

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1670 OF 2020

CHOLAMANDALAM GENERAL INSURANCE COMPANY LTD
THR ITS BRANCH MANAGER AURANGABAD
VERSUS
UJAWALA JAGDISH KULKARNI AND OTHERS

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Advocate for Appellant : Mr. S.G. Chapalgaonkar
Advocate for Respondent Nos.1 and 2 : Mr. S.S. Manale
Advocate for Respondent No.3 : Mr. M.P. Tripathi h/f.
Mr. K.G. Ghute Patil

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CORAM : S.G. DIGE, J.
DATE : 25th July, 2022

ORDER :

1. Being aggrieved and dissatisfied by the judgment and award passed by the Member, Motor Accident Claims Tribunal, Latur (for short 'the Tribunal'), in M.A.C.P. No.280 of 2017, thereby allowing the application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'Act'). The appellant - original respondent No.2 (Insurance Company) has filed this appeal.

2. Brief facts of the case are as under :

On 04.11.2017 deceased Dayanand Jagdish Kulkarni

was proceeding from Dayanand College, Latur towards water tank, new Latur-Barshi road on a motorcycle bearing registration No. MH-24-Z-5847, when he reached opposite side of water tank at about 23:30 p.m. to 23:50 p.m., one Truck bearing registration No. MH-44/5921 (hereinafter referred to as 'offending truck') came from opposite direction. Respondent No.3 herein was driving the said truck rashly, negligently and in high speed and thereby gave forceful dash to the motorcycle of the deceased. Due to the dash deceased sustained multiple grievous injuries on his head and vital part of the body. Immediately after accident deceased was brought to Civil Hospital, Latur for treatment but he was declared dead.

3. Respondent Nos.1 and 2 - original claimants, who are the parents of the deceased filed the claim petition before the Tribunal, Latur claiming compensation. Considering evidence on record and after hearing parties the learned Tribunal has granted Rs.15,42,000/- inclusive of amount of no fault liability to the claimants along-with interest @ 6% per annum from the date of claim petition

till the date of actual realization. The said judgment is under challenge.

4. It is contention of learned Counsel for appellant that, the Tribunal failed to appreciate evidence on record in its proper perspective hence, arrived at erroneous conclusion while passing the impugned judgment and award. At the time of accident the deceased was riding his motorcycle rashly and negligently. The said motorcycle dashed on cleaner side of truck which was coming from opposite direction, which clearly indicate that, there was head on collision between the vehicles which were approaching to each other. In that view of the matter, Tribunal ought to have recorded finding of contributory negligence against the deceased. It is evident from documentary evidence produced on record that, deceased was driving his motorcycle in rash and negligent manner without following the traffic conditions and suddenly dashed to the truck. Therefore, the Tribunal ought to have recorded finding of contributory negligence and deducted amount of compensation in proportion of contribution of the

deceased.

5. Learned Counsel submitted that, claimants have pleaded that deceased was working as supervisor with Anand Agro Foods, Latur and was earning Rs.10,000/- per month. However, there is no documentary evidence supporting the employment of deceased as well as income. Claimant has examined Mr. Uttam Sopanrao Kasade as witness No.2, in support of contention that, deceased was employee with Anand Agro Foods. However, during cross examination of said witness, it has been clearly elucidated that, no documentary evidence is placed on record regarding employment of deceased. There was no PF account. All these admissions clearly shows that, C.W.-2 is a got-up witness and so called salary certificate is a made-up document.

6. Learned Counsel further submits that, in absence of concrete evidence regarding employment of deceased or his income, the compensation ought to have been worked out by taking income of deceased on notional basis.

However, Tribunal has erroneously relied upon evidence of got-up witness and made-up salary certificate while considering income of deceased @Rs.10,000/- per month. In absence of proof of income, the deceased cannot be considered as salaried person or person on fixed salary. Therefore, there is no reason to apply addition by way of future prospects in the income of deceased. However, Tribunal has erroneously applied future prospects in the facts and circumstances of case and passed excessive and exorbitant award. The impugned judgment and award passed by Tribunal is otherwise bad in law hence, required to be quashed and set aside.

7. Learned Counsel for respondent Nos.1 and 2 submits that, the Tribunal has passed the order after considering all evidence led before him. Hence, order passed by the Tribunal is legal and valid. Learned Counsel for respondents relied upon the following judgments :

(i) Mohammed Siddique and Anr Vs. National Insurance Company Limited and Ors in Civil Appeal No.79 of 2020, 2020 DGLS(SC) 29,

dated 08.01.2020.

***(ii) New India Assurance Company Limited Versus
Somwati and Ors in Civil Appeal No.3093 of
2020, (2020) 9 SCC 644 .***

8. I have heard all learned Counsel. Perused judgment and order passed by the Tribunal. The appellant has raised the issue of quantum of income of deceased considered by the Tribunal and contributory negligence of the deceased. It is contention of learned Counsel for appellant that, the income of deceased is considered as Rs.10,000/- per month without any proof. The salary slip produced by the Anand Agro Foods was mere computer generated salary slip, said evidence was given by the authorized person and not by the employer of said firm. Hence, the Tribunal should not have considered it as evidence.

9. The original claimant P.W. - 1 Mr. Jagdish Kulkarni has stated that, at the time of accident deceased was 23 years old and was serving as a supervisor and was

earning amount of Rs.10,000/- per month. To prove the salary of deceased P.W. 2 - Uttam Sopanrao Kasade is examined. In the evidence of Uttam Sopanrao Kasade, it has come on record that, he is serving in Anand Agro Foods and deceased was serving in his company as supervisor and he used to get Rs.10,000/- per month.

10. This witness is independent witness and has stated on oath that, deceased was getting Rs.10,000/- per month. I do not agree with the contention of learned Counsel for appellant that, this witness is not employer of deceased and has given evidence on the basis of authority letter. In my view when this witness has specifically stated that he is working in the Aanand Agro Foods since 2013 he has produced authority letter issued by employer authorising him to give evidence, so there is no reason to disbelieve the evidence of this witness and salary certificate (Exh.39) which is produced on record shows deceased was getting Rs.10,000/- per month.

11. The Apex Court in the case of Mohammed Siddique

(supra) has observed that, “*The High Court ought to have appreciated that the Court of first instance was in a better position to appreciate the oral testimony. So long as the oral testimony of PW-2 remained unshaken and hence believed by the Court of first instance, the High Court ought not to have rejected his evidence. After all, there was no allegation that PW-2 was set up for the purposes of this case. There were also no contradictions in his testimony. As against the testimony of an employer supported by a certificate issued by him, the High Court ought not to have chosen a theoretical presumption relating to the minimum wages fixed for unskilled employment. Therefore, the interference made by the High Court with the findings of the Tribunal with regard to the monthly income of the deceased, was uncalled for.*”

12. In the present case P.W. 2 – has categorically stated that, deceased was employee of their company and was getting Rs.10,000/- per month.

13. In respect of issue of contributory negligence raised

by learned Counsel for appellant, it appears from record that offending truck has given dash to the motorcycle of deceased, crime is registered against the truck driver of offending truck, spot panchanama (Exh.26) shows accident spot. It is on extremely southern side of road. It shows that, deceased was proceeding from left side of the road but offending truck gave him dash coming to side of deceased. It shows that, there was sole negligence of driver of offending truck. Moreover, appellant has not examined any witness to prove that, there was contributory negligence of deceased.

14. In view of the above, I pass the following order :

ORDER

- a) Appeal is dismissed.
- b) No order as to costs.

[S.G. DIGE, J.]