IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.512 OF 2017

1. Smt. Ratnabai w/o. Ramesh Sanvatsarkar.. Appellants
   Age.31 years, Occ. Household [original claimants]

2. Kum. Deepali d/o. Ramesh Sanvatsarkar
   Age.11 years, Occ. Education

3. Master Yogesh s/o. Ramesh Sanvatsarkar
   Age.8 years, Occ. Education

4. Master Nitin s/o. Ramesh Sanvatsarkar
   Age.6 years, Occ. Education

   [Appellant Nos.2 to 4 are minors under natural guardianship of their mother i.e. appellant No.1]

5. Mr.Dnyandeo Namdeo Sanvatsarkar
   Age.64 years, Occ. Nil

6. Mrs.Narmadabai w/o. Dnyandeo Sanvatsarkar
   Age.60 years, Occ. Nil

   All R/o.Shinganapur, Tq. Kopergaon, Dist. Ahmednagar.

Versus

1. Managing Director, .. Respondents
   The Sanjeevani Sahakari Sakhar [oringinal
   Karkhana Ltd., R/o. Shinganapur, respondent]
   Tq. Kopergaon, Dist. Ahmednagar.
   [Owner of jeep No. MH-17-E-960]

2. The New India Assurance Co. Ltd.,
Parag Plaza, Dr. Chatuphale Marg,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

Mr. Amol S. Gandhi, Advocate for the appellants.
Mr. Ashwin V. Hon, Advocate for respondent No.1.
Mr. S.G. Chapalgaonkar, Advocate for respondent No.2.

CORAM : VINAY JOSHI, J.
DATED : 24.02.2022

ORAL JUDGMENT :-

01. Being dissatisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Kopargaon, Dist. Ahmednagar, in MACP No.30 of 2009, the original claimants have preferred this appeal. The Tribunal has assessed total compensation of Rs.6,48,846/-, which has been disputed by contending that the Tribunal erred in holding 50% negligence of the deceased, inadequate amount under non-pecuniary head and non-consideration of future prospects.

02. The facts in brief are that on 15.11.2008 deceased Ramesh by riding on motorcycle was proceeding

from Kopergaon towards village Sanvatsar. While the motorcycle was passing from Shinganapur Shivar, offending vehicle i.e. jeep bearing registration No.MH-17-E-960 came from opposite direction in high speed and gave forceful dash to the motorcycle resulting into death of rider Ramesh. Claimants have filed income tax return of deceased on the basis of which the Tribunal has calculated the compensation by adopting settled norms.

03. The first and foremost objection raised by the appellant-claimant is on the point of negligence. It is argued that the Tribunal has totally erred in holding that it is a case of contributory negligence, wherein deceased as well as jeep driver were equally held responsible for the accident. The Tribunal by holding deceased equally responsible has reduced the claim by 50% of the assessed amount. On the other hand, learned Counsel appearing for the insurer by placing reliance on the decisions in cases of **New India Assurance Co. Ltd. Vs. Jankibai Babruwan Bhawal & Ors. 2020(1)Bom.C.R.226,**

Jiju Kuruvila & Ors. Vs. Kunjujamma Mohan & Ors. 2013 AIR (SC) 2293, Dinesh Kumar J. @ Dinesh J. Vs. National Insurance Co. Ltd. & Ors., 2018(1) SCC 750 and Archit Saini & Anr. Vs. Oriental Insurance Co. Ltd. & Ors. 2018(3) Bom.C.R.420 submitted that, the deceased was not wearing helmet at the time of occurrence and in absence of cogent evidence, negligence towards jeep driver cannot be more than what has been decided.

04. Perused the judgments relied by the respondents. However, the factum of negligence is to be decided on the basis of facts of this case. The claimants have led evidence of widow, however, as she was not eye-witness to the occurrence, her evidence is of no assistance for the purpose of deciding point of negligence. The claimants have produced police papers in support of their case. On the date of accident itself cousin brother of deceased, namely, Balasaheb has filed report (Exh.25) regarding occurrence. He claimed to be eye-witness stating that in his presence the jeep came from opposite direction in

high speed and gave dash to the motorcyclist. However, the claimants have not examined Sahebrao despite he being their close relative. In true sense, besides police papers the applicants have not brought any material in this regard.

05. On the other hand, the insurer has examined jeep driver at Exh.39. He stated other side of the story. At relevant time the jeep was proceeding in moderate speed. However, the deceased came from opposite direction in high speed. He deposed that in order to overtake bullock-cart the deceased came to wrong side and dashed to the jeep. Certainly, the evidence of jeep driver cannot be accepted as it stands, because he is interested one. His evidence has to be tested on the basis of other available material.

06. Police report Exh.25 clearly blames the jeep driver as solely responsible for the accident. Generally in accident cases, panchanama of the scene of offence

assists to large extent. Perusal of panchanama (Exh.26) discloses that the accident took place on East-West road and the place of accident was to the northern side of the road. It has come in the evidence that at the relevant time the deceased was proceeding from Kopargaon i.e. from western side towards East. Admittedly, the jeep came from opposite direction i.e. from eastern side to the West. Thus, it is apparent that it was a case of head on collusion. Panchanama discloses that exact place of occurrence was to the northern side of the road meaning thereby left side of the motorcyclist. The Tribunal has misread the sketch as embodied in panchanama by holding that the place of accident was to the southern side of East-West road. Said observation was factually incorrect since the sketch specifically discloses that the place of occurrence as well as position of jeep after accident was to the extreme northern edge of the road. Perhaps the said confusion has misdirected the Tribunal in fastening equal responsibility to motorcycle rider.

07. It is apparent from evidence that it was a case of head on collusion. The accident took place in northern portion of the road i.e. left side of the motorcycle. True, mere position of the vehicle after accident is not sufficient to prove the aspect of rashness or negligence. However, it will assist us to show that the motorcycle did not went to the wrong side of the road. Admittedly, at the relevant time the deceased was not wearing helmet or taken safeguarding measures. The evidence of jeep driver shows that the motorcycle came in high speed and gave dash. Therefore, certainly it is a case of contributory negligence. Since the jeep was a bigger vehicle, heavy duty lies on the jeep driver to take care while moving on public road. In the circumstances, the jeep driver can be held responsible to the extent of 75% and motorcycle rider i.e. deceased to the extent of 25%. Having regard to the said percentage of negligence amount of compensation is to be calculated.

08. The claimants' learned Counsel has submitted that the Tribunal erred in not considering the loss of future prospects. In view of decision of **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors. (2017)16 SCC 680**, the claimants are entitled for addition on account of future prospects. It has come in the evidence that the deceased was 34 years of age at the time of occurrence and was running a grocery shop. In view of that 40% is to be added towards loss of future prospects. The Tribunal has awarded Rs.5000/- towards consortium, Rs.2000/- towards funeral expenses and Rs.2500/- towards loss of estate. In view of the decision in case of Pranay Shethi (supra) addition of 70,000/- has to be made under above non-pecuniary head.

09. The claimants have produced income-tax return of the deceased showing annual income to the tune of Rs.1,06,950/-, which is considered by the Tribunal as well as there is no reason to discard the said reliable piece of evidence. In the circumstances, the amount of

compensation can be assessed as below :-

Sr. No.	Particulars	Amount (Rs)
1.	Annual income of the deceased	1,06,950=00
2.	40% addition towards future prospects	42,780=00
	(1,06,950/- + 42,780/-)	1,49,730=00
3.	1/4th deduction towards personal expenses	(37,432=00)
	(1,49,730/- - 37,432/-)	1,12,298=00
4.	Application of multiplier of 16. (1,12,298/- x 16)	17,96,768=00
5.	Addition on account of conventional heads.	70,000=00
	(17,96,768/- + 70,000/-)	18,66,768=00
6.	Deduction of 25% amount (towards contributory negligence)	(4,66,692=00)
	(18,66,768/- - 4,66,692/-)	14,00,076=00

10. The offending vehicle was owned by respondent No.1 and duly insured with respondent No.2 – company. Therefore, they are jointly and severally liable to pay compensation. The rate of interest shall be in consonance with the prevailing rate of interest in banking sector. Considering the said aspect it is desirable to award future interest at the rate of 7% per annum.

11. In view of above, the following order :-

O R D E R

(1) Appeal stands partly allowed with proportionate costs.

(2) The impugned order passed in MACP No.30 of 2009 dated 13.05.2009 is set aside and modified as below :-

(3) Respondent Nos.1 and 2 shall jointly and severally pay total compensation of Rs.14,00,076/- (Rupees Fourteen Lakhs Seventy Six) inclusive of 'no fault liability' towards compensation along with future interest @ 7% per annum from the date of filing of petition till realization of full amount.

(4) On deposit of entire amount, Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) be disbursed to appellant Nos.5 and 6 each (parents of deceased).

(5) An amount of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) each be invested in any

Nationalized Bank of the choice of guardian in the name of minor appellant Nos.2 to 4 through their natural guardian mother for the period till they attain majority.

(6) Appellant No.1-widow (mother of minors) is entitled to receive periodical interest on said deposits as per her choice for the purpose of maintenance.

(7) Remaining entire amount be disbursed to appellant No.1-widow.

(8) The appellant shall pay deficit court fee, if any.

[VINAY JOSHI,J.]