IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 430 OF 2010

WITH

CROSS -OBJECTION STAMP NO. 10823 OF 2010

The New India Assurance Co. Ltd.)
Notice to be served on Branch)
Manager)
At Dr. Golwalkar Complex,)
Near Sargam Theatare Pandharpr)
Ta. - Pandharpur, District - Solapur.) ...Appellant

Versus

1. Smt. Kunda Shekhar Bhandawalkar)
   Age - 35 Years, Occupation - Nill,)
2. Pawan Shekhar Bhandawalkar,)
   Age - 5 Years, Occupation - Nill,)
3. Prachi Shekhar Bhandawalkar,)
   Age - 1 Year, Occupation - Nill,)
4. Chandrakala Balvant Bhandawalkar,)
   Age - 70 Years, Occupation - Nill,)
   All 1 to 4 residing of 3120, Tanaji)
   Chowk, Pandharpur, District - Solapur)
5. Ramabai Popatlal Chouhan.)
   Age about - 40 Years,)

SHUBHADA SHANKAR KADAM
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Occupation - Transport owner and)
Driver of vehicle in accident.)
R/o. At Lakhori, P. O. Met Ponjara,)
Taluka - Katol, District - Nagpur.) ...Respondents

Mr. S. M. Dange, Advocate for the Appellant.
Mr. Vishwanath Talkute, Advocate for Respondent Nos. 1 and 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd MAY, 2023.

Oral Judgment :

1. This appeal is preferred by the appellant-Insurance Company against the judgment and order passed by the Motor Accident Claims Tribunal, Pandharpur (for short "the Tribunal"). The respondents/claimants also filed cross-objection for enhancement of compensation. As the appeal and cross-objection are against the same judgment and order, I am deciding it by common judgment.

2. It is contention of learned counsel for the appellant that the accident occurred due to sole negligence of the deceased but it was not considered by the Tribunal. Learned counsel further submits that the Tribunal has considered monthly income of

deceased at Rs.15,000/- per month without any evidence on record, which is on higher side and, on that basis, exorbitant and excessive compensation is awarded, which is improper. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondents/claimants that the offending Matador gave dash to the scooter of the deceased. An offence was registered against the driver of the offending Matador. No witness was examined by the appellant to prove the negligence of the deceased. Learned counsel further submits that deceased had 67 Acres of agricultural land. Besides that, he was doing milk business and other business. From that, he was earning more than Rs.4,50,000/- per annum. An evidence was produced in that regard, but the Tribunal has considered monthly income of deceased at Rs.15,000/-. Learned counsel further submits that the Tribunal has applied wrong multiplier. Tribunal has not awarded future prospects and consortium amount, it can be awarded. Learned counsel further submits that the Tribunal has deducted 1/3rd amount for personal expenses, it should be 1/4th. Hence, requested to allow the cross objection and dismiss the appeal.

4. I have heard both learned counsel, perused the judgment an order passed by the Tribunal.

5. It is the claimants' case that on 4th February 2004 at about 7.30 to 8.00 pm, the deceased – Shekhar was proceeding on his scooter from village Kalameshwar to his village -Sonegaon by Nagpur Karol road. The deceased was driving his scooter in moderate speed and was on the correct side of the road, he was driving scooter by observing traffic rules and regulations. When the deceased came near the place of accident, one matodor (for short "the offending vehicle") bearing registration No. MH31AP221 came from the opposite direction in high speed and in rash and negligent manner. It gave dash to the scooter of the deceased by coming on the wrong side of the road. Due to the said dash, the deceased was thrown away on the road and he sustained fatal injuries. The deceased died while taking treatment. The offence was registered against the driver of the offending vehicle. While dealing with the issue of negligence, the Tribunal has observed that the FIR at Exhibit "69" shows that the driver of the offending vehicle drove the vehicle in high speed and in rash and negligent manner and gave

dash to the scooter of the deceased. A copy of the spot panchanama is at Exhibit “70”. The spot panchanama shows that the scooter was on right side of the road and it was severally damaged on account of the dash given by the offending vehicle. On the basis of the evidence, the Tribunal has considered that the accident occurred due to negligence of the driver of the offending vehicle. I do not find infirmity in it. Moreover, the appellant did not examine the driver of the offending vehicle to prove the negligence of the deceased. Hence, I do not see merit in the contention of learned counsel for the appellant that the accident occurred due to negligence of the deceased.

6. To prove the income of deceased, the claimants have examined claimant No.1 as PW1. She has stated that her husband owned 67 Acres of fertile land and he was national player of football, swimming, boxing, gymnasium, athlete. He was the secretary of Kalameshwar Taluka Kharedi Vikri Sangh. He was doing milk business and he was getting Rs.5000/- per month from it. He was cultivating crops of soyabean, cotton, tur, jowar and oranges. From the said crops, he was getting Rs.4,50,000/- per annum. Nothing elicited in the cross-examination of this witness. To support the

evidence of this witness, the claimants have examined PW2-Baburao Krishanrao Thakare at Exhibit “49”. He has stated that deceased was the Director of Krushi Utpanna Bazaar Samithi. PW 3-Vitthal Waghobaji Thakare at Exhibit “51” has stated that he knew deceased – Shekhar Bhandawalkar. He was the president of Market Committee Kalmeshwar for the year 1995-2000. PW4-Ramesh Damodhar Gore at Exhibit “58” stated that he was accountant with Roopchand Lalchand Fruit Merchant and Commission Agent at Nagpur. He had acquaintence with deceased who used to supply oranges to their firm for sale. Computerised receipts issued by their firm are at Exhibits “33-34”. PW5-Suresh Vasudeorao Patil at Exhibit “60” has stated that he works with Kanayalal and Company as clerk. His company deals with the business of purchase and sale of fruits. The deceased used to bring orange fruits to their company for sale. The receipts of selling fruits are at Exhibits “60/1 to 60/25”. PW-6 – Anil Upasrao Mhaske at Exhibit “62” has stated that he works as clerk in N.N. and A.V.Bhoskar & Company, Fruit Merchant and Grains. Deceased-Shekhar used to bring fruits to their shop for sale. The sale receipts are at “Exhibits 63/1 to 63/3. Considering the evidence of these witnesses, the Tribunal has considered monthly income of deceased at Rs.15,000/-. In my view, it has come on record that deceased was possessing 67 Acres land and he was cultivating fruits and other crops. He would sell it to various fruits companies and would earn income from it. He was office-bearer of various organisations. The monthly income considered by the Tribunal is proper. I do not find any infirmity in it.

7. While considering personal expenses, the Tribunal has deducted 1/3rd amount, there are four claimants, it should be ¼. The Tribunal has applied multiplier of 16. At the time of accident, the deceased was 44 year old, the multiplier should be 14, Hence, I am considering multiplier of 14. The Tribunal has not awarded future prospects. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC),*** the claimants are entitled for 25% future prospects, I am considering it. The Tribunal has awarded an amount for funeral expenses and loss of estate on lower side. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC),*** each claimant is entitled for Rs.40,000/- with 10% increase as consortium amount, Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate.

There are four claimants, the consortium amount comes to Rs.1,76,000/- and Rs.33,000/- for funeral expenses and loss of estate.

8. Considering the above calculations, the claimants are entitled for following compensation :

Particulars	**Rs.**	**Amount**
Monthly Income	Rs.	15,000.00
25% future prospects	Rs.	3750.00
Total monthly Income	Rs.	18,750.00
¼ Deduction for personal expenses	Rs.	4687.50
Total Income	**Rs.**	**14062.50**
Annual Income (Rs.14,062.50 x 12)	Rs.	168750.00
Rs.1,68,750/- X 14(multiplier)	Rs.	**23,62,500.00**
Consortium (Rs.44,000/- x 5 (claimants))	Rs.	1,76,000.00
Funeral Expenses	Rs.	16,500.00
Loss of Estate	Rs.	16,500.00
Carrying dead body from place of accident to residence	Rs.	5000.00
Total	Rs.	**25,76,500.00**

The Tribunal has awarded Rs.20,10,000/-, if this amount is deducted from the amount of Rs.25,76,500/- considered by this Court, it comes to Rs.5,66,500/-. The claimants are entitled for this enhanced amount.

9. In view of above, I pass following order :

O R D E R

1. First Appeal No.430 of 2010 is partly allowed as this Court has reduced the multiplier.

2. The cross-objection is allowed. The claimants are entitled for enhanced amount of Rs.5,66,500/- @ 7.5% interest per annum from the date of filing of claim petition till realisation of the amount. Out of this amount, Rs.2,09,000/- is for consortium, funeral expenses and loss of estate, the claimants are entitled for interest on this amount at 7.5% from 1st November 2017 till realisation of the same.

3. The appellant-Insurance Company is directed to deposit the enhanced amount along with accrued interest thereon within 8 weeks after the receipt of this order.

4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

5. The statutory amount deposited in the First Appeal No.430 of 2010 be transmitted to the Tribunal along with the interest accrued thereon. The parties are at liberty to withdraw it as per Rule.

10. Pending applications, if any, stands disposed of.

(SHIVKUMAR DIGE, J.)