IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3564 OF 2017

The New India Assurance Company ..Appellant

Vs.

1. Sanjiwani w/o. Vachist Kadape,
2. Parmeshwar s/o. Vachist Kadape,
3. Sharda d/o. Vachist Kadape,
4. Ashok s/o. Babasaheb Tidake,
5. Raju s/o. Gangaram Rathod ..Respondents

Mr.A.S.Usmanpurkar, Advocate for appellant
Mr.D.A.Mane, Advocate h/f. Mr.N.R.Pawade, Advocate for respondent nos.1 to 3

AND
FIRST APPEAL NO.1529 OF 2021

1. Sanjiwani w/o. Vachist Kadape,
2. Parmeshwar s/o. Vachist Kadape,
3. Sharda d/o. Vachist Kadape ..Appellants

Vs.

1. The New India Assurance Co. Ltd.
2. Ashok s/o.Babasaheb Tidke,
3. Raju s/o.Gangaram Rathod ..Respondents

Mr.D.A.Mane, Advocate h/f. Mr.N.R.Pawade, Advocate for appellants
Mr.A.S.Usmanpurkar, Advocate for respondent no.1

CORAM : R.G. AVACHAT, J.
DATE : OCTOBER 28, 2021

ORDER :-

Both these appeals are being decided by this common judgment since the challenge therein is to the judgment and award dated 20.07.2016 passed by the Motor Accident Claims Tribunal, Majalgaon ("the Tribunal", for short) in Motor Accident Claims Petition No.3 of 2014. Vide the impugned and order, a sum of Rs.4,79,500/- has been awarded as compensation with interest at the rate of 9% per annum on account of death occurred in a vehicular accident.

First Appeal No.3564 of 2017 has been filed by the insurance company. The Appeal (No.1529 of 2021) has been filed by the original claimants for enhancement of compensation.

2. The facts, giving rise to the present appeals, are as under :-

The deceased – Vachist had gone to Chakarwadi, Tq. Kaij, Dist. Beed, on his motorbike on 01.01.2014. When the deceased was on his way back home, the truck bearing registration no.MH-23-4912 knocked the motorbike down from behind. As a result thereof, the deceased suffered multiple injuries and succumbed thereto. His widow and two children, therefore, filed the petition for compensation. It was their case that the deceased was 53 years of age when he breathed last. The deceased was serving as a Salesman with a garment shop at monthly pay of Rs.8,000/-.

3. The Tribunal worked out the compensation as under :-

Sr. No.	Heads	Calculation
(i)	Monthly income (Notional)	Rs.3,000
(ii)	50% of (i) above to be added as future prospects	Rs.3000+1500=4500
(iii)	Annual income of the deceased	Rs.4500x12=54,000
(iv)	1/3rd deduction from (iii)	Rs.54000-13500 =40,500
(v)	Compensation after multiplier of 9 is applied	Rs.40500x9 (suitable multiplier) Rs.3,64,500/-
(vi)	Loss of consortium (Rs.10000/- to each claimant i.e. 10000x3)	Rs.30,000/-
(vii)	Love and affection	Rs.50,000/-
(viii)	Loss of estate	Rs.25,000/-
(ix)	Funeral expenses	Rs.5,000/-
(x)	Travelling expenses	Rs.5,000/-
	Total Compensation awarded	Rs.4,79,500/-

4. Since the driver of the truck involved in the accident did not hold valid and effective driving license, the Tribunal directed the appellant-insurance company to pay the amount of compensation and then recover the same from the truck owner.

5. Heard learned counsel for the parties.

6. Mr.A.S.Osmanpurkar, learned counsel for the insurance-company, would submit that the truck driver did not hold valid and effective driving license at the relevant time. It constituted breach of the terms and conditions of the policy of insurance. The insurance company, therefore, ought to have been exonerated of its liability to pay the compensation. The deceased was riding the motorbike without sporting helmet. As such, the deceased himself has contributed to the cause of his death. The deceased was 60 years of age. Multiplier of 7, therefore, ought to have been applied instead of 9. Moreover, nothing should have been awarded towards future prospects as the deceased was 60 years of age. Learned counsel, therefore, urged for setting aside the impugned judgment and award.

7. Learned counsel for the respondents-claimants (appellants in First Appeal No.1529 of 2021) would, on the other hand, submit that the deceased was serving at monthly pay of Rs.8,000/- and the evidence to that effect was let in. The Tribunal, therefore, ought to have considered his income at Rs.8,000/-. Moreover, the driving license of the deceased indicates his age was 53 years of age. The

Tribunal ought not to have considered it as 60 years based on the post mortem report. No adequate compensation has been granted under conventional heads. Learned counsel, therefore, urged for enhancement of compensation.

8. The facts indicate that the offending truck dashed the motorbike from behind. It, therefore, cannot be considered it to be a case of contributory negligence merely because the deceased was not sporting helmet. The driver of the offending truck did not hold valid and effective license to drive the same at the relevant time. The Tribunal has, therefore, rightly directed the appellant-insurance company to pay the amount of compensation and then recover the same from the owner of the truck. It was a case of third party claim.

9. As regards the question of quantum of compensation, there was no concrete evidence of income of the deceased. The deceased was said to have been serving as Salesman with a garment shop. In the factual backdrop, the Tribunal considered it notionally at Rs.3,000/- per month.

10. The accident dates back to January, 2014. The notional income considered by the Tribunal is on lower side. The Tribunal,

therefore, ought to have considered it at Rs.4,500/- per month (Rs.150/- per day). The driving licence of the deceased indicates that his age was 53 years when he breathed his last. The Tribunal, therefore, ought not to have relied on the age, which has been approximately mentioned as 60 years in the post mortem report. Since the deceased was 53 years of age, 10% of his established income is added thereto towards future prospects (Rs.4,500/- + Rs.450/-). This way, the monthly income of the deceased comes to Rs.4,950/-. The annual income would come to Rs.59,400/-. After deducting one third thereof towards personal and living expenses since the claimants were three in number, the amount would come to Rs.39,600/- (i.e. Rs.59,400 – 1/ 3rd = 39,600). Applying multiplier of 11, the amount of loss of dependency would come to Rs.4,35,600/- (Rs.39,600 x 11). A sum of Rs.1,20,000/- is awarded towards loss of consortium and love and affection to each of the claimants besides Rs.30,000/- towards loss of estate and funeral expenses. This way, the total amount of compensation payable to the claimants would come to Rs.5,85,600/- (Rs.4,35,600 + Rs.1,20,000 + Rs.30,000/-).

11. It appears that the Tribunal has awarded interest at the rate of 9% p.a., which is very much on higher side. Same is required to be scaled down to 6% p.a.

12. In view of the above, both the appeals are disposed of in terms of the following order :-

(i) First Appeal No.3564 of 2017 filed by the insurance company is dismissed.

(ii) First Appeal No.1529 of 2021 filed by the claimants is partly allowed.

(iii) The amount of compensation awarded by the Tribunal is enhanced to Rs.5,85,600/- to be paid with interest at the rate of 6% per annum from the date of the claim petition till the date of payment.

(iv) The amount, which has already been paid/deposited by the insurance company, be given due set off.

(v) The amount of compensation, if any, in deposit with this Court be paid to the claimants immediately.

[**R.G. AVACHAT, J.**]

KBP