

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1778 OF 2019

The New India Assurance Co. Ltd.]
Office at L.I.C. Building, Sadar Bazar, Satara,]
through Mumbai Legal Hub, 41-B, 4th Floor,]
Maker Tower-E, Near World Trade Centre,]
Cuff Parade, Mumbai-400 005.]Appellant
]

Versus

- 1 Surekha Rangrao Awale**]
Age-29 years, Occ : Housewife]
- 2 Suraj Rangrao Awale**]
Age : 12 years, Occ : Education]
- 3 Kiran Rangrao Awale**]
Age-6 years, Occ : Education]
- 4 Sapana Rangrao Awale**]
Age : 3 years, Occ : Education]
Respondent Nos.2 to 4 being minors, Through]
their G.A. L. Respondent No.1.]
- 5 Tanaji Dadu Awale**]
Age-62 years, Occ : Nil]
- 6 Bhagirthi Tanaji Awale**]
Age-58 Years Occ : Housewife]
All R/at Malgaon, Taluka-Wai, District-Satara]
- 7 The Managing Director**]
Ajinkyatara Sahakari Sakhar Karkhana Ltd.]
At Post Sahunagar, Shendre, Taluka and]
District-Satara.] ..Respondents

Ms.S.S. Dwivedi, Advocate for the Appellant.

Mr.Yuvraj P. Narvankar, Advocate for Respondent Nos.1 to 6.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19th DECEMBER, 2023.

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ORAL JUDGMENT :

1. The issue involved in this appeal is contributory negligence of the deceased in the said accident.

2. It is contention of learned counsel for the appellant-Insurance Company that at the time of the accident, the deceased was riding on motorcycle. He came on wrong side of the road and gave dash to the offending jeep but this fact is not considered by the Tribunal and has wrongly considered sole negligence of the driver of the offending jeep, which is erroneous. Learned counsel further submitted that the Tribunal has awarded 50% future prospects, it should be 40%. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos.1 to 6/claimants that deceased was riding motorcycle on left side of the road by observing traffic rules. At that time, the offending jeep came from opposite direction in rash and negligent manner and gave dash to the motorcycle of the deceased by coming on wrong side of the road. The accident occurred due to sole negligence of the driver of the offending jeep. The Tribunal has considered all the aspects while passing the order. Hence, no interference is required in it.

Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side, it should be awarded as per the view of Hon'ble Apex Court in **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC) .**

4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Satara (for short “the Tribunal”).

5. It is the claimants’ case that on 29th September 2014 at about 8.45 p.m., deceased – Rangrao Awale was proceeding on his motorcycle No.MH-11/BB-4378 to Malgaon from Satara by Satara-Phaltan Road. When he was in the limits of village Vadheswar, Tal. Satara, one pick-up jeep bearing No.MH-11/AG-9266 suddenly came across his motorcycle in excessive speed and in rash and negligent manner, and by coming to wrong side gave forceful dash to the motorcycle of Rangrao. Due to the said dash, Rangrao died on the spot. An offence was registered against the driver of the offending jeep.

To prove the negligence of the deceased, the driver of the pick-up jeep Suryakant Jadhav examined has himself. He has stated that deceased – Rangrao came from opposite direction in high speed and gave dash to his pick-up jeep and there was head-on collision between pick-up jeep and motorcycle of the deceased. In cross-examination, he admitted that he himself had given information of the accident to the police. While giving the said

information to the police, he informed that deceased -Rangrao drove his motorcycle in rash and negligent manner in high speed and gave dash to his pick-up jeep. He did not ask the police to register crime against the driver of motorcycle i.e. deceased Rangrao. The spot panchanama is at 'Exhibit-50'. It shows that the offending jeep had gone on the wrong side of the road. Considering the evidence on record, the Tribunal has observed that accident occurred due to sole negligence of the driver of the offending jeep. I do not find infirmity in it.

While awarding compensation, the Tribunal has considered 50% future prospects. As per the view of Hon'ble Apex Court in **National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)**, the deceased was self-employed, hence, future prospects should be 40%.

The Tribunal has awarded an amount of Rs.1,00,000/- for loss of consortium, Rs.3,00,000/- for loss of love and affection and Rs.25,000/- for funeral expenses, it is on higher side. As per the view of Hon'ble Apex Court in **Magma General Insurance Co. Ltd. (supra)**, each claimant is entitled for Rs.48,000/- as consortium, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

Considering the above calculations, the claimants are

entitled for following compensation :

Particulars	Amount
Monthly Income	Rs. 6000.00
40% future prospects	Rs. 2400.00
Total	Rs. 8400.00
$\frac{1}{4}$ deduction towards personal expenses	Rs. 2100.00
Monthly Income	Rs. 6300.00
Annual Income 6300 X 12	Rs. 75600.00
Rs.75600/- X 15(multiplier)	Rs. 1134000.00
Consortium (Rs.48,000/- x 6 (claimants))	Rs. 288000.00
Funeral Expenses	Rs. 18000.00
Loss of Estate	Rs. 18000.00
Total Compensation Entitled	Rs. 1458000.00
Amount awarded by Tribunal	Rs. 1640000.00
Excess amount	Rs. 182000.00

The appellant-Insurance Company is entitled for excess amount of Rs.1,82,000/-.

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

O R D E R

1. The appeal is partly allowed.
2. The appellant-Insurance Company is permitted to withdraw an amount of Rs.1,82,000/- along with accrued interest thereon out of the deposited amount.

3. Respondent Nos.1 to 6/claimants are permitted to withdraw the balance amount along with accrued interest thereon.
4. The statutory amount be transmitted to the Motor Accident Claims Tribunal, Satara, along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)