

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

FIRST APPEAL NO. 132 OF 2010

1. Mrs. Rekha Vindokumar Pandey }
2. Miss. Jaya Vinodkumar Pandey }
3. Master. Aniket Vindokumar Pandey }
4. Master Kartik Vinodkumar Pandey }
5. Mrs. Chandravati Harkishan Pandey }
- (The Applicant Nos. 2, 3 and 4 are minors, }
- Represented through their mother i.e. }
- Applicant No. 1) }

All R/at C: 305, Sai Shakti Apartment, }
Classic country, Near Shiver Garden, Mira }
Bhayander Road, Mira Road (E), Taluka- }
District-Thane – 401 107. }

**....Appellants
(Original
Applicants)**

V/s.

1. Mr. Navin Chiman Patel, }
- R/at 102, Ridhi-Sidhi Apartment, Patel }
- Pada, Dahanu Road, District-Thane. }
2. United India Insurance Co. Ltd. }
- Sweet Dream Apartment, Near Boisar }
- Railway Station, Boisar-Palghar Road, }
- Boisar, Taluka-Palghar, District-Thane. }

**....Respondent
(Original
Respondents)**

Mr. Shirshak Chavanke, for the Appellant.
Ms. Poonam Mital, for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th DECEMBER 2023

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JUDGMENT :-

. By this Appeal, the Appellants-Claimants are seeking enhancement of the compensation.

2. It is contention of the learned counsel for the Appellants that, accident occurred due to sole negligence of driver of the truck. But Tribunal has considered 80% negligence of deceased and 20% of driver of offending truck, which is erroneous. The learned counsel further submitted that, the Tribunal has awarded consortium amount on lower side and no future prospectus are awarded. The learned counsel further submitted that, no written statement was filed by Respondent-Insurance Company before the Tribunal. On the statement of eye witnesses offence was registered against the driver of the offending truck. But this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of the Respondent-Insurance Company that while passing the order, the Tribunal has considered all the aspects. Accident occurred due to sole negligence of the deceased. Hence, no interference is required in

the order passed by the Tribunal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, ('The Tribunal' for short), Palghar.

5. It is Appellant/Claimant's case that, on 13th April 2008 the deceased was riding on motorcycle from Manor to wada, when he reached near village Kanchad, Phansapada a truck bearing No.MH-04/H-2187 came from opposite direction in high and excessive speed and gave dash to the motorcycle of deceased. The motorcycle was dragged upto 20 feet. The deceased had sustained injuries and due to injuries he died. While dealing with issue of the negligence, the Tribunal has observed that, accident occurred in the center of the road. It was a case of the contributory negligence. Considering the position of the vehicle along with contents of the panchnamma, it can be said that, deceased himself was more negligent than driver of the truck. Therefore, the Tribunal has fixed 80% negligence on the deceased and 20% on the driver of the truck.

6. I am unable to understand the observations of the

Tribunal in respect of contributory negligence of deceased at 80% when it has come on record that for the said accident offence was registered against the driver of truck. It has come on record that after accident the offending truck dragged motorcycle of the deceased to 20 feet, it shows that truck was in excessive and high speed. Moreover to prove the negligence of deceased, driver of offending truck did not step into witness box, but these facts are not considered by the Tribunal and erroneously he has fixed 80% liability on the deceased which is not proper, hence I am setting aside it. I hold that accident occurred due to sole negligence of the truck driver. While awarding compensation the Tribunal has not awarded future prospectus. As per view of Hon'ble Apex Court in case of *National Insurance Co. Ltd. vs. Pranay Sethi*¹, the Claimant's are entitled for future prospectus. The Tribunal has awarded consortium amount on lower side. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. vs. Nanu Ram*², each claimant is entitled for Rs.48,000/- as consortium amount. There are five Claimants it comes to

1 *2017 ACJ 2700 (SC)*

2 *2018 ACJ 2782 (SC)*

Rs.2,44,000/-, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. The Tribunal has considered yearly income of the deceased as per income tax returns filed on record at Rs.1,72,582/- on that basis calculations are done, but while awarding compensation only 20% of total calculation of Rs.18,50,364/- has been awarded. As this Court has considered that accident occurred due to sole negligence of the offending truck driver. The Claimants are entitled for following compensation.

Particulars	Amount
Income As per ITR	Rs.1,72,582.00
Add: 40% F.P. Income = Rs.69,032	Rs.2,41,614/-
Less 1/4th Personal Expenses = Rs.60,403/-	Rs.1,81,209.00
Rs.1,81,209/- x 15	Rs.27,18,135.00
Add: Consortium (Rs.48,000/- x 5)	Rs.2,40,000.00
Add: Loss of Estate	Rs.18,000.00
Add : Funeral	Rs.18,000.00
Total Just Compensation	Rs.29,94,135.00
Less : 20%	Rs.23,95,308.00
Less Compensation Awarded	Rs.3,70,072.00
Enhanced Compensation	Rs.20,25,236.00

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

ORDER

- (i) The Appeal is allowed.
- (ii) The Claimants are entitled for compensation of Rs.20,25,236/- @ 7.5% per annum from the date of the filing of Claim Petition till realization of the amount. Out of this amount Rs.2,76,000/- is consortium amount, the Claimants are entitled @ 7 % on this amount from 1st November 2017 till realization of the amount.
- (iii) The Claimants are permitted to withdraw the entire compensation amount along with interest thereon.
- (iv) Pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)