

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 1702 OF 2007

- | | | |
|-----------------------------------|-----------------|--|
| 1. Mrs. Sunita Azgarsen Chelliya |) | |
| Age- 35, Occu: Housewife, |) | |
| Residing at Swapna Shilpa, |) | |
| Ganesh Nagar, Dombivli (West). |) | |
| | | |
| 2. Baby Akshara Azgarsen Chelliya |) | |
| Age – 3 years, (Through their |) | |
| Natural guardian applicant No.1) |)....Appellants | |

Versus

- | | | |
|------------------------------------|---|--|
| 1. Mr. Jagat Kishore Balkrishna |) | |
| Kalantri, Age-Adult, Occ: Business |) | |
| R/at Opp. Agiwal Niwas, Saykheda |) | |
| Tal. Niphad, Dist. Nashik |) | |
| | | |
| 2. M/s. United India Insurance Co. |) | |
| Regional Office, Thane, |) | |
| Dist. Thane. |) | |
| | | |
| 3. Mr. K. Chelliah, |) | |
| Age-Adult, Occ: Retired, |) | |
| R/at Block No.1, 'A' Wing, Om |) | |
| Akshay Co-op. Hsg. Society, |) | |
| Din Dayal Road, Thakurwadi, |) | |
| Dombivli (W). |) | |
| | | |
| 3A. Mrs. C. Arulmani |) | |
| Adult, Occu: Houswife, |) | |
| R/o at:- |) | |
| Block No. I, 'A' Wing, |) | |
| Om Akshay Co-operative |) | |
| Housing Society, |) | |

Din Dayal Road,)
 Thakurwadi)
 Dombivali (West).)

3B. Sundar Selvan)
 Adult. B/o at :-)
 Block No. I, 'A' Wing,)
 Om Akshay Co-op; Hsg; Society,)
 Din Dayal Road,)
 Thakurwadi,)
 dombivali (West).)

4. Mrs. C. Arulmani, Age – Adult,)
 Occ: Housewife, R/o. Block No.1,)
 'A' Wing, Om Akshay Co-op. Hsg.)
 Society, Din Dayal Road,)
 Thakurwadi, Dombivli (W).)....Respondent

Mr. Vishwanath S. Talkute for the Appellant.
 Smt. S. S. Dwivedi for the Respondent No.2.
 Mr. A. A. Garge for the Respondent Nos. 3 & 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th DECEMBER, 2023.

Oral Judgment. :

1. By this appeal, Appellants/Claimants are seeking enhancement of compensation.

2. It is contention of learned counsel for the Appellants that accident occurred due to sole negligence of driver of offending Canter

but tribunal has wrongly fixed 50% contributory negligence on deceased, which is erroneous. Learned counsel further submitted that tribunal has not awarded future prospects. The consortium amount is awarded on lower side. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent No.2/Insurance Company that, deceased was riding motorcycle rashly and negligently while over taking other vehicle he gave dash to the Canter. There was no negligence of the driver of canter. After considering evidence on record the tribunal has fixed 50% contributory negligence on driver of Canter and 50% on deceased, which is proper. Learned counsel further submitted that the tribunal has considered monthly income of deceased at Rs.7,500/-, it includes future prospects. The order passed by the tribunal is legal and valid and no interference is required in it.

4. Learned counsel for the Respondent Nos.3 and 4 submit that Respondent No.3 is died during the pendency of the Appeal. Appropriate order be passed.

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

6. It is Claimants’ case that on 9th February, 1997 deceased was proceeding on his motorcycle from Dombivli to Pune. When his motorcycle came near Subhas Petrol Pump located on Nashik Pune Road, Canter bearing No. MH-15-G-4377 which was proceeding from Pune to Nashik dashed to the motorcycle of deceased. The deceased sustained injuries and thereafter succumbed to the injuries. The offence was registered against the driver of Canter.

7. It is contention of learned counsel for the Respondent No.2/Insurance Company that accident caused due to negligence of deceased. To prove the defense the Insurance Company examined driver of the Canter as defense witness. Driver Arun Balak at Exhibit-53 has stated that on 9th February, 1997, he was going from Pune to Nashik at about 8:30 a.m. when his vehicle came near Subhas Petro Pump located on Pune – Nashik Road at that time one motorcycle rider was overtaking truck proceeding ahead of him. Motorcycle

was coming from Nashik side and said motorcycle rider dashed to front portion of his Canter. This witness turned his vehicle to left side to save the motor cyclist. Accident took place due to negligence of motorcycle rider. After accident, he went to the police station and lodged report, police came to the incident spot and drew spot panchanama. The FIR was lodged against him. In cross-examination this witness admitted that the width of road was sufficient for passing two vehicles. He admitted that, he saw the motorcycle of deceased from 10 feet prior to the accident. The First Information Report is at Exhibit-27. It is filed by the Police Constable Gulab Gagurde after inspecting incident spot. In his report, he has stated that the accident caused due to the negligence of the driver of Canter. The spot panchanama which is at Exhibit-28 also supports the claimants' case that accident occurred due to negligence of driver of the Canter. The tribunal has considered 50% contributory negligence of deceased. I am unable to understand the observation of the tribunal, when the police has lodged FIR against the driver of canter after visiting the incident spot and spot panchanam also supports the claimants' case. Moreover, in cross-examination driver of canter has admitted that he had seen motorcycle of deceased, when he was 10 feet away, in spite

of that he did not take steps to avoid the accident. It shows only to avoid liability, he has stated that accident occurred due to contributory negligence of deceased but evidence produced on record i.e. FIR and spot panchanama falsify his evidence. Hence, I hold that, the accident caused due to sole negligence of driver of Canter. In respect of the issue of future prospects, the tribunal has considered monthly income of deceased around Rs.5,000/- but while calculating compensation, the tribunal has considered monthly income of deceased at Rs.7,500/- which included future prospects hence, no need to award future prospects, as it is already considered by the tribunal. The tribunal has awarded consortium amount on lower side. 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 claimants are entitled Rs.48,000/- as consortium amount and Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

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

Notional Income per month	Rs.7,500/-
1/3 Deductions towards personal expenses	Rs.2,500/-

	Therefore Rs.7,500 – Rs.2,500/- = Rs.5,000/-
Total Income	Rs.5,000
Annual Income Rs.5,000/- X 12	Rs.60,000/-
Multiplier Rs.60,000/- X 16	Rs.9,60,000/-
Loss of Estate	Rs.18,000/-
Funeral Expenses	Rs.18,000/-
Add. Consortium (Rs.48,000/- X 3)	Rs.1,44,000/-
Total Compensation	Rs.11,40,000/-
Less compensation awarded by Tribunal	Rs.4,90,000/-
Enhanced compensation	Rs.6,50,000/-

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

ORDER

- i. Appeal is allowed.
- ii. The Appellants/Claimants are entitled for enhanced compensation of Rs.6,50,000/- @ 7.5% interest per annum from the date of filing of claim petition till realisation of amount, out of this amount Rs.1,80,000/- is consortium amount. The claimants are entitled @ 7.5% interest per annum on this amount from 1st November, 2017 till realisation of amount.
- iii. The Respondent No.2/Insurance Company shall

deposit enhanced amount along with accrued interest thereon within six weeks after receipt of the order.

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

10. All pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)