

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

**FIRST APPEAL NO.542 OF 2022
ALONGWITH
INTERIM APPLICATION NO.2759 OF 2021**

The New India Assurance Company Appellant/Applicant
Versus

Smt.Kavita Jitendra Pawar and Ors. Respondents

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Ms.Poonam Mital, Advocate for the Appellant/Applicant.

Mr.Rohan Mahadik a/w. Ms.Rachana Karad i/b. M/s.The Juris Partners, Advocate for Respondent Nos.1 to 3.

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CORAM : ABHAY AHUJA, J.

DATED : 25th JULY 2023

JUDGMENT :

This First Appeal has been preferred by the New India Assurance Company under Section 173 of the Motor Vehicles Act, 1988 (the “M.V. Act”, for short), being aggrieved by the Judgment and Award passed by Motor Accident Claims Tribunal, Pune (“MACT Pune”, for short) in MACP No.437 of 2015, dated 20th August, 2019, primarily on the ground that the Tribunal erred in considering the income tax return of the deceased filed after his death.

2 The brief facts are that the deceased Jitendra Hiraral Pawar was the husband of the Respondent No.1 and the father of Respondents No.2 and 3. The deceased on the day of accident was

travelling with his friend Madanlal Parmar in his friend's Swift Car bearing registration No.MH-12-EG-3208 towards, which vehicle was insured with the Appellant insurance company, when at about 05:30 p.m. on Mumbai-Pune express highway near village Bharangaon, the driver of the swift vehicle lost control, crossed the divider and dashed into another car bearing No.MH-12-KT-6311 which was coming from the opposite direction. In the said accident, Mr.Jitendra Pawar sustained multiple injuries and succumbed to them. Offence under C.R.No.42 of 2015, was registered against the car driver in which the deceased was travelling under various sections of the Indian Penal Code ("IPC", for short) holding him responsible for the accident. The Tribunal has observed that the evidence leading to the conclusion that the driver of the vehicle which was insured by the Appellant insurance company was driving the car rashly and negligently has not been challenged seriously in the cross-examination, and, therefore, the liability of the insurance company is more or less undisputed. It is also observed by the Tribunal that perusal of the police papers also reveals that the accident took place due to the rash and negligence act of the driver of the offending vehicle. The offence registered against the driver of offending vehicle corroborates the evidence given by the first Respondent, widow of the deceased. The Post-mortem report also

suggests that the death occurred due to hemorrhagic shock due to polytrauma after the accident. The Tribunal has, therefore, concluded that the claimants prove that the deceased Jitendra Pawar died in the motor vehicle accident caused on 13th April, 2015 at about 5:30 p.m. on Mumbai–Pune express way by rash and negligent driving of the driver of the Swift Car bearing registration No. MH–12–EG–3208, in which the deceased was travelling.

3 The aforesaid facts, as mentioned above are not in dispute. The issue that the Appellant insurance company is primarily aggrieved is by the quantum of compensation awarded to the claimant. It is being argued by Ms.Mital, learned counsel for the Appellant–insurance company that there is absolutely nothing on record to substantiate the fixed income of the deceased; that the last income tax return of the deceased, relied upon by the claimants was furnished after the death of Mr.Pawar and the amount is excessively high. According to her, since there is no fixed income, a notional income of Rs.5,000/- to 7,000/-, can be considered. On the other hand Mr.Mahadik, learned counsel for the Respondent Claimants would submit that the deceased was doing seasonal business and his income tax returns filed after his death have been rightly considered by the Tribunal.

4 I have heard learend counsel and with their able assistance perused the papers and proceedings and considered the rival contentions.

5 Before proceeding further and in order to appreciate the limited controversy at hand, it would be useful to quote paragraphs 14 and 15 of the Judgment dated 20th August, 2019, passed by the Member, MACT, Pune, as under:

“14. This takes me to Income Tax Returns filed below Exh.32 and 33. From perusal of Income Tax Returns for the period 2013–2014 it can be seen that income from business was shown Rs.1,25,750/-. Similarly, the Income Tax Returns for the period 2014–2015 shows income from business as Rs.2,45,500/-. Admittedly, death occurred on 13.04.2015. The Returns were furnished by the brother of deceased after his death. Harping on this point, Advcoate for Insurance Company argued that, this assessment after the death of Shri Pawar was purposefully made at the higher end to get maximum compensation.

15. Admittedly, there is hike of almost Rs.1,00,000/- in the income of deceased, if compared to the previous Income Tax Returns. In 2013–2014 income was Rs.1,25,750 and in 2014–2015 it is shown Rs.2,45,500/-. In such situation if the average income of both the years would be considered as the income of deceased for computing compensation, it would put controversy to an end. It will also ensure protection of legitimate right of the applicants regarding compensation. The average would thus come upto Rs.1,85,625/-.”

6 It is not in dispute that the death of Mr.Jitendra Pawar occurred on 13th April, 2015, due to the negligence of the driver of the

offending vehicle in the accident described above. The income tax returns of the deceased that were produced before the Tribunal are for two periods, one is for the period 2013 – 14 where the income from business was shown as Rs.1,25,750/-, and the other income tax returns pertains to the period 2014–15, which shows income from business at Rs.2,45,500/-. The Tribunal for the purposes of computing the compensation has considered the income of the deceased on the basis of an average of the income of both the years. It has been argued on behalf of the Appellant that income tax return of the year 2014–15, cannot be considered as that is after the death of the deceased. This in my view, is a misconceived interpretation. The deceased died on 13th April, 2015, which means that the previous year commencing on 1st April, 2014 ended on 31st March, 2015; income tax returns for the previous year are in accordance with the Income Tax law filed in the next year which is called the assessment year. Therefore as far as the deceased was concerned, the previous year would be 2014–15 and the year prior to that would be 2013–14. In my view, the Tribunal has rightly considered the average of the two years in coming to the figure of Rs.1,85,625/-. The Hon'ble Supreme Court in the case of ***Malarvizh and Ors. Vs. United India Insurance Company Limited & Anr.***¹, has approved the practice of determination on the basis of income tax

1 (2020) 4 SCC 228

returns holding that the income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. In *Rukmini Jethani & Ors. Vs. Gopal Singh & Ors.*², the Hon'ble Supreme Court had also observed that Tribunal had committed an error in not taking into account the income tax return filed on behalf of the deceased for the financial year 2004–2005 even though the deceased had died on 14th September, 2005, which also supports the view taken above.

7 I am also in agreement with the Tribunal that once the income of the deceased is decided at Rs.1,85,625/-, p.a., the computation of the compensation be made in accordance with the principles settled in the decisions of the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and Ors.*³, as well as *Sarla Verma & Ors Vs. Delhi Transport Corp. & Anr.*⁴ The calculations towards future prospects, the deduction on account of personal expenses, the multiplier of 15 considering the age of the deceased being 38 years at the time of his death, the amounts towards consortium, towards loss of estate and towards funeral expenses have

2 2021 ACJ 2683

3 Special Leave Petition (Civil) No.25590 of 2014.

4 (Arising out of SLP [C] No.8648 of 2007)

all been correctly computed totaling to Rs.25,98,760/-, alongwith interest at the rate of 8% p.a. to be paid in accordance with the order passed on the 20th August, 2019, by MACT, Pune.

8 In the circumstances, I do not find any error or illegality or perversity in the findings and decision of the Tribunal. There is no merit in the Appeal. The Appeal deserves to be dismissed and is hereby dismissed. No order as to costs.

9 Ad-interim/interim order(s) accordingly stand vacated. Pending interim application accordingly stands disposed.

(ABHAY AHUJA, J.)