

FIRST APPEAL NO. 878 OF 2016

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Ms. Rina Kundu, Advocate for Appellants.
Mr. D. S. Suryawanshi, Advocate for Respondents No.2.
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CORAM : SHIVKUMAR DIGE, J.
DATE : 18th DECEMBER, 2023

JUDGMENT :

1. By this appeal the appellants /claimants are seeking enhancement of compensation.
2. It is the contention of learned counsel for the appellants that the Tribunal has wrongly fixed 25% contributory negligence on the driver of Tata Sumo Jeep in which deceased was travelling. The offence was registered against the driver of offending truck. No witness was examined by the respondent No.2-Insurance company. To prove the negligence of driver of Tata Sumo Jeep only on assumption the Tribunal has considered 25% contributory negligence of driver of Tata Sumo Jeep which is improper. Learned counsel further submitted that deceased was earning salary of more than Rs.10,000/- p.m. He was the owner of Tata Sumo Jeep and he had kept the driver to drive the jeep, it shows his income was more but the Tribunal has considered his income at Rs.6,000/- per month which is on lower side. Learned counsel further submitted that the driver of said Tata Sumo Jeep was examined to show that he was regular driver of the deceased. Hence, requested to allow the appeal.

3. It is contention of learned counsel for Respondent No.2/Insurance Company that there was head on collusion between the offending truck and Tata Sumo Jeep. The said collusion occurred in the center of the road on that basis the Tribunal has observed that there was 25% contributory negligence of driver of Tata Sumo Jeep and 75% of offending truck which is proper and no interference is required in it. Learned counsel further submitted that no evidence was produced before the Tribunal to prove the income of deceased. In spite of that, the Tribunal has considered monthly income of deceased at Rs.6,000/- p.m. which is proper. The order passed by the Tribunal is legal and valid and no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Mumbai (for short "**the Tribunal**"). It is the claimant's case that on 19.02.2010 at about 2.30 a.m. deceased was proceeding in Tata Sumo Jeep bearing No.MH-04-AS-534 from Nagothane to Kolad. He was sitting beside the driver. When the jeep was proceeding at that time Motor Truck No. MH-28-B-7612 came from opposite direction at a very high speed. The driver of the truck lost the control and came to the wrong side and gave dash to the Tata Sumo Jeep. Due to the said dash deceased died on the spot. The offence was registered against the driver of offending truck.

5. To prove the negligence of offending truck driver, the claimants have relied upon the police papers. While dealing with the issue of negligence, the Tribunal has observed that there was head on collision between the two vehicles. From police paper it reveals that the truck was seen at the center of the road and rear wheels of the Tata Sumo Jeep on the road and rear wheels off the road. It cannot be said that accident in question had taken place because of exclusive or sole negligence on the part of the driver of motor truck. On that basis the Tribunal has considered 75% contributory negligence of truck driver and 25% contributory negligence of the driver of Tata Sumo Jeep. In my view observations of the Tribunal are on the basis of FIR and spot panchnama. The FIR was lodged by Baliram Patil, Assistant Inspector of Nagothane Police Station at Exhibit-19. In FIR it is mentioned that the offending truck came to wrong side of the road and gave dash to the Tata Sumo Jeep. The offending truck was in high speed. FIR was filed by the police officer after inspecting incident spot and in the FIR it is mentioned that the offending truck had come on wrong side it shows sole negligence of the driver of the offending truck. The spot panchnama is at Exhibit-20 also supports the contents of the FIR. Moreover the respondent No.2-Insurance Company has not examined driver of offending truck to prove the negligence of driver of Tata Sumo Jeep, hence I hold that accident occurred due to sole

negligence of the driver of offending truck and I am setting aside the observation of the Tribunal that there was 25% contributory negligence of driver of Tata Sumo Jeep in the said accident. To prove the income of deceased, wife of deceased PW-1 has examined herself. She has stated that the deceased used to earn Rs.10,000/- per month and he was owner of Tata Sumo Jeep. Considering the evidence on record the Tribunal has considered notional income of the deceased at Rs.6,000/- per month. In my view, when it has come on record that the deceased was owner of the Tata Sumo Jeep and he had kept driver to drive the Tata Sumo Jeep he must have paying salary to the said driver, it shows he had sufficient income and he was maintaining the family of four persons. Moreover, it appears that claimants have not exaggerated the income of deceased and they have mentioned what he was actual earning.

6. Considering this facts, I am considering Rs.10,000/- as monthly income of deceased. The Tribunal has not awarded future prospects as per the view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi¹***, claimants are entitled for 40% future prospects.

7. The claimants are entitled for following compensation:

Particulars	Rs.	Entitlement
Monthly Income	Rs.	10,000.00
40 % future prospects	Rs.	4,000.00

¹ 2017 ACJ 2700 (SC)

Total monthly income	Rs.	14,000.00
Annual Income	Rs.	1,68,000.00
1/4 th deduction	Rs.	3,500.00
Total Income Tax 3/4 th	Rs.	10,500.00
Multiplier Rs.10,500 X 12 X 17	Rs.	21,42,000.00
Conventional heads	Rs.	1,70,000.00
Compensation awarded by the Tribunal	Rs.	9,18,000.00
Enhanced amount	Rs.	13,94,000.00

8. In view of above, I pass following order:

ORDER

- i. The appeal is allowed.
- ii. The appellants/claimants are entitled for enhanced amount of Rs.13,94,000/- at the rate of 7.5% interest per annum from date of filing claim petition till realisation.
- iii. The respondents shall deposit the enhanced amount along with accrued interest thereon before the Tribunal within six weeks from the receipt of the order.
- iv. The claimants are permitted to withdraw the amount deposited by the respondents along with accrued interest thereon.

9. The appeal is disposed off.

(SHIVKUMAR DIGE, J.)