

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 314 OF 2018

National Assurance Co. Ltd.

Mumbai Regional Office-I, New India

5th Floor, Sterling Cinema Bldg.,

65, Murzban Road, Fort,

Mumbai-400 020.

(Ori.Opponent No.2)

...Appellant

Versus

1. Mrs. Sulbha Ganesh Shinde,
Age : 27 years, Occu.: Nil (Ori.Applicant No.1)
2. Mrs. Radhabai Gangaram Shinde,
Age : 50 years, Occu.: Nil (Ori.Applicant No.2)
3. Mr. Gangaram Gunaji Shinde,
Age : 57 years, Occu.: Nil (Ori.Applicant No.3)
4. Kumari Saniya Ganesh Shinde,
Age : 4 years, Occu.: Nil (Ori.Applicant No.4)
5. Kumar Piyush Ganesh Shinde,
Age : 2 years, Occu.: Nil (Ori.Applicant No.5)

Respondent Nos. 4 & 5, being minor,
through their Natural guardian mother
Respondent No.1.

All R/o.: A/P Morani, Post Chinchwali,
Taluka Bhiwandi, District Thane.

6. Mr. M. S. Shetty,

Age : Major, Occu.: Nil,

R/o.: A-51, Ashoka, Sector-18,

Vashi, Navi Mumbai, District Thane.

(Ori.Opponent No.1)

...Respondents

Mr. Amol A. Gatne for the Appellant.

Ms. Rina Kundu for the Respondent Nos. 1 to 5.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th April, 2023.

JUDGMENT :

1. The issues involved in this Appeal are income of deceased considered on higher side and negligence.

2. It is the contention of learned Counsel for the Appellant that the deceased was working as a Forest Guard and was getting gross salary of Rs.9072/-. Considering the evidence on record, the Tribunal has considered monthly salary of deceased at Rs. 12,421/- on the basis of Sixth Pay Commission salary, which would have received by the deceased on 1st January, 2007, which is not proper. Learned Counsel further submits that the Claimants are receiving pension, as per the salary of Rs. 9,000/- per month and not as per the salary of Rs.

12,000/- per month. The Tribunal has considered the salary of the deceased as per Sixth Pay Commission, which is improper.

3. Learned Counsel further submits that the accident occurred due to the sole negligence of the deceased, as he dashed his motorcycle to the offending truck. But the Tribunal has not considered this fact. At least 50% contributory negligence of the deceased should have been considered by the Tribunal, but it was not considered. Hence, he requested to allow the Appeal.

4. Learned Counsel for the Claimants/Respondent Nos. 1 to 5 submits that the FIR, in respect of the accident, was lodged against the driver of offending truck. No witness was examined by the Appellant to prove the negligence of the deceased. She further submits that the deceased was working as a Forest Guard and on the date of accident, he was getting gross salary of Rs.9,072/-. A witness was examined to prove the salary of the deceased, who has stated that Sixth Pay Commission was made applicable on 1st January, 2007 and as per the revised pay, the deceased would have got salary of Rs. 12,421/-. This salary is considered by the Tribunal, which is proper, hence, requested to dismiss the Appeal.

5. I have heard both learned Counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Thane (for short 'the Tribunal').

6. It is contention of learned Counsel for the Appellant that the accident occurred due to the negligence of deceased. It is the Claimant's case that on 7th May, 2009, at about 2:15 p.m., the deceased was proceeding towards Shelar Village, on his motorcycle. When he came near Shivmandir, one truck bearing No. MH-43-E-0149 came from opposite direction with high speed and in rash and negligent manner and dashed the motorcycle. The deceased died on the spot. The offence was registered against the driver of offending truck.

7. While dealing with the issue of negligence, the Tribunal has observed that the FIR at Exh.22 and spot panchnama at Exh.23 shows that the accident was occurred due to the sole negligence of the driver of offending truck. I do not find any infirmity in it.

8. In my view, the FIR was registered against the driver of offending truck. To prove the negligence of the deceased, the driver of offending truck did not step into the witness box. Mere submissions of learned Counsel for the Appellant that there was negligence of the

deceased is not sufficient. The Appellant has failed to prove before the Tribunal that there was negligence of the deceased in the said accident. Hence, I do not see any merit in it.

9. To prove the income of the deceased, the Claimants have examined PW-1 Sulbha Shinde (wife of deceased) at Exh.19. She has stated that at the time of accident, the deceased was getting salary of Rs. 8,000/- per month.

10. To support the evidence of this witness, the Claimants have examined PW-2 Trambakeshwar Kupte, Forest Officer, Bhiwandi. This witness has stated that he is a Drawing Disbursing Officer. The original documents in respect of the salary of the deceased are in the custody of this witness. Sixth Pay Commission has been made applicable from 1st January, 2007. The salary of Ganesh Gangaram Shinde (deceased), as per the revised pay as on 7th May, 2009, is Rs. 12,421/- per month. The salary certificate is at Exh.33. In cross examination, this witness admitted that the net salary paid to the deceased from April-2009 was Rs. 6,594/- per month. This witness further stated that family pension is issued to the legal heirs of the deceased Ganesh at Rs. 3,600/- per month. The family pension also includes Dearness Allowance, which is liable to increase from time to time. Considering the evidence of PW-2,

the Tribunal has considered salary of the deceased at Rs. 12,421/- per month.

11. In my view, it is settled principle of law that a Court has to consider the gross salary of deceased after deducting Income Tax and Professional Tax. In present case, Exh.33 shows that the deceased was getting Rs. 12,421/- as gross salary and the amount of Rs. 175/- is deducted for Professional Tax. But the Tribunal has not deducted this amount, hence, I am deducting this amount. After deducting the amount, it comes to Rs. 12,246/-.

12. It is the contention of learned Counsel for the Appellant that the pension papers, which are filed on record, shows that the Claimants are getting pension around Rs. 3,600/-. It is the contention of learned Counsel for the Claimants that the pension papers were prepared immediately after the death of the deceased in the year 2009 and Sixth Pay Commission is made applicable in the year 2010 i.e. at the time of giving evidence by PW-2.

13. In my view, PW-2 who is Drawing and Disbursing Officer in the office of deceased, the salary documents were in the custody of this witness, who has stated that, as per the Sixth Pay Commission, the deceased was getting salary of Rs. 12,421/-. There is no reason to this

witness to depose falsely before the Tribunal. Moreover, he is responsible Government Officer. He has stated before the Tribunal as per official record. Hence, I am considering Rs.12,246/- as salary of the deceased.

14. It is the contention of learned Counsel for the Appellant that the Tribunal has applied multiplier of 17. At the time of accident, the deceased was 31 years old. Hence, the multiplier should be 16.

15. Learned Counsel for the Claimants submits that the Tribunal has deducted 1/3 amount for personal expenses. There are five Claimants, hence, it should be 1/4. Learned Counsel for the Claimants further submits that the Tribunal has awarded Rs. 10,000/- as the consortium amount to the widow only. As per the view of the 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/- as consortium amount.

16. Considering the submissions of both learned Counsel as well as in view of the above observations, the Claimants are entitled for following compensation :

Particulars	Amount
Monthly Income	Rs. 12,246.00

Future prospects 50%	Rs.	6,123.00
Monthly Income with Future Prospects	Rs.	18,369.00
Deduction towards personal expenses $\frac{1}{4}$ of Rs.18,369.00 comes to Rs.4593.00	Rs.	13,776.00
Rs. 18,369.00 - Rs. 4593.00 comes to		
Yearly Income Rs.13,776.00 X 12	Rs.	1,65,312.00
Rs. 1,65,312.00 X 16 (Multiplier)	Rs.	26,44,992.00
Loss of consortium Rs. 40,000/- x 5 (Family Members – Filial and Parental)	Rs.	2,00,000.00
Loss of Estate	Rs.	15,000.00
Funeral Expenses	Rs.	15,000.00
Total Compensation	Rs.	28,74,992.00

17. The Tribunal has awarded Rs. 25,48,884/-. If this amount deducted from the amount considered by this Court, it comes to Rs. 3,26,108/-. The Claimants are entitled for this amount. In view of above, I pass following Order :

ORDER

- i. Appeal is dismissed. No order as to cost.
- ii. The Claimants are entitled for additional amount of Rs. 3,26,108/- along with interest @ 7.5% per annum, from the date of filing of Claim Petition, till the realization of the amount, out of this amount an amount of Rs. 2,30,000/- is consortium amount, the Claimants/

Respondent Nos.1 to 5 are entitled for interest @ 7.5% on this amount from 1st November, 2017, till realization of the amount.

- iii. The Appellant is directed to deposit additional amount, along with accrued interest thereon, within eight weeks after the receipt of this order.
- iv. The statutory amount be transmitted to the Tribunal along with accrued interest thereon.
- v. The parties are at liberty to withdraw the amount as per rule.
- vi. The interim stay, granted earlier, continued for eight weeks.
- vii. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)