

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 944 OF 2019

ICICI Lombard General Insurance Co. Ltd.)
Through its authorized representative)
Mr. Prathamesh Dinde)
Having its office at Peninsula House, 4th Floor,)
Dr. D. N. Road, Fort, Mumbai – 400 001)...Appellants
(Orig. Opp. Party No.3)

Versus

1. Smt. Rupali Bhanudas Londhe,)
Age: 27 years, Occ: Housewife)
2. Master. Aniket Bhanudas Londhe,)
Age: 9 years, Occ. Education)
3. Kumari Anushka Bhanudas Londhe,)
Age: 6 years. Occu.: Education)

Applicant No.1 to 3 residing at)
Rewalkarwadi, Visapur, Tal. Khatav,)
Dist-Satara.)
4. Smt. Kusum Nana Londhe,)
Age: 60 years, Occ: Housewife)

residing at Chimangaon, Tal-Koregaon)
Dist.-Satara)
5. Shri. Gangaram Janu Patil)
Age: 45 years, Occ: Business)
residing at Salav, Tal – Murud,)
Dist-Raigad.)

6. Shri Kanifnath Mohan Mandavkar)
Age: 28 years, Occ: Driver)
residing at Rajegaon, Tal – Navasa,)
Dist.- Ahmadnagar.)...Respondents
(Present Respondent No.1 to 4 being
original Applicants and present
Respondent No.5 and 6 being
original opp. party No.1 & 2 and
Insured)

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Mr. Rajesh Kanojia i/by Res Juris, for Appellant.
Mr. Vaibhav R. Gaikwad a/w. Atharva R. Bhingardev, for
Respondents No.1 to 4.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 27th MARCH 2023.

JUDGMENT:

1. The issues involved in this Appeal are, contributory negligence of the deceased, future prospects and compensation under conventional head are awarded on higher side. The income of deceased considered on higher side without any proof of it.

2. It is contention of learned Counsel for the Appellant that the accident occurred due to sole negligence of deceased. But, the Tribunal has held contributory negligence which is improper.

Learned Counsel further submits that there is no proof of income of deceased produced on record. In spite of that the Tribunal has considered Rs.12,000/- per month as monthly income of deceased which is on higher side. Learned Counsel further submits that the Tribunal has considered 50% future prospects. It should be 40% as the Tribunal has considered notional monthly income of the deceased.

3. Learned Counsel further submits that the Tribunal has awarded Rs.2,56,000/- under the conventional head which is on higher side. Hence, requested to allow the Appeal.

4. It is contention of learned Counsel for Respondents/ claimants that it has come on record that the offending vehicle came in wrong side and gave dash to the vehicle which was driving by deceased. It shows that the accident occurred due sole negligence of the driver of the offending vehicle. Learned Counsel further submits that the deceased was working as a driver in transport company and he was getting monthly salary of Rs.10,000/- and Rs.200/- daily 'bhatta', he was getting around Rs.16,000/- per month income. But, the Tribunal has considered

Rs.10,000/- only.

5. Learned Counsel further submits that, he was also getting Rs.1,50,000/- per year income from his agricultural land, but learned Tribunal has not considered this income. Hence, requested to dismiss the Appeal.

6. I have heard both learned Counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short 'the Tribunal').

7. While dealing with the issue of contributory negligence, the Tribunal has observed that exhibit 32, it is spot panchnama. It shows that the offending vehicle came on wrong side of the road by breaking divider. The F.I.R is at exhibit 31. From the F.I.R and spot panchnama, it shows that the accident occurred due to negligence of driver of offending vehicle. I do not find any infirmity in it as it appears from the record that the driver of offending vehicle was in high and excessive speed and by breaking the divider it came on wrong side of the road and gave a dash to the vehicle of deceased.

8. In respect of income of deceased, the claimants have examined Vasudeo Kadam at exhibit 37. He has stated that he works as accountant in Hariom Transport, Navi Mumbai. The deceased was working as driver on heavy trailer and his monthly salary was Rs.10,000/- per month. He was getting Rs.200/- daily 'bhatta'. The vouchers are at exhibit 42 to 46. The claimant No.1 stated in her evidence that the deceased was getting Rs.1,50,000/- from agricultural land and deceased had 4 acres fertile land.

9. Considering the evidence on record, the Tribunal has considered salary income of deceased at Rs.10,000/- and Rs.2,000/- at agricultural supervisory income. I do not find any infirmity in it. The Tribunal has given 50% future prospects as deceased was self-employed. I am considering 40% future prospects. The Tribunal has awarded Rs.2,56,000/- under the conventional head, as per view of the Hon'ble Apex Court in the case **Magma General Insurance Co. Ltd. vs. Nanu Ram**¹ each claimant is entitled for Rs. 40,000/- as consortium amount and Rs.15,000/- for loss of estate and Rs.15,000/-for funeral expenses.

¹ 2018 ACJ 278 (SC)

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

Particulars	Amount
Income	Rs. 12,000.00
40% future prospects	Rs. 4,800.00
Deduction towards personal expenses 1/4th of Rs.16,800.00 comes to Rs.4,200.00.	
Therefore, Rs.16,800-Rs.4,200.00	Rs. 12,600.00
Total Income Rs.12,600.00 X12	Rs. 1,51,200.00
Rs. 1,51,200 X 16 (multiplier)	Rs. 24,19,200.00
Loss of consortium Rs.40,000/- x 4(family members – filial and parental)	Rs. 1,60,000.00
Loss of Estate	Rs. 15,000.00
Funeral Expenses	Rs. 15,000.00
Total Compensation	Rs. 26,09,200.00
For round up	Rs. 26,10,000.00

11. The Tribunal has awarded Rs.28,48,000/-. If, this amount is deducted from compensation amount considered by this Court it comes to Rs.2,38,000/-. This amount is excess amount.

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

ORDER

- i. Appeal is allowed.
- ii. The claimants are entitled for compensation of Rs.26,10,000/- @ 8% per annum from the date of filing of the claim Petition till realization of the amount.
- iii. The Appellant is permitted to withdraw excess amount of Rs.2,38,000/- along with accrued interest thereon.
- iv. The claimants are permitted to withdraw deposited amount along with accrued interest thereon.
- v. The statutory deposit be transmitted to the Tribunal along with accrued interest thereon.
- vi. The parties are at liberty to withdraw the amount as per rule.
- vii. Pending Applications, if any, disposed of.

(SHIVKUMAR DIGE, J.)