IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.2845 OF 2016

The National Insurance Company Ltd. a Subsidiary of the General Insurance Corporation of India and a Company Incorporated under the Companies Act having one of its Divisional office at Hazari Chambers, Station Road, Aurangabad Through its Authorized Signatory ..Appellant
(Orig. Respondent No.3)

Versus

1. Kailaschandra Tulshiram Agrawal,
   Age 55 yrs, Occ. Nil,
   R/o Golden Niwas,
   Madkya Maruti Chowk, Parola
   Tk. Parola, Dist. Jalgaon.
2. Sapna Kailaschandra Agrawal,
   Age 45 yrs, Occ. Household,
   R/o. As above.
3. Rahul Kailaschandra Agrawal,
   Age 20 yrs, Occ. Education,
   R/o. As above.
4. Anil Suresh Nikam,
   Age Major, Occ. Driver,
   R/o Bhimnagar, Sakri Road,
   Dhule.
5. Shaligram Bhoju Sonawane,
   Age Major, Occ. Owner,
   R/o. Lal Bahadur Shastrinagar,
   Tal. Golibar Tekadi Road Dhule ..Respondents

(Respondent Nos.1-3 Claimants
Respondent Nos.4-5: Respondent Nos.1-2)

...

Mr. A. B. Kadethankar, Advocate for the Appellant.
Mr. Ujwal S. Patil, Advocate for Respondent Nos.1 to 3.
Mr. V. P. Raje, Advocate for Respondent Nos.4 and 5.

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 18th JULY, 2023.
PRONOUNCED ON : 20th JULY, 2023.

JUDGMENT (Per: S. G. Chapalgaonkar, J.):-

1. The appellant/original respondent no.3-Insurer impugns the judgment and award dated 22.03.2016 passed by the Motor Accident Claims Tribunal, Amalner in Motor Accident Claim Petition No.20/2012 in this appeal, filed under Section 173 of the Motor Vehicle Act.

2. Respondent nos.1 to 3 herein (original claimants) had approached the Tribunal under the provisions of Section 166 of the Motor Vehicle Act raising the claim for compensation towards accidental death of deceased Swapnil Agrawal, who died in motor vehicle accident on 08.12.2011. The claimants contend that deceased was 25 years old and engaged in marketing and sell of mobile instruments. He used to earn Rs.20,000/- per month and support the family. He had passed his MBA in the year 2011. He had great potential in social and political work. According the claimants, on fateful day deceased Swapnil was proceeding from Parola towards Jalgaon on his motorcycle bearing registration No.MH-19-BB-2341. While reached in the vicinity of Erandol, the car bearing registration no.MH-18-W-6426 came from opposite direction and gave forceful dash to the motorcycle of deceased causing multiple injuries and consequential death. The claim was contested on behalf of the respondents on the ground that the deceased himself was responsible for accident as he was riding his motorcycle in rash and negligent manner. The appellant/insurer filed written statement to contend that the claim is bad for non-joinder of necessary parties, as owner and insurer of the motorcycle is not added. The car driver was without license that constitutes breach of policy and prayed for dismissal of the claim.

3. The Tribunal framed the issues. Claimant no.2 deposed in tune with the contents of the claim petition and relied upon the police

papers. The Tribunal after taking survey of the material on record assessed the notional income of the deceased at the rate of Rs.15,000/- per month. After adding 50% towards future prospects, loss of earning assessed to Rs.22,500/-. The deduction of 10% is made towards the income tax and 50% deduction made towards personal and living expenditures. The final Award of Rs.21,90,500/- alongwith interest at the rate of 7.5% from the date of petition is cast.

4. Mr. Kadethankar, learned Advocate appearing for the appellant in his endeavour to assail the Award submits that the Tribunal has erroneously decided the issue of negligence so also considered exponential notional income resulting into excessive and exorbitant Award. He would submit that except pleadings in the claim petition, no evidence is adduced to prove the source of income to the deceased. He would submit that merely because the deceased was possessing MBA, his notional income could not have been estimated to Rs.15,000/-.

5. Per contra, learned Advocate appearing for the respondents/ claimants submits that the deceased was young man aged about 25 years. He had possessed MBA qualification and he was from the business-oriented family. The assessment of income in such background could not have been less than Rs.15,000/- per month. He would submit that the issue of negligence is elaborately dealt by the Tribunal and for the reasons recorded the conclusion is arrived that the car driver was responsible for the accident and consequential death of Swapnil.

6. Having heard the submissions advanced by the learned Advocate appearing for the respective parties and after going through the record and proceeding, it is apparent that accidental death of the deceased Swapnil is not in dispute. The accident was reported to the

police. Accordingly, the offence was registered against the car driver. The spot panchanama was drawn. A perusal of the spot panchanam shows that the motorcycle was laying on the road. The petrol tank was pressed from right side. The car driver did not step into the witness box to explain the circumstances leading to the accident.

7. It is trite that the claimants need not prove negligence of the offending car driver beyond the doubt. The preponderance of probability is the principle of evaluation of evidence in the claims for compensation under Motor Vehicle Act. Considering the documentary evidence on record, the claimants have discharged their burden. The Tribunal has recorded findings accordingly. In that view of the matter, there is no force in the contentions of the appellant that the Tribunal could have considered contributory negligence against the deceased.

8. Second contention of the appellant that the Tribunal has estimated excessive and exorbitant notional income of the deceased. It is established on record that the deceased was from business family and he was holding postgraduate degree of MBA. He was just 25 years of age at the time of accident. Some evidence is also brought on record to suggest that the deceased was active in social life. In that view of the matter, estimation of the notional income at the rate of Rs.15,000/- per month cannot be faulted. Although, the Tribunal has made addition of 50% towards future prospects, the deduction of 10% is applied towards income tax. Therefore, the error of adding excess 10% towards future prospects has been diluted by another error of deduction of 10% towards income tax.

9. Taking overall survey of the matter, it is apparent that the Tribunal has passed the Award of just compensation applying the settled principle of law. Hence, there is no merit in the appeal and the

same is dismissed accordingly. The amount deposited by the appellant/insurer be disbursed to the claimants in terms of Award passed by the Tribunal.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2023