

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1016 OF 2022

The New India Assurance Co. Ltd.

Having its Office at 3rd Floor, Nehru Memorial

Hall, Opposite Coffee House, Dr. Ambedkar

Road, Camp, Pune through Mumbai Legal

Hub, 41-B, 4th Floor, Maker Tower-E,

Near World Trade Centre, Cuffe Parade,

Mumbai – 400 005.

...(Ori.Opponent No.2)

...**Appellant**

Versus

1. Dilip Sabaji Bhandwalkar

(Since deceased through his legal heirs

Respondents-Claimants Nos. 2 and 3)

...(Ori.Applicant No.1)

2. Vijaya Dilip Bhandwalkar

Aged about 47 years, Occu.: Profession

...(Ori.Applicant No.2)

3. Ashish Dilip Bhandwalkar

Age : 26 years, Occu.: Student,

All residing at Shaha Colony,

Plot No.20-B, Talegaon Dabhade,

Taluka Maval, District Pune.

...(Ori.Applicant No.3)

4. Ideal Movers Pvt. Ltd.

Having its office at :

A) B-3050, Steel Yard, Beema Complex,
Kalaboli, Taluka Panvel, District Raigad.

B) B-2035, Steel Yard, Beema Complex,
Plot No.119, Kalamboli,

Navi Mumbai – 402 107

...(Ori.Opponent No.1)

...Respondents

Mr. Sandeep S. Jinsiwale for the Appellant.

Mr. Uday B. Nighot for Respondents-Claimants Nos. 1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 31st MARCH, 2023.

JUDGMENT :

1. The issues involved in this Appeal are contributory negligence of deceased and income of deceased considered on higher side by the Motor Accident Claims Tribunal, Pune (for short 'the Tribunal').

2. It is contention of learned Counsel for the Appellant that accident occurred due to the sole negligence of deceased, but this fact was not considered by the Tribunal. Learned Counsel further submits that deceased was M.B.A. (Master of Business Administration) student and the Tribunal has considered his monthly income @ Rs.25,000/-

per month, which is on higher side, hence, requested to allow the Appeal. He relied on the Judgments of *Nagar Mal And Others Versus Oriental Insurance Company Limited And Others, (2018) 3 Supreme Court Cases 130* .

3. It is contention of learned Counsel for Respondents-Claimants that the offence was registered against the driver of offending vehicle. No witness was examined by the Appellant to prove the negligence of deceased. Learned Counsel further submits that deceased was pursuing MBA. The Tribunal has not awarded future prospects, hence, the income considered by the Tribunal is proper. He relied on Judgment of *S. Vasanthi And Another Versus M/s. Adhiparasakthi Engg. College And Another, Civil Appeal No.7180 of 2022*.

4. I have heard both learned Counsel. Perused Judgment and Order passed by the Tribunal.

5. In respect of act of negligence, admittedly the FIR of said accident was registered against the driver of offending vehicle. From FIR and spot panchnama, it appears that accident occurred due to sole negligence of driver of offending vehicle. Moreover, to prove the negligence of deceased, the driver of offending vehicle did not step into the witness box. Hence, mere on submissions of learned Counsel

for Appellant, it cannot be considered that there was negligence of deceased. Hence, I do not see merit in it.

6. In respect of issue of income of deceased, he was pursuing M.B.A. after the graduation of B.B.A. (Bachelor of Business Administration). The Tribunal has considered his monthly income @ Rs.25,000/-. It is contention of learned Counsel for the Appellant that it is on higher side.

7. In my view, at the time of accident, deceased was 24 years old. He was pursuing the education of Master of Business Administration. The Hon'ble Apex Court in the case of ***S. Vasanthi Versus M/s. Adhiparasakthi Engg. College (Supra)*** has held that the deceased was pursuing M.B.A. student and on that basis the Tribunal has considered monthly income of deceased at Rs.30,000/- per month, which is proper. The facts of cited case are squarely applicable to the present case.

8. It is contention of learned Counsel for the Appellant that the accident in present case was occurred in the year 2012. So considering the ratio of that year, the income of deceased is on higher side. Learned Counsel for Respondents-Claimants submits that the Tribunal has not awarded future prospects.

9. In my view, admittedly the future prospects is not awarded to the Claimants, for which the Claimants are entitled. If the amount of Rs. 25,000/- is included with future prospects, would meet the ends of Justice.

10. Learned Counsel for the Respondents-Claimants agrees for it and he submits that the Claimants would not file separate Appeal for enhancement of amount on that ground.

11. The Tribunal has not awarded consortium amount. It is contention of learned Counsel for the Appellant that in an Appeal filed by the Appellant, the Claimants cannot claim enhancement.

12. In my view Section 168 of Motor Vehicles Act states about just compensation. The Claimants are entitled for consortium amount. As per the view of the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each Claimant is entitled for Rs.40,000/- as consortium amount. There are three Claimants. The Claimants are entitled for Rs.1,20,000/- as consortium amount, Rs. 15,000/- for funeral expenses and Rs. 15,000/- for loss of estate. Total comes to Rs. 1,50,000/-

13. Learned Counsel for the Appellant submits that the Tribunal has awarded Rs.1,00,000/- for loss of estate and Rs. 25,000/- for funeral expenses.

14. The Tribunal has already awarded amount of Rs.1,25,000/-. As per calculation of this court, the amount for consortium comes to Rs.1,50,000/-, difference of which comes to Rs.25,000/-. In view of above, I pass following order :

ORDER

- i. Appeal is dismissed. No order as to cost.
- ii. The Claimants are entitled for additional amount of Rs.25,000/- @ 7.5% p.a. from 1st October, 2017, till realization of amount.
- iii. The Appellant shall deposit additional amount alongwith accrued interest thereon within four weeks after receipt of Order.
- iv. The statutory amount of Rs.25,000/- alongwith accrued interest be transmitted to the Tribunal. The parties are at liberty to withdraw it, as per rule.

- v. The Claimants are permitted to withdraw deposited amount alongwith accrued interest thereon.
- vi. All pending Applications, if any, stands disposed off.

(SHIVKUMAR DIGE, J.)