

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 594 OF 2011

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| <ol style="list-style-type: none"> 1. Jagruti Deepak Sachdev
Formerly Jagruti Anant Thakkar
Adult, Occ : Household, Residing at 104,
Lohar Baug, Sitapur, Uttar Pradesh-261 001 2. Bhagyashree Anant Thakkar
Appellant No.2. Minor through her mother and
natural guardian Appellant No.1.
abovenamed residing at 104, Lohar Baug,
Sitapur, Uttar Pradesh – 261001 3. Indravadan Karsandas Thakkar
Adult, Occu: Business 4. Nirmala Indravadan Thakkar
Adult, Occ: Household <p style="margin-left: 40px;">Appellant Nos. 3 and 4 residing at –
3, Thakkar Niwas, Juna Rasta, Opp. New
Telephone Exchange at Anand, State of Gujarat</p> | | Appellants |
| Versus | | |
| <ol style="list-style-type: none"> 1. Sha Champalal Lalchandji Jain
C/o. Raichand Hukumchand & Co.
Railway Goods Shed Road, Renebennur Dharwad,
Karnataka State 2. National Insurance Co. Ltd.
A Company incorporated under the General
Insurance Act, having its office at Ram Maruti
Cross Road, Near Dr. Apte Rugnalaya,
Naupada, Thane | | Respondents |

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Ms. Druti Datar i/b. R.S.Datar, Advocate for the Appellants.
Ms. Poonam Mital, Advocate for Respondent No.2.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 12th DECEMBER, 2023

JUDGMENT:

1. By way of this appeal, the claimants are seeking enhancement of compensation.

2. It is the contention of learned counsel for the appellants/claimants that accident caused due to sole negligence of driver of offending truck but the Tribunal has considered 50% contributory negligence of deceased which is not proper. Learned counsel further submitted that the Tribunal has not awarded future prospectus and consortium amount is given on lower side. Learned counsel further submitted that wrong multiplier is applied, hence requested to allow the appeal.

3. It is the contention of learned counsel for respondent No.2– Insurance Company that accident occurred due to sole negligence of deceased as he was riding the motorcycle in rash and negligent manner and he could not control the speed and dashed against the truck. The Tribunal has considered 50% contributory negligence of deceased & 50% contributory negligence of truck driver, which is proper and no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment

and Order passed by the Motor Accident Claims Tribunal, Thane (for short “**the Tribunal**”). To prove the negligence of truck driver the claimants have examined eye witness to the incident Prashant Keni, he has stated that on 10.08.1993 at about 3 p.m. he was waiting for city bus at Anand Nagar stop at that time he found one truck bearing No.KA-27-333 was proceeding from Thane towards Ghodbunder Road in excessive speed. The truck was found proceeding by the wrong side of the road. At the same time, he saw one motorcycle was coming from opposite direction and the truck gave dash to the said motorcyclist and due to said dash the motorcycle was dragged to the distance of 30 ft. by the said truck. In cross examination he has stated that police has not recorded his statement and there were shops around side of the road. To prove the negligence of deceased the Insurance Company has examined driver of offending truck as DW-1 he has stated that on the day of incident he was proceeding from Thane to Ghodbunder Road, it was single road and he was proceeding from the left side of the road. He further stated that one tempo was coming from opposite direction, the motorcyclist was overtaking the tempo in question. This witness had given signal to the motorcyclist but he did not respond, he took his truck to the extreme left side on kaccha road. The motorcyclist dashed his truck on drivers side. He further stated that it did not happen that after dash motorcycle was dragged by his truck to 30

ft. In cross examination he admitted that there was ditch on the side of kaccha road. This witness has stated that he did not drag the deceased to 30 feet. The spot panchanama is at Exhibit-41. This spot panchanama shows that the truck had applied break. There were break marks of 30 ft. of said truck. It falsifies the evidence of the truck driver that he had not dragged the body of deceased to 30 ft. The complaint is at Exhibit-40 it is filed by Milind Gandankush, Police Constable. In his complaint he has stated that due to dash by the truck the body of the deceased was almost cut into pieces and he recorded submission of eye witnesses who saw the incident and from their statements he came to know that the incident happened due to sole negligence of the driver of the offending truck. Considering the evidence on record the Tribunal has observed that there was 50% contributory negligence of the deceased in said accident, in my view it is erroneous. As it has come on record that accident occurred due to sole negligence of driver of offending truck, hence I am setting aside the said observations. While calculating the compensation the Tribunal has considered monthly income of deceased Rs.8,000/- per month. It is not challenged by the appellant- Insurance Company. The Tribunal has not awarded future prospects. As per the view of the Hon'ble Apex Court in the case of *National Insurance Co. Ltd. vs. Pranay Sethi*¹, claimants are entitled for 40% future prospectus. The Tribunal has awarded consortium

¹ 2017 ACJ 2700 (SC)

amount on lower side. As per the view of the Hon'ble Apex Court in *Magma General Insurance Co. Ltd. vs. Nanu Ram.*², each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

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

Particulars	Entitlement
Monthly Income	8,000.00
40 % future prospects	3,200.00
Total monthly income	11,200.00
Annual Income	1,34,400.00
Multiplier Rs. 134400 X 17	22,84,800.00
1/4th deduction for personal expenses	5,71,200.00
Total	17,13,600.00
Consortium (Rs.48,000/- X4 claimants)	1,92,000.00
Funeral Expenses	18,000.00
Loss of Estate	18,000.00
Total	19,41,600.00
Less compensation awarded by the Tribunal	3,79,000.00
Total enhanced amount	15,62,600.00

The claimants are entitled for an enhanced amount of Rs.
15,62,600.00

6. In view of the above, I pass following order:

²2018 ACJ 2782 (SC)

ORDER

- i. The appeal is allowed.
 - ii. The claimants are entitled for enhanced compensation of Rs.15,62,600/- @7.5% per annum from date of filing of claim petition till realisation. Out of the this amount, the amount of Rs.2,10,000/- is for consortium and loss of estate and funeral expenses, the claimants are entitled for interest @7.5%. per annum on this amount from 1st November, 2017 till realisation.
 - iii. The respondent No.2/Insurance Company shall deposit enhance amount along with interest within six weeks.
 - iv. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
7. The appeal is disposed of. Pending applications, if any, stand disposed of.

SONALI
SATISH
KILAJE

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by SONALI
SATISH KILAJE
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(SHIVKUMAR DIGE, J.)