

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1159 OF 2016

The Divisional Manager,
The New India Assurance Co. Ltd.
Branch, Satara.

Appellant
... (Orig. Insurer)

Versus

1. Nilam Suhas Nimbalkar
Aged 30 years, Occ- Household
2. Nirmal Suhas Nimbalkar
Aged 10 year, Occ.Education
Respondent No.1 is Mother &
Guardian of Respondent No.2
3. Chabutai Janardan Nimbalkar
Age 65 yrs., occ. Household
All R/o. Adarki Khurd
Tal. Phaltan, Dist. Satara
4. Sachin Chandrakant Ghadge
Age – Adult, occ: Business
R/o. Rajwada Post Mahimangad
Tal. Man (Dahiwadi) Dist. Satara
5. Daivan Jalindar Tandale
Age: 23 years, occ: Driver
R/o. Tandalewadi Tal and Dist. Beed

Respondents
(Resp. Nos.1 to 3=Orig.
Applicants and Respondent
...Nos.4 & 5=Opp. Parties)

Mr. Milind V. More for Appellant.

Mr. Dilip Bodake a/w Ms. Shraddha Pawar for Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATED : 17th MARCH, 2023**Oral Judgment :**

1. Being aggrieved and dissatisfied by the judgment and order passed by the Motor Accident Claims Tribunal, Satara (for short 'The Tribunal'), the Appellant-Insurance Company has preferred this Appeal.

Brief facts of the case are as under :-

2. On 13th December, 2012, the deceased-Suhas Nimbalkar was proceeding on his motorcycle from his village Adarki (Kh) through Lonad Satara Road at about 10:30 p.m. When he reached within the limits of village Deur, at relevant time, one Truck bearing No. MH-11-M-5820 which was in high and excessive speed and driven by its driver rashly and negligently without taking care and caution, dashed the motorcycle of the deceased. Due to dash, deceased-Suhas Nimbalkar sustained multiple injuries and died on the spot. The offence was registered against the driver of offending truck.

3. It is contention of learned counsel for Appellant that the accident occurred due to sole negligence of the deceased. Moreover, initially FIR was lodged against unknown vehicle. No evidence was led before the Tribunal to show how the Truck was involved in the said accident, but this fact is not considered by the Tribunal.

4. The learned counsel further submits that the deceased himself was negligent in the said accident, he gave dash to the offending Truck. At the most, the Tribunal should have considered contributory negligence of the driver of both vehicles, but it was not considered. The learned counsel further submits that the Tribunal has considered income of deceased at Rs.28,000/- per month, which is on higher side, without any evidence. Hence, requested to allow the Appeal.

5. It is contention of learned counsel for the Respondents-Claimants that deceased was serving in Government Service as Border Security Guard in Border Road Organization and he was getting salary of Rs.28,000/- per month. To prove negligence of deceased driver of truck did not step into witness box. The Tribunal has considered all the aspect while awarding compensation hence, no interference is required in it.

6. It is contention of learned counsel for Appellant that deceased was getting fixed salary, the Tribunal should not have considered 50% future prospects, it should be 40% as he was working for 10 years on bond period.

7. I have heard both the learned counsel. Perused the judgment and order passed by the Tribunal.

8. It has come on record that deceased was in Government Service on executing bond for certain years. At the time of accident, he was 30 years old. The soldier who works on Border has to execute bond it does not mean that his service was temporary. Deceased was in permanent service. As per view of the

Hon'ble Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi¹**, claimants are entitled for 50% future prospects. Hence, I do not find infirmity in the observation of future prospects. In respect of negligence of the deceased, admittedly, FIR was lodged against the driver of offending vehicle. The Appellant had put his two fold case before the Tribunal. On one count Appellant says that, offending vehicle was not involved in the accident and on other count Appellant says that, at the time of accident, driver of offending vehicle was driving vehicle in moderate speed and deceased himself gave dash to the offending vehicle. To prove negligence of deceased, the driver of the offending vehicle did not step into witness box. The driver of offending Truck was the best person to tell about incident. It appears from the record that after the accident, driver of offending Truck ran away from the accident. In my view, FIR was lodged against driver of offending truck. He did not step into witness box to prove negligence of deceased. After accident he ran away from the accident spot it shows accident was occurred due to his negligence. I do not find substance in the contention of learned counsel for Appellant that there was negligence of the deceased in the said accident.

9. It is the contention of learned counsel for Appellant that Tribunal has awarded consortium amount to Applicant No.1 at Rs.1,00,000/-, loss of love and affection to Applicant Nos.2 and 3 Rs.2,00,000/- and funeral expenses Rs.25,000/- which are excessive.

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10. In my view, as per view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram²**, each claimant is entitled for Rs.40,000/- with 10% increase, Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate. There are three claimants, so total comes to Rs.1,65,000/-. The amount awarded by Tribunal is excessive i.e. Rs.3,25,000/-, if this amount is deducted from amount considered by this Court, it comes to Rs.1,60,000/-. This is an excess amount. In view of above, I pass following order:-

O R D E R

- (i) The Appeal is partly allowed.
 - (ii) The Appellants are permitted to withdraw the deposited amount of Rs.1,65,000/- along with accrued interest thereon, if not withdrawn by the claimants.
 - (iii) The claimants are permitted to withdraw remaining balance amount awarded by the Tribunal along with accrued interest thereon.
 - (iv) The statutory amount be transmitted to the Tribunal. The parties are at liberty to withdraw it as per rule.
11. Pending Applications, if any, are also disposed of.

(SHIVKUMAR DIGE, J.)

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