IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2477 OF 2023

1. The Divisional Manager,
HDFC ERGO General Insurance Company
Limited, 1st Floor, Kanale Plaza,
82 Railway Line,
Dufreen Chowk Solapur,
Tq. & Dist. Solapur.
Through : It's Authorized Signatory,
2nd Floor, Malpani's Oberoi Tower,
Opposite Government Milk Dairy,
Ramanand Colony, Jalna Road,
Aurangabad 431001 Appellant
(orig. Resp.No.3)

VERSUS

1. Dnyaneshwar Sadashiv Gadekar,
age 47 years, Occ. Labour,

2. Anita Dnyaneshwar Gadekar,
age 45 years, Occ. household,

3. Sunita Dnyaneshwar Gadekar,
age 22 years, Occ. Education.

All R/o Jewali North,
Tq. Lohara, Dist. Osmanabad.

4. Somnath Mahadev Ubale,
age 40 years, Occ. Driver,
R/o Tandulwadi, Tq. South Solapur,
Dist. Solapur.

5. Mahadev Baburao Chakote,
age 45 years, Occ. Business,
R/o. M/s. Nav Sunta Transport Agency,
Nehru Ganj Gulbarga.

6. Annarao Govind Mane,
age 38 years, Occ. Business,
R/o Koral Post, Dalimb,
Tq. Omerga, Dist. Osmanabad.

7. The Divisional Manager,
ICICI Lombard General Insurance Company

Ltd., ICICI Lombard House,
414, Veer Savarkar Marg,
Near Sidhivinayak Temple,
Prabhadevi, Mumbai. Respondents.
(R- 1 to 3 orig claimants &
Resp 4 to 7 orig R-1,2,4,5)

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Mr. M.R. Deshmukh, Advocate for appellant.
Mr. Nagesh Talekar Advocate for respondent nos.1 to 3.
Mr. S.A. Wakure h/f L.C. Patil advocate for respondent nos.4 & 5.

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WITH

CA 7304 OF 2023 IN FA 2477 OF 2023

CORAM : S.G. CHAPALGAONKAR, J.

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RESERVED ON: 23 JUNE, 2023
PRONOUNCED ON: 30 JUNE, 2023

JUDGMENT :

1. The appellant/original respondent No.3-insurance Company approaches this court under section 173, thereby challenging the judgment and award dated 25.4.2022 passed by the Motor Accident Claims Tribunal, Omerga, in MACP No.68 of 2017, under section 166 of Motor Vehicle Act.

2. The claimants/respondents No.1 to 3 had approached the Tribunal under section 166 of the Motor Vehicles Act claiming compensation of Rs.15.00 Lakhs from the respondents towards accidental death of Sunil Gadekar, who was employed as a cleaner on the Tempo bearing registration No.MH-25/P-5566. On 22.6.2017 while deceased Sunil was proceeding in the tempo, it collided with the truck bearing registration No.KA-32/6891. Due to the said accident, Sunil suffered fatal injuries.

3. It is the contention of the claimants that Sunil was aged about 20 years and used to earn Rs.6,000/- per month from his employment as a cleaner. The claimants were dependent on his income. The accident occurred due to composite negligence of drivers of both the vehicles. As such, they are entitled for the compensation as claimed from the respondents. The claim was contested by the respondents by filing respective written statements. The Tribunal had framed the issues based on pleadings of the parties. After hearing the parties, the Tribunal passed an award for Rs.12,39,600/- in favour of the claimants. The liability to pay the compensation has been fastened against respondent nos.1 to 3 (i.e. Driver, Owner and Insurer of Truck), whereas the claim petition came to be dismissed against respondent nos.4 and 5 (Owner and Insurer of Tempo).

4. The appellant/original respondent no.3-Insurer of the Truck is in appeal before this Court.

5. Mr. Deshmukh, learned advocate appearing for the appellant would submit that two vehicles are involved in the accident. There was head on collision at the center of the road which raises presumption of composite negligence of the drivers. However, the Tribunal fixed entire liability of the accident on shoulder of the truck driver and consequently passed the award against the respondent nos.1 to 3 only. He would submit that, at the most the Tribunal could have apportioned the liability equally against both the vehicle drivers. Mr. Deshmukh would further submit that the deceased was a Bachelor, son of the claimant nos.1 and 2. Hence, (1/2) half deduction from assessed income of deceased ought to have been made towards his

personal and living expenses. However, Tribunal has erroneously considered the dependency of claimant no.3 and applied 1/3rd deduction towards personal and living expenses. He would further submit that the excessive interest rate of 9% on compensation amount has been applied.

6. Per contra, Mr. Talekar, learned advocate appearing for the claimants would submit that the Tribunal has assessed the compensation in tune with the settled principles of law. The tribunal has rightly concluded that the Truck driver was responsible for the accident. He would further submit that the claimant no.3 being sister of the deceased would be dependent on the income of the brother.

7. Having considered the submissions advanced by the learned advocates appearing for the respective parties and with their able assistance, on perusal of the record, which is readily made available during the course of the hearing, it can be gathered that the appellant insurer has raised restricted challenge on the points of negligence and quantum. No statutory ground is put into service in this appeal.

8. So far as the issue of negligence is concerned, it can be observed from spot panchanama that the truck went on wrong side of the road and gave dash to the tempo. The truck driver was prosecuted for rash and negligence driving. The Tribunal on appreciation of the contents of the spot panchnama placed at exhibit 35 recorded categorical finding that the road is divided by central line. The truck left its side and dashed to the Tempo. Pertinently, the driver of the Truck did not step into the witness box to prove

his innocence. Although, he caused his appearance through his Advocate before the Tribunal, failed to contest the issue of negligence. In that view of the matter, no fault can be found in the conclusion recorded by the Tribunal against Truck Driver.

9. So far as second contention of the Insurance Company/appellant is concerned, it is submitted that the deceased was a Bachelor. Hence, one half amount of his income ought to have been deducted towards personal and living expenses. However, the Tribunal has deducted 1/3rd. It is the trite that in case of death of Bachelor, one half of his income needs to be deducted towards personal and living expenses. The Supreme Court of India in the matter of ***Sarla Varma and others Vs. Delhi Transport Corporation and others reported in (2009) 6 SCC 121*** categorically laid down that one-half amount has to be deducted towards personal and living expenses of the deceased in case of bachelor's death. Only by way of exception, this rule can be deviated, if it is specifically brought on record that such dependency of siblings existed due to special circumstances. Only mother is considered to be dependent on the deceased. The relevant observations of the Supreme Court in the matter of Sarla Varma (supra) reads thus :-

> "15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be

> considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

10. In the present case, nothing is brought on record to show that the claimant no.3 was dependent on the deceased or the father/claimant no.1 was not in a position to maintain claimant no.3. In that view of the matter, the Tribunal erred in applying 1/3rd deductions while working out the compensation amount.

11. At this stage, Mr. Talekar, learned advocate appearing for the claimant would submit that the Tribunal granted meager compensation towards non-pecuniary heads. He would submit that in view of the law laid down in the case of **Magma General Insurance Company Ltd., Vs. Nanu Ram reported in (2018) 18 SCC 130** the claimant nos.1 and 2 would be entitled to have compensation of Rs.40,000/- each towards loss of filial consortium, in addition to the compensation on other heads. This court finds force in submissions advanced on behalf of claimants. In that view of the matter, the compensation can be re-assessed in tabular form as under :-

Compensation	**Amount (Rs.)**
Annual income of the deceased Rs. 6,000 x 12 =	Rs.72,000/-
Addition of 40% amount towards Future Prospects Rs.72,000 + 28,800 =	Rs.1,00,800/-
1/2 deduction towards personal and living expenses Rs.1,00,800 / 2	Rs.50,400/-
After applying multiplier of '18' Rs.50,400 x 18 =	**Rs.9,07,200/-**
Loss of Estate Rs.15,000 /- and Funeral expenses Rs.15,000/-	**Rs.30,000/-**
Loss of filial consortium of Rs.40,000/- each to claimant nos.1 and 2	**Rs.80,000/-**
Total	**Rs.10,17,200/-**

12. Resultantly, the appeal deserves to be partly allowed and award passed by the Tribunal needs to be modified.

ORDER

I. The First Appeal is hereby allowed.

a. The Judgment and award dated 25.4.2022 passed by the Motor accident Claims Tribunal, Omerga in M.A.C.P. No.68 of 2017 is modified in following terms: -

(i). The respondent nos. 1 to 3 are hereby directed to pay jointly or severally the compensation of Rs.10,17,200/- (Rs. Ten Lakh seventeen Thousand Two Hundred) together with interest thereon @ 9% p.a. from the date of filing of the petition i.e. 2.8.2017 till realization of the amount.

(ii). The amount of compensation be equally apportioned in ratio of 30:70 between the claimant nos.1 and 2 respectively.

(iii). The Registry of this Court shall disburse the amount deposited by appellant to the claimants in aforesaid terms, as per modified award. Balance, if any be refunded to appellant

II. Award of Tribunal be modified and drawn accordingly.

III. Pending civil application, if any, also stands disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

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aaa/-