

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1161 OF 1997
WITH
CROSS OBJECTION (ST) NO.25738 OF 2019**

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|--|----------------------|
| 1. Union of India |) |
| (through Secretary, Ministry of Defence, |) |
| Government of India, Army Headquarters, |) |
| New Delhi and Commanding Officer, |) |
| 2nd Maratha Company Headquarters, |) |
| Aundh, Pune-7) |) |
| 2. Assistant Director, Army Group, |) |
| Insurance Directorate, Adjutant Generals |) |
| Branch, Army H.Q. West Block III. |) |
| | (Original Opponents) |
| | ...Appellants |

Versus

- | | |
|--|---|
| 1. Smt. Sandhya Sudhakar Karhadkar |) |
| (Since Deceased)42 years, Occu. Household. |) |
| 2. Kumari Anjali Sudhakar Karhadkar, |) |
| @ Neha Nandkumar Devchakke. |) |
| 17 years, Occu. Education. |) |
| 3. Kumari Manju Sudhakar Karhadkar, |) |
| @ Jayshree Rajendra Joshi |) |
| 14 years, Occu. Education |) |
| 4. Mr. Girish Sudhakar Karhadkar, |) |
| S/o. Sudhakar Karhadkar, |) |
| (Since deceased through his legal heir) | |
| a. Shradha Girish Karhadkar, |) |
| Age: 40 Years; Occ: Service; |) |
| R/at:103, A Wing, Nisarg City CHS-1, |) |
| Kaspate Wasti, Wakad, |) |
| Near Hotel Ambience; |) |
| Pune - 411 057 |) |
| b. Kalpita Girish Karhadkar; |) |
| Age: 17 Year; Occ: Student; |) |
| R/at: 103, A Wing, Nisarg City CHS-1, |) |
| Kaspate Wasti, Wakad, |) |
| Near Hotel Ambience; |) |
| Pune - 411 057. |) |

- c. Sarvesh Girish Karhadkar;)
 Age:14 Year; Occ: Student;)
 R/at: 103, A Wing, Nisarg City CHS-1,)
 Kaspate Wasti, Wakad,)
 Near Hotel Ambience;)
 Pune - 411 057.)
5. Shri. Ashok Laxman Patil (Lans Naik))
 Soldier No. 2768295, driver of Military Truck)
 No.780 D 37141N, Adult, Occu. Driver, r/o)
 Ministry of Defence, Government of India,)
 Army Head Quarters, New Delhi.)
- (Original Opponent)
...Respondents

Mr. Mayuresh S. Lagu, for the Appellants.
 Mr.Sandeep Parikh a/w Prabhakar M. Jadhav, for the
 Respondent Nos. 2 to 4.

CORAM : S.G. DIGE, J.
DATE : 22ND DECEMBER 2022

JUDGMENT:-

1. Being aggrieved and dissatisfied with the judgment and order passed by Motor Accident Claim Tribunal, Pune, this appeal is preferred by appellant/original respondent no.1.

2. Brief facts of the case are as under.

On 27th February 1986 at about 5:45 p.m. the deceased Sudhakar was traveling on vehicle TVS bearing No. MGC 7508 alongwith his friend Laxman as pillion rider. The deceased was driving the T.V.S. 50 at the relevant time a military truck no.780D 37141 No.259 II Maratha

Company, (for short 'offending truck') dashed the vehicle of the deceased from back side. Due to said dash, the deceased fell on the road and the rear wheel of the said truck crushed the deceased. Even after the accident, the truck driver did not stop the vehicle and tried to run away from the spot. However, one Shri. Arun Chidiawar, who witnessed the accident informed the police about the accident and later on the truck driver was arrested. The offence was registered against the truck driver of the offending truck.

3. The Respondent nos. 1 to 4/original claimants (for short "claimants") filed claim petition for getting compensation before the Motor Accident Claim Tribunal, Pune (for short 'the Tribunal'). The Tribunal has awarded the compensation, the said judgment and order is under challenge.

4. It is the contention of learned counsel for appellants that the Tribunal has erred in holding that the said accident was occurred due to negligence of driver of the offending truck. The said accident was occurred due to sole negligence of deceased but this fact was not considered by

the Tribunal. Learned counsel further submits that the income of deceased is considered on higher side. Hence, requested to allow the appeal.

5. It is the contention of learned counsel for respondents that the accident was occurred due to sole negligence of the offending truck driver. There was eye witness to the said incident. The deceased was working in the MSEB. He was a Government servant. The Tribunal has considered all the aspects while awarding the compensation. Hence, no interference is required.

6. I have heard both learned counsel. Perused the judgment and order passed by the Tribunal. The issue involved in this appeal is of contributory negligence of deceased and income of deceased.

7. It is the contention of learned counsel for appellants that the accident was occurred due to sole negligence of the deceased. Admittedly, the offence is registered against the driver of offending military truck. The deceased was traveling with his friend Laxman. His evidence is at Exh. 27.

He has stated that the deceased was proceeding with him on TVS 50.Motor Cycle. A military truck came from back side and knocked them down. They both fell on road. The wheel of the offending truck ran over the head of the deceased Sudakar Karadkar. Nothing elicited in the cross-examination of this witness. The appellants have examined driver of the offending truck at Exh. 51. In cross examination, this witness admitted that on 27 February 1986, he was driving the vehicle and police has registered offence against him. Mr. Laxman has stated that driver of offending truck gave dash to their vehicle from back side. It has come on record that after the accident driver of offending truck tried to run from accident spot, it proves that the accident was occurred due to sole negligence of driver of offending truck.

8. The issue in respect of income of deceased is concerned, it has come on record that the deceased was serving in MSEB and getting salary of Rs.2,500/- per month. The Tribunal has considered the salary of deceased at Rs.2082.45 paise and on that basis, calculations are done.

9. It is the contention of learned counsel for claimants that Respondents have filed cross-objection for enhancement of the compensation but it is not registered as application for delay condonation is pending. This Court may consider about the enhancement of amount in respect of future prospect as per the view of Hon'ble Apex Court in case of **National Insurance Co. Ltd. V/s. Pranay Sethi & Ors.**¹ and Consortium amount as per the view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram.**²

10. In my view, cross objection is filed by the claimants for enhancement of compensation but it is not registered. This first appeal is of year 1997. If the claimants are entitled for enhancement, it can be considered in this appeal. Admittedly, amount of the future prospect is not awarded, as per the view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. V/s. Pranay Sethi & Ors.** Claimants are entitled for 30% future prospects. The consortium amount has not been awarded. As per the view of Hon'ble Apex Court, in the case of ***Magma (supra)***

1 SLP Civil No.25590 of 2014

2 (2018) 18 SCC 120

claimants are entitled for consortium amount of Rs.40,000/- each and Rs.30,000/- for loss of estate and funeral expenses. The Tribunal has considered the income of Rs. 2,082/- after adding 30% in it i.e. Rs.624 it comes to Rs.2706. If one-fourth amount is deducted for personal expenses i.e. Rs.676/-, it comes to total Rs. 2030/-. This Rs. 2030 * 12 comes to Rs. 24,360/-. The applicant was 45 years of age at the time of death. As per the view of Hon'ble Apex Court in the case of **Sarla Verma V/s. Delhi Transport Corporation³**, the proper multiplier is 14. Rs. 24360 * 14 it comes to Rs. 3,41,040/-. The Tribunal has awarded Rs. 1,50,000/-. If this amount is deducted from Rs.3,41,040/-, it comes to Rs. 1,91,040/-. As observed earlier, there are four claimants, they are entitled for consortium amount. It comes to Rs.1,60,000/-, funeral expenses Rs. 15,000/- and loss of estate Rs. 15,000/- total of above calculations comes to Rs.3,81,040/-. Claimants are entitled for this amount as compensation amount.

11. In view of the above I pass following order.

ORDER

i. Appeal is dismissed. No order as to cost.

3 (2009) 6 SCC 121

ii. The claimants are entitled for enhanced compensation of Rs. 3,81,040/-. The Claimants are entitled interest at 7.5% interest on amount of Rs. 1,91,040/- from the date of filing of claim petition till its realization. The claimants are entitled for further interests @ 7.5% on the amount of Rs.1,90,000/- from 31st October 2017 till its realization as this amount is awarded in respect of consortium amount and funeral expenses and loss of estate.

iii. The appellant is directed to deposit the enhanced amount within four weeks. The claimants are permitted to withdraw the deposited amount alongwith accrued interest thereon.

iv. The appellant is permitted to withdraw the statutory amount of Rs. 25,000/- alongwith accrued interest thereon, if it is deposited.

v. The cross objection alongwith interim applications are disposed of. Any amount in the name of deceased claimants, if pending before this Court, be disbursed to the claimants.

(S.G. DIGE, J.)