IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.144 OF 2016

1. Pradip Manohar Kapadane,

2. Varsha Pradeep Kapadane,

3. Aditya Pradeep Kapadane,

Applicant No.1 is a guarding of
Minor Applicant No.3,
All R/o:- Sarang Park, Near Dr. More
Hospital, Ambad Link Road,
Pavan Nagar, Nashik. Appellants
… (Orig. Claimant)

Versus

1. Anjanabai Rajaram Sapkal,
R/o: 10/2 Balaji Peth, Jalgaon.

2. Divisional Manager
The New India Assurance Co. Ltd.
M.I.D.C. Area, Trimbak Road,
Tal. & Dist. Nashik Respondents
…(Orig. Opponents)

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Mr. Amey Deshpande a/w Ms. Vandana Rathod Bait for Appellants.
Mrs. Poonam Mittal for Respondent.

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CORAM : SHIVKUMAR DIGE, J.

DATED : 17th MARCH, 2023

<u>Oral Judgment</u> :

1. By way of this Appeal, the Appellants-Claimants are seeking enhancement of compensation.

2. It is contention of learned counsel for the Appellant that the accident occurred due to sole negligence of offending driver, but Tribunal has fixed 50% contributory negligence of the deceased.

3. Learned counsel further submits that deceased was getting monthly salary of Rs.16,500/- per month. He was also getting other allowances i.e. mobile charges allowances, Rs.100/- as conveyance allowance, but Tribunal has considered his monthly income at Rs.5,000/- per month which is improper. The learned counsel further submits that the Tribunal has not awarded consortium amount hence, requested to allow the Appeal.

4. It is contention of the learned counsel for Respondent-Insurance Company that the accident occurred due to contributory negligence of deceased and the Tribunal has properly considered this fact. The learned counsel further submits that there was deduction of the salary of the deceased and on that basis Tribunal has considered salary of deceased properly. Hence, no interference is required in it. The learned counsel further submits that while awarding compensation the Tribunal has considered all the aspects and on that basis compensation is awarded.

5. I have heard both the learned counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal, Nashik (for short 'the Tribunal'). It is the case of claimants that accident occurred on 5th October, 2010 at 11:00 p.m. deceased Pawan Kapadane (Shimpi) was travelling on motorcycle as pillion rider on highway. When their motorcycle reached in the vicinity of

Nimkhedi Taluka, the driver of Truck No.MTB 4627 drove the truck in rashly, negligently and without considering the road condition and gave dash to the motorcycle of deceased, due to said dash, deceased suffered multiple injuries and succumbed to it.

6. It is contention of learned counsel for the Appellant that the deceased was pillion rider on the said motorcycle in spite of that the Tribunal has considered contributory negligence at 50%. I am unable to understand the finding given by the Tribunal on the point of contributory negligence. When it appears from record that deceased was pillion rider on the motorcycle, the rider of said motorcycle was Rohan Bapat. Hence, I am setting aside the observations of the Tribunal about contributory negligence of deceased as he was pillion rider. In respect of income of deceased, Tribunal has considered monthly income of deceased at Rs.5.000/- per month. To prove the income of deceased the claimants have examined PW-2 Prashant Tukaram Kad, Assistant Manager (H&R) Johnson India Mumbai TBK Limited at Exhibit-47. He has stated that deceased was working in their Company and he was getting salary of Rs.16,500/- per month, but on the basis of admission given by this witness. The Tribunal has considered the income of deceased at Rs.5,000/-. I do not agree with this observation of the Tribunal as it appears from Exhibit-53, salary certificate of deceased which shows that deceased was getting gross total of Rs.16,500/- per month, out of which Rs.417/- is bonus amount. This certificate also shows that deceased was getting daily conveyance expense at Rs.100/- per day as per Company Policy.

7. It is settled principle of law that while considering the monthly income of deceased, the professional tax and income tax has to be deducted. In the salary certificate, no professional tax and income tax is mentioned, but there is mention of bonus Rs.470/-. Hence, I am deducting this amount from salary of deceased and I am considering daily conveyance expenses of Rs.100/- in his salary. So I am considering the monthly salary at Rs.16,083/-.

8. The Tribunal has not awarded the consortium amount. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram***[1], the claimants are entitled for consortium amount of Rs. 40,000/- each with 10% increase. There are three claimants. Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate.

9. In view of the above calculations, the claimants are entitled for following compensation:-

Monthly earning of deceased	:-	**Rs.16,083/-**
Yearly income Rs.16,083X12/=36,500/-	:-	(1,92,996+36500/-)
("daily conveyance expenses of Rs.100/-")		
	Total:-	**Rs.2,29,496/-**
Personal Expenses (50%)	:-	Rs.1,14,748/-
Future Prospects (50%)	:-	Rs57,374/-
	Total:-	**Rs.1,72,122/-**
Yearly Income multiplied by	:-	Rs.1,72,122/-
Multiplier of 18	:-	X 18
	Total:-	**Rs.30,98,196/-**
Consortium (44,000X3)	:-	Rs.1,32,000/-

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Loss of Estate	:-	Rs.16,500/-
Funeral Expenses	:-	Rs.16,500/-
	Total:-	**Rs.32,63,196/-**

The Tribunal has awarded Rs.4,40,250/-, if this amount is deducted from the amount considered by this Court of Rs.32,63,196/- it comes to Rs.28,22,946/-. The claimants are entitled for this amount.

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

<u>O R D E R</u>

(i) Appeal is allowed.

(ii) The claimants are entitled for enhanced compensation of Rs. 28,22,946/- @7.5% per annum from filing of claim petition till realization of the amount, out of this, consortium amount is Rs.1,65,000/-, the claimants are entitled interest @ 7.5% per annum from 1st November, 2017 till realization of the amount.

(iii) The Respondent-Insurance Company is directed to deposit the enhanced amount along with accrued interest thereon within six weeks after receipt of this order.

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

(SHIVKUMAR DIGE, J.)