

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

FIRST APPEAL NO. 1480 OF 2013

A/W.

FIRST APPEAL NO. 1505 OF 2013

1. .Smt. Najmunissa Umar Sharif Shaikh Age-40 Year, Occ.Household R/o. Vishnu Sheth Chawl Room No. 4, Sanjay Nagar Mumbra Tal & Dist. Thane.

2. Kumari Sanah Umar Sharif Shaikh Age-22 Years R/o. Vishnu Sheth Chawl Room No. 4, Sanjay Nagar Mumbra Tal & Dist. Thane.

3. Jasim Umar Sharif Shaikh Age-21 Year, R/o. Vishnu Sheth Chawl Room No. 4, Sanjay Nagar Mumbra Tal & Dist. Thane.

4. Kumari Aiysha Umar Sharif Shaikh Age-17 Year,R/o. Vishnu Sheth Chawl Room No. 4, Sanjay Nagar Mumbra Tal & Dist. Thane.

5. Kumari Zoya Umar Sharif Shaikh Age-10 Year, R/o. Vishnu Sheth Chawl Room No. 4, Sanjay Nagar Mumbra Tal & Dist. Thane.

6. Shaikh Mohd. Shaikh Hussain, (Since deceased, deleted as per order dated 04.01.2013).

... Appellants

V/s.

1. United India Insurance Company Limited
Motor Third Party Hub Union Cooperative
Insurance Building 5th Floor, Sir P.M. Road,
Mumbai – 400 001

2. Mr. Mehboob R. Khan R/o. 253, T.L. SHD,
253 Kolsa Bunder Darukhana, Mazgaon
Mumbai – 400 010.

... Respondents

Mr. Rahul Mehta i/by KMC Legal Venture For Appellant In First Appeal No.
1480 of 2013.

Mr. A.R. Gole for Appellant in First Appeal No. 1505 of 2013.

CORAM : SHIVKUMAR DIGE, J.

DATED : 13th MARCH, 2023

JUDGMENT:

1. Being aggrieved and dissatisfied with the Judgment and Order passed by the Motor Accident Claims Tribunal, Thane, the Appellant-Insurance Company preferred this Appeal. The Respondents-Claimants also filed Appeal for enhancement of compensation. Hence, I am deciding both Appeals by this common judgment.

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

On 1st June, 2008, Claimant No. 3 Master Jasim Shaikh, and his deceased father were proceeding towards their residence, when they were crossing Mumbra-Panvel old highway, one Hero-Honda motorcycle bearing

No. MH-03-X-9047 came from Panvel side in a very high speed and gave dash to Umar Sharif from his back side. As a result of dash, Umar Sharif was thrown on electric pole and sustained severe head injury. He was rushed to Jupiter hospital initially and thereafter taken to Rehmania Hospital. However, he succumbed to the accidental injuries. On the complaint of Claimant No.3, the offence was registered against unknown vehicle. In investigation, it reveals that the dash was given by Hero-Honda motorcycle bearing No. MH-03-X-9047.

3. The Claimants filed Claim Petition for getting compensation before the Motor Accident Claims Tribunal, Thane (for short “The Tribunal”). The Tribunal has passed judgment and order which is under challenge.

4. It is contention of learned Counsel for Appellants/Insurance Company that the offence was registered against unknown vehicle and Complaint was given by the minor. It creates doubt about involvement of the vehicle, but this fact is not considered by the Tribunal. Learned Counsel further submit that it was the case of claimants that deceased was working in Cape East Ltd. Co. Qatar and he was getting salary, but no witness was examined to prove the income of deceased, but without any evidence, the Tribunal has considered the salary of deceased at Rs. 51,000/- which is exorbitant and excessive. Learned Counsel further submits that the Tribunal has awarded 9% interest on the compensation amount which is on higher side. Hence, requested to allow the Appeal.

5. It is contention of learned Counsel for the

Respondents/Claimants Cross Appellants that the issue of false involvement of vehicle is not disputed by the Appellant before the Tribunal. Their defence was before the Tribunal about contributory negligence hence at appellate stage they cannot raise the issue of false involvement of vehicle. Moreover, the Claimant No. 3 was 16 years old at the time of accident and he has seen the motor cycle who had given dash to his father and on that basis, Complaint was lodged before the police. Police investigated the matter and it revealed that the offending motor cycle was involved in the accident and on that basis, charge-sheet was filed against the rider of motor cycle. Moreover, Appellant had not examined the motor cycle rider as well as investigating officer to prove that the said vehicle was not involved in the accident. Learned Counsel further submits that to prove the income of deceased, the Claimants have examined the wife of deceased and produced documents on record to show that he was getting salary of more than Rs. 51,000/- per month. Witness summons was also issued to the Manager of Cape East Ltd. Co. Qatar where deceased was working but there was no response to the said witness summons. Considering the evidence, the said company replied to the said witness summons and stated that and produced attested copy of the employment documents. On that basis, the Tribunal has considered the monthly salary of deceased at Rs. 51,000/- which is proper.

6. Learned Counsel further submits that the Tribunal has deducted 1/3 amount for personal expenses, it should be 1/4th as there are 6 Claimants. The Tribunal has awarded consortium amount on lower side it should be Rs.

44,000/- to each Claimant. Hence, requested to dismiss the First Appeal No. 1480 of 2013 and allow the cross-appeal.

7. I have heard both learned Counsel, perused judgment and order passed by the Tribunal. In respect of issue of false involvement of the vehicle admittedly, accident occurred when Claimant No. 3 and his father were trying to cross the road, walking. After giving dash to the deceased, the rider of offending motor cycle ran away from the incident spot, thereafter, the Claimant No. 3 filed police Complaint and on the basis of his complaint, in investigation, police filed F.I.R. against the rider of motor cycle rider. It is contention of learned Counsel for the Appellant that the Complaint was filed by a minor. In my view, at the time of accident the Claimant No. 3 was more than 16 years old. So, it cannot be said that he was not understanding about the incident, in police complaint, he has specifically stated that one blue colour motor cycle came in rash and negligent manner and gave dash to their motorcycle. He has also given the description about the motor cycle rider in the complaint. At the age of 16 years boy can state about the incident happened in his presence. Moreover, he has given detail of incident in complaint. So, no question of disputing it arise. It is significant to note that when police filed charge-sheet against motor cycle rider, his statement is recorded by the police and he admits in his statement about the happening of the incident moreover defense of false involvement of vehicle not proved before the Tribunal. Appellant had not examined investigating officer or rider of the motor cycle to prove false involvement of the vehicle. I do not see merit in contention of learned

Counsel for Appellant that there was false involvement of the vehicle.

8. To prove the income of deceased, the Claimants have examined wife of deceased. Najmunissa Umar Sharif Shaikh at Exhibit 38 she has stated that her husband was working abroad at Qatar in Cape East Ltd. Co. as a Supervisor. He was drawing salary to the tune of Rs. 4700/- Qatari Riyals in cross-examination. She has stated that her husband was in service since last 15 years. Exhibit 42 is the attested copy of Passport and Visa of deceased. Witness summons was issued to Human Resources Manager, Qatar, at P.O. Box No.12573 Doha-Quatar on 22nd May, 2012 seeking attendance to give evidence before the Tribunal. In reply to it the company issued communication dated 2nd June, 2012 acknowledging the receipt of summons, it further informed that their Ex-employee Umar Sharif Shaikh died in a road accident during his vacation in India and all his dues have been cleared and finally settled with Mrs. Najmunissa Umar Sharif Shaikh on 15th June, 2008 itself. They annexed copies of his salary certificate and time sheet for ready reference further informing that they will not appear on 16th June, 2012 before the Tribunal.

9. On the basis of evidence of PW-1 and the documents sent by employer of deceased and the evidence of PW-2 employee of Canara Bank where deceased had bank account, the Tribunal has considered monthly salary of deceased at Rs. 51,465/-. I do not find any infirmity in it. As it has come on record that deceased was working at Qatar his employer admitted that deceased was working in their Company they also admitted that deceased was

permanent employee monthly income considered by the Tribunal is proper. The Tribunal has awarded future prospects as per the view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. V/s. Pranay Sethi & Ors.**¹ the Claimants are entitled for 50% future prospects, total of it comes to Rs. 77,197/- the yearly income comes to Rs. 77,197/- x 12 and upon applying multiplier of 15, it comes to Rs. 1,38,95,550/-. The Tribunal has deducted 1/3 amount for personal expenses, there are 6 claimants it should be 1/4. The Tribunal has awarded amount of Rs. 25,000/- for loss of estate and Rs. 5,000/- for funeral expenses. No amount is awarded for loss of consortium. As per the view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram**² each Claimant is entitled for Rs. 40000/- @ 10% increase, there are six Claimants. Hence Rs. 44,000/- x 6, it comes to Rs. 2,64,000/- as consortium amount and for funeral expenses Rs.16,500/- and for loss of estate Rs. 16,500/- so total comes to Rs. 2,97,000/-. If this amount is deducted from the amounts awarded by the Tribunal, it comes to Rs. 2,67,000/-. The Tribunal has awarded compensation of Rs. 93,53,700/-. The compensation considered by this Court about future prospects after deduction of 1/4 amount for personal expenses and consortium amount it comes to Rs. 14,24,962/-. The Claimants are entitled for this enhanced amount.

10. It is contention of learned Counsel for Claimants that the Tribunal has not awarded Rs. 5,20,145/- for medical expenses despite evidence. Learned Counsel for the Claimants submitted that the amount of Rs. 5,20,145/- was incurred by the Claimants on

¹ SLP Civil No. 25590 of 2014

² (2018) 18 SCC 120

medical expenses of the deceased.

11. It is contention of learned Counsel for Appellant that no documents were produced before the Tribunal to prove the medical expenses. Moreover, the Claimant No. 1 in her cross-examination has admitted that she has received the amount of Rs. 5,20,145/- from the employer for medical expenses. Hence, this amount is rightly declined by the Tribunal.

12. In my view, the Claimant No. 1 has admitted that she has received the amount of Rs. 5,20,145/- for medical expenses from the employer of deceased. Hence, this amount cannot be considered hence I am not considering this amount.

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

ORDER

- i) The First Appeal No. 1480 of 2013 filed by Insurance Company is dismissed.
- ii) The First Appeal No. 1505 of 2013 filed by the Claimants is partly allowed. The Claimants are entitled for enhanced amount of Rs. 14,24,962/- @7.5% interest per annum from the date of filling Claim Petition till realization of the amount. Out of this amount, amount of Rs.2,67,000/- is awarded under head of consortium, the claimants are entitled interest @ 7.5 % per annum from 1st October, 2017 till realization on this amount.
- iii) The Appellant-Insurance Company is directed to deposit the enhanced amount within 8 weeks after receipt of the order along with accrued interest thereon.

- iv) The Claimants are permitted to withdraw the deposited amount along with the accrued interest thereon.
- v) The statutory amount in Appeal filed by Insurance Company be transferred to the Tribunal along with the accrued interest thereon. The parties are at liberty to withdraw it as per rule.
- vi) Appeals are disposed off.
- vii) Certificates for TDS, if deducted, be provided by the Insurance Company.

(SHIVKUMAR DIGE, J.)