

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1422 OF 2008

United India Insurance Co. Ltd. }
Mumbai Regional Office II, }
Maker Bhavan No.1 3rd Floor, Sir.V.T. }
Marg, Mumbai-400 020 } **...Appellant**

Versus

1. Smt.Vijaylaxmi Ramanan, Widow }
2. Miss.Vinkita Ramanan Rajlaxmi }
3. Mr.Vinkita Ramanan Narayanan }
}

All R/at C-29, Vasant Villa, Amrit }
Nagar, Ghatkopar (W) }
Bombay- 400 086 }

4. M/s.Date Transport }
At & Post : Kathapur Khurd, }
P.O. Pimerkhed, Tal. Shirur, Dist-Pune } **...Respondents**

Mr.Amol A. Gatane, for the Appellant.

Ms.Sapana Krishnappa i/b Mr.Suresh Dubey, for Respondent
Nos.1 to 3.

CORAM : S.G. DIGE, J.

DATE : 10 MARCH 2023

JUDGMENT :-

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

2. It is contention of the learned counsel for the Appellant that incident was occurred due to negligence of deceased. But this fact is not considered by the Tribunal and held that driver of offending truck was negligent in the said accident. The learned counsel further submits that the Tribunal while considering the income of deceased has wrongly considered fixed salary of deceased along with Rs.1,500/- as future prospects and has considered the gratuity amount while calculating the compensation which is improper. Hence, requested to allow the Appeal.

3. The learned counsel for the Respondent/Claimants submits that the offending truck gave dash to the scooter of the deceased from back side. The FIR was lodged against the driver of the offending truck. Spot panchnamma shows negligence of the offending truck. No witness was examined by the Appellant to prove the negligence of deceased. The learned counsel further submits that the deceased was employee in Bank of Baroda and Tribunal has considered his monthly salary at Rs.7,500/- and Rs.1,500/- is added as a future prospects. At the time of the accident the deceased was 42 years old and Tribunal has applied the multiplier of 12 instead of 18 which is on lower side. Hence, requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short 'the Tribunal.')

5. The accident occurred on 11 November 1993 at 9.40 p.m. at Sion Trombay Road at Chembur, Mumbai. At the relevant time deceased was riding the scooter bearing No.MH-03-C-5325. There was pillion rider. When the scooter came at Chembur Naka, it halted at signal post, as the signal turned green the deceased started scooter, it tilted a little towards right. At that time the offending truck came from behind and gave dash to the deceased and went away. Because of the said accident deceased was died. The offence was registered against driver of the offending truck. From the evidence on record it reveals that the accident was occurred due to sole negligence of the driver of the offending truck. Moreover, to prove negligence of deceased driver of the offending truck did not step in the witness box. Hence, I do not find any merit in the contention of the learned counsel for the Appellant that said accident was occurred due to negligence of the deceased.

6. In respect of income of deceased, the deceased was working in the Bank of Baroda and he was getting salary of Rs.7,448/- as a gross salary. The Tribunal has considered his salary as well as Rs.1,500/- as future prospects and has considered

monthly income at Rs.9,000/- per month. I do not find any infirmity in it.

7. In respect of considering gratuity amount the Tribunal has awarded Rs.1,50,000/- towards loss of gratuity. The Tribunal has awarded Rs.25,000/- for consortium amount. There are three Claimants. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. vs. Nanu Ram*¹, each Claimant is entitled for Rs.40,000/-. There are three Claimants, total comes to Rs.1,20,000/-. Hence, gratuity amount awarded can be adjusted in the amount of loss of consortium. In view of above, the Appeal is devoid of merit and I pass following order.

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The Claimants are permitted to withdraw the award amount along with accrued interest thereon.
- (iii) The statutory amount be transmitted to the Tribunal along with accrued interest thereon. Parties are at liberty to withdraw it, as per Rule.
- (iv) All pending Civil Applications, if any, are disposed of.

(S.G. DIGE, J.)

¹ 2018 ACJ 2782 (SC)