

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1236 OF 2013

ICICI Lombard General Insurance }
Company Limited, Corporate Office }
Zenith House, Keshavrao Khadye }
Marg, Mahalaxmi, Mumbai-400 034 } **...Appellant**

Versus

1. Smt. Pranati Sinha }
2. Master Anurag Srivastava }
3. Miss Aditi Srivastava }
both minor through their mother and }
natural guardian Applicant No.1. }

4. Shri.Raju Sonar S/o A Krishna }
R/at Kalpana Building, Room No.4, }
Near Bhadrakali Road, Nashik }

Second Address : Nawab Ali Chawl, }
Room No.9, Cross Road, Shivandi, }
Mumbai-400 094 }

5. Om Jaishree Traders }
Properitor Shanti Devi Singh }
Survey No.298, Village Phasane, Post }
Vehloli, Shahapur, District-Thane } **...Respondents**

Mr.Nikhil Mehta i/b KMC Legal Venture, for the Appellant.
Mr.Aadil Parsurampururia a/w Mr.Bharat Jain i/b Mr.Mehul
Rathod, for the Respondents.

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FIRST APPEAL NO.140 OF 2013

1. Smt. Pranati Sinha }
2. Master Anurag Srivastava }
3. Miss Aditi Srivastava }
both minor through their mother and }
natural guardian Appellant No.1. }
R/at 102, Sankalp, Plot No.41, Sector- }
21, Nerul, Navi Mumbai, Taluka & }
District-Thane. }

...Appellants

Versus

1. Shri.Raju Sonar S/o A Krishna }
R/at Kalpana Building, Room No.4, }
Near Bhadrakali Road, Nashik }

Second Address : Nawab Ali Chawl, }
Room No.9, Cross Road, Shivandi, }
Mumbai-400 094 }

2. Om Jaishree Traders }
Proprietor Shanti Devi Singh }
Survey No.298, Village Phasane, Post }
Vehloli, Shahapur, District-Thane }

3. ICICI Lombard Motor Insurance }
Co. Ltd. having its branch at Shop }
No.4 and 5, Prestige Garden, Almeida }
Road, Opp. Shreeji Ville, }
Panchpakhadi, Thane-400 602. }

...Respondents

Mr.Aadil Parsurampururia a/w Mr.Bharat Jain i/b Mr.Mehul Rathod, for the Appellants.

Mr.Nikhil Mehta i/b KMC Legal Venture, for the Respondent No.3

CORAM : S.G. DIGE, J.

DATE : 21 FEBRUARY 2023

JUDGMENT :-

. Being aggrieved and dissatisfied with the judgment and order passed by Motor Accident Claims Tribunal, Thane (for short 'the Tribunal') the Appellant-Insurance Company has preferred this Appeal. The Original Claimants have also filed First Appeal seeking enhancement of the compensation. I am deciding both these Appeals by common judgment.

2. Brief facts of the case are as under:-

On 20th December 2007 the Applicants-Claimants were to go to Delhi. Deceased therefore, left the house to drop the Applicants-Claimants at airport by Maruti Car bearing No.MH094-AY-4341. When they reached Vashi Creek bridge which goes towards Sion, there was traffic jam. Deceased with a view to find out the cause of traffic jam got down from his car and went to other side of the road. However, at that relevant time offending dumper bearing No.MH-04-DD-2592 which was driven by its driver in high, excessive and improper speed and that too on wrong side of the road, gave dash to the deceased. As a result of dash deceased fell down and sustained serious injuries. He died while taking treatment. The offence was registered against the driver of offending dumper. The Claimants filed

Claim Petition for getting compensation before the Tribunal. The Tribunal has passed judgment and order which is under challenge by way of Appeal filed by the Appellant-Insurance Company and by way of Appeal filed by Respondent-Original Claimants.

3. It is contention of learned counsel for the Appellant that accident was occurred due to negligence of deceased, when there was traffic jam the deceased got down from his car and went on the other side of the road, so it was negligence of the deceased in the said accident. But Tribunal has held that it was sole negligence of the driver of the dumper, at the most the Tribunal should have considered 50% contributory negligence of the deceased but it was not considered. The learned counsel further submits that it has come on record that the deceased was getting salary of Rs.22,503/- per month. But the Tribunal has considered the future salary which would have got by deceased, it is improper.

4. The learned counsel further submits that the Tribunal has awarded exorbitant and excessive compensation. Hence, requested to allow the Appeal of Appellant-Insurance Company and dismiss the First Appeal of Original Claimants.

5. It is contention of the learned counsel for the Claimants that the accident was occurred due to sole negligence of the driver of offending dumper. The dumper came from wrong side of the road, it was in high speed and gave dash to the deceased. When dumper came wrong side of the road it shows that sole negligence of the driver of the dumper, FIR was lodged against driver of the dumper.

6. The learned counsel further submits that the deceased was getting monthly salary of Rs.22,503/- but by applying sixth pay commission he would have got the salary of Rs.48,706/- in the month of 1 July 2011. The effect of Government Resolution was retrospective i.e. from 1 January 2006. The accident date was 20 December 2007, due to Government circular there was increase in the salary. The Tribunal has not considered the salary at Rs.48,706/- which was deceased entitled as per sixth pay commission but after deducting of deductions the Tribunal has considered salary at Rs.33,625/- which is on lower side. The Tribunal should have considered salary at Rs.48,706/-. Hence, requested to dismiss the Appeal filed by the Appellant-Insurance Company and allow the Appeal filed by the Claimants.

7. I have heard both learned counsel. Perused judgment and order passed by the Tribunal.

8. The issue involved in this Appeal is negligence of deceased and income of deceased.

9. In respect of issue of negligence. Admittedly, the FIR was lodged against the driver of offending dumper. FIR is at Exhibit-46. Spot Panchanama is at Exhibit-47. The Applicant No.1-wife of deceased examined herself to prove the negligence of driver of dumper, she has stated that on the day of accident they were to go to Delhi, therefore deceased left the house to drop the Applicant by Maruti Car. When they reached Vashi Creek bridge which goes towards Sion, there was traffic jam, deceased got down from car and went to the other side of the road. At the relevant time the offending dumper came from wrong side in rash and negligent manner in high, excessive and improper speed and gave dash to the deceased. She has further stated that after giving dash the driver of dumper ran away from the spot of incident. In her cross-examination she has denied the suggestion that her husband was in hurry and he had not taken care of the traffic, due to which accident was occurred. From the evidence of this witness who was eye witness to incident reveals that said accident was occurred due sole negligence of driver of dumper. Moreover, Appellant-Insurance Company was not examined driver of dumper to prove negligence of deceased. Hence I do not see merit in the contention of learned counsel for the Appellant that accident occurred due negligence of deceased.

10. In respect of issue of income of deceased the Tribunal has observed that the deceased was getting salary of Rs.22,503/- per month. The Tribunal has further observed that as per the letter issued by the Income Tax Officer(HQ), Personnel, Mumbai, the salary of the deceased which would have been got in the month of 1 July 2011 discloses the amount of Rs.48,706/-. On the basis of this circular, and after making deductions the Tribunal has considered Rs.33,625/- as salary of deceased. It is contention of learned counsel for the Appellant that the salary in future could not have been considered by the Tribunal as salary of the deceased.

11. In my view the circular issued by the Income Tax Office is at Exhibit-54. This circular shows that it is applicable retrospectively i.e. from 1 January 2006. The accident was occurred in the month of Deceased 2007, so deceased was entitled for the said salary from 1 January 2006. The monthly income of deceased considered by the Tribunal is proper and I do not find any infirmity in it. In view of this the Appeal of Insurance Company is devoid of merit.

12. At this stage the learned counsel for the Claimants on instructions submit that if this Court is dismissing the Appeal filed by the Appellant-Insurance Company, the Claimants would not press their contentions in Appeal filed by them and their

Appeal be disposed of in view of the dismissal of the Appeal. Of Insurance Company. This statement of learned counsel for the Claimants is accepted.

13. In view of the above, I pass following order.

ORDER

- (i) The First Appeal No.1236 of 2013 is dismissed.
No order as to costs.
- (ii) In view of dismissal of FA No.1236 of 2013, FA No.140 of 2013 is disposed of.
- (iii) The Claimants are permitted to withdraw the amount deposited by the Appellant along with accrued interest thereon.
- (iv) The Statutory amount be transmitted to MACT, Thane.
- (v) The parties are at liberty to withdraw it as per Rule.
- (vi) All pending Civil Applications, if any, are disposed of.

(S.G. DIGE, J.)