

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 224 OF 2020

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IFFCO TOKIO General Insurance Co. Ltd.)
 Thr. Its Divisional Officer,)
 Mr. Neeraj Kumar Jain,)
 Having its office at 2nd Floor, ALF House,)
 Lokbharati, Andheri (E), Mumbai- 400034)....Appellant
 (Orig. Opp. Party No.3)

Versus

1. Shri. Shankar Shindu Jadhav)
 Age - 68 years, Occ- Agri.)
 2. Sou. Lilabhai Shankar Jadhav,)
 Age-52 years, Occ- Agri)
 3. Shashikant Shankar Jadhav,)
 Age - 22 years, Occ-Agri)
 All r/o : Jadhavwadi, Taluka)
 Khanapur, Dist. - Sangli.)
 4. Santosh Dhondiram Gharge)
 Age-30 years, Occ- driver)
 R/o. Kadegaon, District-Sangli)
 5. Prakash Vasantrao Tadsare)
 Age -30 years, Occ-Owner)
 R/o. Kadegaon, District-Sangli)....Respondents
 (Present Resp. Nos. 1 to 3
 being original Applicant &
 present Resp. No.4 & No. 5
 being original opp. Party
 Nos.1 & 2 insured.)

Mr. Rajesh Kanojia a/w Ms. Nikita i/b Res Juris for the Appellant.
Mr. V. B. Rajure for the Respondent Nos. 1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd APRIL 2023.

JUDGMENT :

1. The issue involved in this appeal is, wrong application of multiplier and contributory negligence.
2. It is contention of learned counsel for the appellant that, the tribunal has applied multiplier of deceased, it should be multiplier of parents of the deceased. As at the time of accident, deceased was bachelor .
3. The learned counsel further submits that, the accident occurred due to sole negligence of deceased, but this fact is not considered by the tribunal and awarded exorbitant and excessive compensation. Hence, requested to allow the appeal.

4. It is contention of learned counsel for the respondents/ claimants that it is settled principle of law that while applying multiplier, the age of deceased has to be considered. The FIR was lodged against the driver of offending vehicle. No witness was examined to prove the negligence of deceased. The order passed by the Tribunal is legal and valid. Hence, no interference is required in it.

5. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal (for short 'the Tribunal'). In respect of issue of multiplier, the tribunal has considered multiplier of 17 on the basis of age of deceased. I do not find any infirmity in it. In respect of issue of negligence admittedly, the FIR was lodged against the driver of offending vehicle. While dealing with these issue, the tribunal has observed that from FIR and spot panchanama, it reveals that the accident occurred due to sole negligence of driver of offending vehicle. I do not find any infirmity in it. Moreover, the appellants have not examined any witness to prove the negligence of deceased. Hence, I do not find merit in the contention of learned counsel for the appellant that accident occurred due to negligence of deceased.

6. The tribunal has awarded Rs. 60,000/- for love and affection and Rs. 25,000/- for funeral expenses. 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 to Rs. 44,000/-, as consortium amount with 10% increase. There are two claimants. They are entitled for Rs. 88,000/- and Rs. 16,500/- for funeral expenses and Rs. 16,500/- for loss of estate. So total of it comes to Rs. 1,21,000/-. The tribunal has awarded Rs. 85,000/-. If this amount deducts from amount awarded by the tribunal, it comes to Rs. 36,000/- The claimants are entitled for this amount.

6. In view of above, I pass following order.

ORDER

- i. Appeal is dismissed. No order as to cost.
- ii. The claimants are entitled for additional amount of Rs. 36,000/- @ 7.5% from 1 October, 2017 till realization of the amount.
- iii. The appellant is directed to deposit the additional amount along with accrued interest thereon, within four weeks after

receipt of the order.

- iv. The claimants are permitted to withdraw the deposited amount alongwith accrued interest thereon.
 - v. The statutory amount be transmitted to the tribunal. The parties are at liberty to withdraw it, as per Rule.
7. All pending applications are disposed of.

(SHIVKUMAR DIGE, J.)