

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1302 OF 2010**

United India Insurance Company Limited)
Motor Third Party Hub)
Union Cooperative Insurance Building)
Fort, Mumbai - 400 001)

..(Orig. Oppo. No.2)
Appellant

Versus

1. Shri. Vijay Narayan Mhatre)
Aged about 49 years, Occu : Business)
Father of the Deceased)

...Orig. Claimant No.1.

2. Smt. Manda Vijay Mhatre)
Aged about 47 years,)
Occ : Household / Social Worker)
Mother of the deceased)
Both residing at F-7/6, Sector 4)
C.B.D. Belapur, Navi Mumbai)
Dist - Thane)

3. Smt. Karuna Jitendra Dand)
Age : Adult : Occu : Business)
Residing at 104, Janki Nagar, Indore)
M.P. State)
(Ownerof Motor Truck No. MP-09/KB-6682)

....Orig. Oppo. No.1

Mr. Rahul Mehta i/b KMC Legal Venture, Advocates for the Appellant.

Mr. Achyut S. Patil along with Mr. B. G. Tangsali, Advocate for the Respondents.

CORAM : S. G. DIGE, J.

DATE : 6th MARCH 2023.

Judgment :

1. The issues involved in this appeal are negligence of deceased in the said accident and income of deceased.

2. It is contention of learned counsel for appellant that accident had occurred due to head on collusion between the offending truck and Maruti Esteem Car, which was driven by deceased. But Tribunal has fixed liability on the driver of the offending truck, which is improper. Learned counsel further submits that at the most there was contributory negligence of both drivers in the said accident but it has not been considered. Learned counsel further submits that deceased was doing business, in spite of that, the Tribunal has considered his annual income at Rs.1,00,000/-, which is excessive and on higher side, on that basis, compensation is awarded which is improper, hence, requested to allow the appeal.

3. It is contention of learned counsel for respondents/ claimants that the deceased was driving car in moderate speed. The offending truck came from opposite direction in high speed and went on wrong side of the road and gave dash to the Maruti car which shows that the accident had occurred due to sole negligence of driver of the offending truck. Moreover, after giving dash to the Maruti Car, the truck driver ran away from the place of accident. FIR was lodged against the driver of the truck. Learned counsel further submits that deceased was partner of M/s. Govardhani Construction Company and he was earning income at Rs.7,86,961/- per annum from his business in partnership. He was also getting salary of Rs.75,000/- per annum from the said firm. His total income was more than Rs.8,00,000/- per annum but the Tribunal has considered Rs.1,00,000/- per annum, which is on lower side. Learned counsel further submits that the Tribunal has applied wrong multiplier of parents of the deceased, it should be as per the age of deceased i.e. 18, as the deceased was 22 year old at the time of accident. Learned counsel further submits that no consortium amount is awarded to the claimants.

4. I have heard both learned counsel, perused judgment and

order passed by Motor Accident Claims Tribunal, Thane (for short "the Tribunal")

5. In respect of issue of negligence, the Tribunal has observed that opponent No.2 - Insurance Company has not examined the driver of the offending truck who is eye witness of the incident to prove negligence of deceased. From the FIR, spot-panchanama and evidence of witnesses, it appears that the accident had occurred due to sole negligence of the driver of the offending truck. A copy of the complaint is at Exhibit "23" and spot panchanama is at Exhibit "24". On perusal of spot-panchanama, it reveals that the front portion of Maruti Car involved in the accident had been damaged badly. It reveals from the record that the truck driver went on wrong side and gave dash to Maruti Car, in which, deceased was driving. So from the FIR and spot-panchanama, it shows that the accident had occurred due to sole negligence of driver of the offending truck. Moreover, driver of offending truck did not step into the witness box to prove the negligence of the deceased. Hence, I do not find merit in contention of learned counsel for the appellant that accident had occurred due to negligence of the deceased.

6. In respect of income of deceased, the claimants have examined claimant No.1-Vijay Mhatre. He has stated that deceased was his son and his yearly income was Rs.7,86,961/- in the year 2002 and Rs.8,28,893/- plus salary of Rs.68,750/- in the year 2003 and he paid Income Tax on it. The Income Tax Returns of the deceased are at Exhibits "32 to 35" and 44. On the basis of Income Tax Returns and evidence, the Tribunal has considered Rs.1,00,000/- yearly income of deceased. I do not find any infirmity in it.

7. The Tribunal has applied multiplier of 13 on the basis of age of claimants. It is settled principle of law that multiplier should be on the basis of age of deceased. At the time of accident, deceased was 22 year old, the proper multiplier is 18, hence, I am considering it.

8. The Tribunal has not awarded consortium amount. It is contention of learned counsel for the appellant that no appeal is filed by the claimants for enhancement of compensation, hence, consortium cannot be awarded. It is settled principle of law that the claimants are entitled for just compensation. This Court is not

enhancing the income of deceased. The claimants are entitled for consortium amount. Hence, I am considering consortium amount. As per the view of 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, Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. Considering the above calculations, the claimants are entitled for following compensation :

Particulars	Amount
Annual Income	Rs. 1,00,000.00
less 1/2 deductions for personal expenses	Rs. 50,000.00
Total Yearly Income	Rs. 50,000.00
Rs.50,000.00 X 18(multiplier) as deceased was 22 year old at the time of accident.	Rs. 9,00,000.00
Add Consortium amount (2 claimants)	Rs. 80,000.00
Add Funeral expenses and loss of estate	Rs. 30,000.00
Add Expenses towards Medical Bill	Rs. 10,54,000.00
Total Entitled Compensation	Rs. 20,64,000.00
Compensation awarded by Tribunal	Rs. 17,11,000.00
Difference (Amount to be deposited by Appellant-Insurance Company)	Rs. 3,53,000.00

9. In view of above, I pass the following order :
1. The appeal is dismissed. No order as to cost.
 2. The claimants are entitled for additional amount of Rs.3,53,000/- along with 7.5% interest per annum from date of filing of petition till realisation of the amount. Out of this amount, amount of Rs.1,10,000/- awarded as consortium, the claimants are entitled @ 7.5% interest per annum on this amount from 1st October 2017 till realisation of the amount.
 3. The appellant shall deposit the additional amount along with accrued interest thereon within six weeks from receipt of this order.
 4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

5. Statutory amount be transmitted to the Tribunal.
The parties are at liberty to withdraw it as per Rule.

10. Pending applications, if any, stand dispose of.

(S. G. DIGE, J.)