

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO. 706/2015

1. Vinayak Shriram Ingle,
Aged about 55 years, Occ. Retired,
2. Rambabai Vinayak Ingle,
Aged about 49 years, Occ. Household,
3. Amit Vinayak Ingle,
Aged 25 years, Occ. Education,
4. Sumit Vinayak Ingle,
Aged 24 years, Occ. Education,
5. Ku. Neha Rangrao Ingle,
Aged 21 years, Occ. Education,

Appellant Nos. 1 to 5, R/o. Bicchu Tekdi,
Amravati, Dist. Amravati.

...APPELLANT
(On R.A.)
Ori. Petitioner

// VERSUS //

1. Sanjivkumar Sudarshan Pradhan,
aged 49 years, Occ. Driver,
R/o. Banmalipur, P.S. Thakurgad,
Dist. Angul Orrisa,
2. Munendra Jambeshwar Jena,
Aged Major, Occ. Not known,
R/o. Kulad, Nalco Nagar,
Angul, Dist. Angul, Orisa,

3. The Oriental Insurance Co. Ltd.,
through it's Divisional Manager,
2nd Floor, Shraddha Building, Rajapeth,
Amravati.

.... **RESPONDENTS**
(On R.A.)
Ori. Respondents

Shri S. S. Alaspurkar, Advocate for appellant Nos. 1 to 5.
Shri A. W. Paunikar, Advocate for respondent No. 3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 02.03.2021

JUDGMENT

This is an appeal under Section 173 of the Motor Vehicles Act (short 'M. V' Act) challenging the judgment and award dated 20.11.2014 in MACP No.33/2011. By the impugned judgment, the Claims Tribunal has awarded compensation of Rs. 8,49,100/- to these appellants who were claimants before the Tribunal.

2. The appellants herein were the claimants before the Tribunal and shall be hereinafter referred to as 'the claimants'.

3. The claimants had filed an application under Section 166 of the M. V. Act in view of death of Manish in a motor vehicular accident. The claimant Nos. 1 and 2 are the parents whereas claimant

Nos. 3 and 4 are siblings of deceased Manish. It is the case of the claimants that on 26.12.2010, at about 07.50 p.m. said Manish was proceeding on his motorcycle from Warud to Amravati with his brother Roshan as a pillion rider. There was collision between the motorcycle and a truck bearing registration No. OR-19-C-1386 which was driven by the respondent No. 1 and owned and insured by the Respondent Nos. 2 and 3 respectively. Said Manish died as a result of the injuries sustained in the said accident.

4. The claimants alleged that the accident was caused solely due to rash and negligent driving by the respondent No. 1. The claimants stated that deceased Manish was 25 years of age and that he was working as a Manager in Big Bazar, Gopal Nagar, Amravati. He was earning Rs. 10,000/- per month. Claimants further stated that he had completed MBA from prestigious International College, Pune. The claimants therefore filed claim petition under Section 166 of the M. V. Act claiming compensation of Rs. 7,00,000/- which amount was subsequently restricted to Rs. 1,00,000/-.

5. The respondent Nos. 1 and 2 denied that the accident was caused due to rash and negligent driving by the respondent No. 1. They claimed that deceased was not authorized to drive a vehicle. They

stated that the accident was caused due to rash and negligent driving by the deceased.

6. The Tribunal held that it was a case of contributory negligence and assessed negligence of the deceased at 30%. The Tribunal considered the income of the deceased as Rs. 7,200/- p.m. and deducted Rs. 175 towards professional tax. The Tribunal added 50% towards future prospects, applied multiplier of 18 and upon deducting 50% towards personal expenses of the deceased, assessed loss of dependency at Rs. 11,38,050/-. In addition, the Tribunal awarded Rs. 75,000/- towards loss of love and affection and funeral expenses. After deducting 30% towards contributory negligence, the claimants have been awarded compensation at Rs. 8,49,100/- with interest @ 9% per annum from the date of the petition till realization.

7. The claimants have challenged the findings recorded by the Tribunal on the issue of contributory negligence and on the quantum of compensation. It is further stated that the Tribunal has not awarded any compensation towards loss of filial consortium.

8. Learned counsel for the appellant submits that the charge-sheet was filed against the driver of the offending vehicle for driving the vehicle in rash and negligent manner resulting in death of said

Manish. It is submitted that the driver of the offending vehicle has not stepped into the witness box and in the absence of any evidence, the Tribunal could not have assumed that the deceased had contributed to the accident. He has relied upon the decision of the ***Apex Court in Kumari Kiran Vs. Sajjan Singh and others, AIR 2015 SC (Supp) 694,*** to contend that mere position of vehicle after accident, cannot give a substantial proof as to the rash and negligent driving on the part of the deceased. Therefore, learned counsel for the claimant contends that the Tribunal has erred in holding that the deceased has also contributed to the accident and has thus erred in deducting 1/3rd of compensation towards contributory negligence.

9. Learned counsel for the claimants submits that claimant Nos. 1 and 2 are the parents and claimant Nos. 3 and 4 are the siblings of the deceased. He claims that the claimant Nos. 1 to 4 were the dependent of the income of the deceased. Since deceased was contributing income to his family for survival, 1/3rd amount is to be deducted towards his personal expenses. He has relied upon the decision in ***Magma General Insurance Company Limited Vs. Nanu Ram, 2018 SCC 1546,*** to contend that claimant No. 1 and 2 being the parents and claimant Nos. 3 and 4 being sibling of the deceased are entitled for loss of filial consortium.

10. Learned counsel for the respondents Insurance Company submits that in connected Claim Petition No. 37/2011 filed by the brother of the deceased, the Tribunal has recorded a finding on the issue of contributory negligence. He further submits that evidence on record particularly spot panchanama shows that the deceased was responsible for accident. He therefore contends that the Tribunal was justified in holding that it was a case of contributory negligence.

11. Learned counsel for the respondent submits that the deceased was a bachelor and in view of the judgment of the Apex Court in *Sarla verma and others Vs. Delhi Transport Corporation and another*, 2009 ACJ 1298, half of the income needs to be deducted towards personal expenses of the deceased. He submits that the claimants have not adduced any evidence to prove that the deceased was contributing his income to the family for their survival and hence, the Tribunal was justified in deducting 50% of his income toward his personal expenses.

12. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

13. It is not in dispute that the motorcycle driven by the deceased had collided with the vehicle driven by the respondent No. 1.

It is also not in dispute that the deceased had expired as a result of injury sustained in the accident. The question is whether it was a case of a contributory negligence.

14. It is to be noted that the FIR was lodged against the driver of the offending vehicle for causing death of the Manish due to his rash and negligent driving. The said case was investigated and charge-sheet was filed against the driver of the offending vehicle for offences under Sections 279 and 304A of the Indian Penal Code. The driver of the offending vehicle has not stepped into the witness box and has not explained the circumstances under which the accident was caused. On the contrary, the pillion rider Roshan who was the witness to the accident, has deposed that the driver of the offending vehicle had driven the vehicle in rash and negligent manner. He has stated that accident was caused when the said truck was in the process of overtaking another truck. He has denied that the accident was caused due to negligent driving by the deceased. Nothing has been elucidated in the cross-examination of this witness to indicate that the deceased was in any manner responsible for the accident. The Tribunal has held that the deceased was also responsible for accident mainly on the basis of spot panchanama. In the case of Kumari Kiran (*supra*), referred to the decision in *Juju Kuruvila and Ors. Vs. Kunjamma Mohan and*

Ors. the Apex Court has reiterated that the mere position of the vehicles after the accident, as shown in a scene mahazar, cannot be a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.

15. As noted above, the substantial evidence of Roshan clearly proves that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle. Hence the Tribunal was not justified in attributing negligence to the deceased and consequently deducting 30% compensation on the ground of contributory negligence.

16. The Apex Court in *National Insurance Company Ltd. Vs. Pranay Sethi 2017 (ACJ) 2700* has held that the claimants are entitled to total compensation of Rs. 70,000/- on the three conventional heads viz. 40,000/- towards loss of consortium and Rs. 15,000/- each towards loss of estate and funeral expenses. In *Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram, (2018) 18 SCC 130*, the Apex Court interpreted “consortium” to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family.

17. The claimant Nos. 1 and 2 are the parents of the deceased and claimant Nos. 3 and 4 are the siblings who have been deprived of love and affection of the deceased therefore the claimant Nos. 1 to 4 are entitled for filial compensation of Rs. 40,000/- each. Deceased was a bachelor, there is no evidence on record to indicate that the deceased was contributing to the income of the claimants for their survival. Hence, claimants have not made out a case for deduction of 1/3rd towards personal expenses.

18. In the New *India Assurance Co. Ltd. Vs. Smt. Somwati and others, 2020 ACJ 2321*, the Hon'ble Apex Court has reiterated that loss of 'love and affection' is comprehended in 'loss of consortium', hence, there is no justification to award compensation towards 'loss of love and affection' as separate head. Hence, claimants are not entitled for separate compensation under the head of loss of love and affection. Hence, compensation of Rs. 75,000/- awarded under these heads needs to be adjusted towards loss of filial consortium. Hence, the compensation calculated as under:-

I	Loss of dependency	
i.	Annual Income	Rs. 84,300/- (7025 x 12)
ii.	Addition of towards future prospect	Rs. 42,150/-
iii	Total Income	Rs. 1,26,450/-
iv	50% deduction towards personal expenses	Rs. 63,225/-
v.	Total income after deducting personal expenses	Rs. 63,225/-
vi.	Loss of dependency on applying multiplier of 18.	Rs.11,38,050/-
II	Compensation payable on other conventional heads.	
i.	Loss of filial consortium	Rs. 1,60,000/-
ii.	Funeral expenses and loss of estate	Rs. 30,000/-
	Total Compensation payable	Rs. 13,28,050/-

19. Thus, the claimant Nos. 1 to 4 are entitled for total compensation of Rs. 13,28,050/-, which in my view 'just compensation' hence, the following order:-

- (i) Appeal is allowed.
- (ii) The claimants Nos. 1 to 4 are entitled of total compensation of Rs. 13,28,050/- with interest @ 9% per annum from the date of the petition till realization.
- (iii) The respondent No. 3 – Insurance Company shall deposit the balance amount within a period of eight weeks before the Claims Tribunal, Amravati.
- (iv) The claimant Nos. 1 to 4 are at liberty to withdraw the said amount.
- (v) Award stands modified.
- (vi.) The claimants to pay deficit court fees within a period of six weeks.

(SMT. ANUJA PRABHUDESSAI, J.)