

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.968 OF 2018
WITH
CROSS OBJECTION (ST) NO.5039 OF 2023

Divisional Manager,
Reliance General Insurance Co. Ltd
135/B Pushpam Plaza, Ground Floor,
Near Nandadeep Hotel, Tadiwala Road,
Pune.

... Appellant

Versus

1. Nikhil Padmanabhan Pillay,
Age: 25 years, Occu: Watchman
2. Nishka Nikhil Pillay,
Age: 01 years 2 months, Occu: Nil,
Applicant No.2 is minor, hence
claiming through No.1 both are
R/at-AFMC Quarters, Wanowari,
Pune.
3. M/s. Gayatri Roadways,
Age: Major, Occu: Transport
Business, 2/204 Vishrda Chambers
Durgesh Park, Kalkher Village, Tal.
Bhiwandi, District – Thane.

Respondents

(Res. No.1 and 2 are Org.
Applicant & Res. No.3 is Orig.
...Opp. Party)

Mrs. Shalini Shankar a/w Ms. Megha Keluskar for the Appellant.
Mr. Yogesh Pande for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATED : 17th MARCH, 2023

Oral Judgment:

1. Being aggrieved and dissatisfied with the judgment and order passed by the Motor Accident Claims Tribunal, Pune (for short 'The Tribunal'). The Appellant-Insurance Company preferred this Appeal, the Claimants have also filed cross objection for enhancement of compensation. Hence, I am deciding these matters by this common judgment.

2. **Brief facts of the case are as under:-**

On 23rd December, 2015 the husband of deceased Pournima was riding the motorcycle. Pournima was pillion rider. The motorcycle was in a moderate speed, when they reached in front of PMT Depot outgate, Gadital Hadapsar Pune. At relevant time, tanker bearing registration MH 04 FU 8288 came from Saswad road and recklessly dashed to the motorcycle. Due to said dash, the deceased Pournima sustained multiple injuries and died while taking treatment. The offence was registered against driver of offending tanker.

3. It is the contention of learned counsel for the Appellant that the accident occurred due to sole negligence of the deceased, at the time of accident she was chitchatting with her husband on the motorcycle, but this fact is not considered by the Tribunal. The learned counsel further submits that at the time of accident, the driver of offending tanker was not holding valid and effective

driving licence. The income of deceased considered on higher side without any evidence on record. Hence, requested to allow the Appeal.

4. It is the contention of learned counsel for the Respondents-Claimants that the accident occurred due to sole negligence of the offending tanker driver. To prove the negligence of deceased, no witness is examined by the Appellant before the Tribunal. Moreover, deceased was pillion rider so, question of her negligence will not arise. The learned counsel further submits that the deceased was doing job as a teacher at Lexicon School, Hadpasar. The deceased was not permanent employee and her monthly salary was Rs.13,000/- and accordingly the Tribunal has considered salary of deceased after deduction of income tax at Rs.11,300/-, which is proper. The Tribunal has not awarded future prospects and consortium amount to other claimant it be awarded.

5. I have heard both learned counsel. Perused the judgment and order passed by the Tribunal while dealing with issue of negligence, the Tribunal has observed that the Appellant-Insurance Company did not examine any witness, to prove that husband of deceased was riding motorcycle rashly and negligently. Moreover, deceased was pillion rider so question of her negligence would not arise.

6. The Appellant has not examined driver of offending tanker to prove the negligence of husband of deceased. I do not

find infirmity in the observations of Tribunal that the accident was occurred due to sole negligence of driver of vehicle. In my view F.I.R. was lodged against driver of offending tanker, deceased was pillion rider. The observation of the Tribunal is proper. In respect of issue of driving licence of tanker driver to prove this defence, the Appellant has not examined any witness to prove that at the time of accident, the driver of offending vehicle was not holding valid and effective driving licence. I do not see merit in contention of learned counsel for the Appellant that driver of offending tanker was not holding valid driving licence. To prove the income of deceased PW-1 has examined. He has stated that, Pournima was serving as a teacher at Lexicon School Hadpsar and her monthly salary was Rs.13,000/-. In cross-examination, this witness admitted that she was not permanent employee. PW-2 Rahul Jagtap, Accountant in Lexicon School has stated that monthly salary of deceased was Rs.11,500/-. Salary slip of the deceased is at Exhibit-34A. Considering the evidence of both these witnesses and after deducting professional tax of Rs.200/-, the Tribunal has considered monthly income of deceased Rs.11,300/-. I do not find any infirmity in it.

7. The Tribunal has not given future prospects. As per the view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi¹**, the deceased was below 40 years and she was not in permanent service. Hence, the claimants are entitled for 40% future prospects. The Tribunal has awarded consortium amount to claimant No.1 only and not claimant No.2, the claimant

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No.2 is entitled for consortium amount of Rs.44,000/-.

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

Particulars	Amount
Monthly Income	Rs. 11,300.0
40% future prospects	Rs. 4,520.00
Monthly earning	Rs. 15,820.00
Less 1/3 deduction from earning	Rs. 5,273.00
Monthly dependency	Rs. 10,547.00
Annual Income Rs.10,547X12(months)	Rs. 1,26,564.00
Rs.1,26,564 X18(multiplier)	Rs. 22,78,152.00
Funeral expenses	Rs. 16,500.00
Loss of estate	Rs. 16,500.00
Add Consortium amount	Rs. 88,000.00
Total entitled compensation	Rs. 23,99,152.00
(Less) Compensation awarded by Tribunal	Rs. 16,97,000.00
Total compensation payable	Rs. 7,02,152.00

9. The claimants are entitled for enhanced compensation of Rs.7,02,152/-.

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

ORDER

- (i) First Appeal No.968 of 2018 is dismissed. No order as to cost.

- (ii) Cross objection is partly allowed.
 - (iii) The claimants are entitled for enhanced amount of Rs.7,02,152/- @7.5% from filing claim petition till realization of the amount, out of this amount Rs.88,000/- is consortium amount, the claimants are entitled interest at 7.5% on this amount from 1st November, 2017 till realization of the amount.
 - (iv) The Appellant-Insurance Company is directed to deposit the enhanced amount along with accrued interest thereon within six weeks on receipt of this order.
 - (v) The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - (vi) The statutory amount along with accrued interest thereon 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.)