

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 197 OF 2018**

Bajaj Alliance General Insurance Co.)		
Ltd.,)		
G.E.Plaza Airport Road,)		Appellant/
Yerwada, Pune-411 006, branch at)		Applicant
Adhar Complex, Near Ram Mandir,)		(Insurer Co. of
Sangli.)		Truck)
versus		
1 Madhu Arun Potdar,)		
Aged 40 years, Occupation-)		
Household)		
2 Omkar Arun Potdar)		
Age : 15 years, Occ: Education,)		
3 Shrish Arun Potdar)		
Age : 13 years, Occ : Education)		
(Resp. Nos. 2 & 3 minors, hence)		
through Natural guardian-mother-)		
Resp. No.1))		
4 Uddhav Ramchandra Potdar)		
(Deceased hence deleted as per on)		
Exh.50))		
5 Malan Uddhav Potdar,)		
Age 71 years, Occ : Household,)		
All R/o. Malangaon, Tal: Kavathe-)		
Mahankal, Dist: Sangli.)		
6 Gurujitsing Ratanshing Bul,)		

- Age 36 years, Occ : Driver,)
 R/o. New Mumbai, Belapur, Sector-3,)
 Building No.19, C.B.D., Mumbai.)
- 7 Rajbirsing Ratansing,)
 Age : Major, Occ: Transport,)
 R/o. Gil Bular Road Lines,)
 Room No. 439, Central Facility,)
 Building No.2, APMC Sec-19/C,)
 Nerul, Vashi, New Mumbai- 400 703.)
- 8 Asawari Amol Nilkanth,)
 Age : Major, Occu: Household.)
- 9 Ravani Amol Nilkanth,)
 Age : 11 years, Occ: Education)
 (Resp.No.9 minor through her Natural)
 Guardian Resp. No.8))
- 10 Alka Pundalik Nilkanth,)
 Age : 59 years, Occ : Household,)
 Nos.8-10 all R/o. Kognoli,)
 Tal: Kavathe Mahankal, Dist : Sangli.)
 (Nos.8-10 being L.Rs of deceased)
 Amol Pundalik Nilkanth))
- 11 National Insurance Company Ltd.)
 Division No.10, Flat No.101-106, N-1,)
 B.S.C. House Kanot Place,)
 New Delhi – 110 001.)
 (Branch at Jain Boarding, Amrai)
 Road, Sangli.))
-Respondents

Mrs. Yogita Deshmukh, Advocate for the Appellant.

Mr. Mahindra Deshmukh, Advocate for Respondent Nos. 1 to 3 and 5.

Mr. Om Latpate i/b. Mr. Kuldeep Nikam, Advocate for Respondent Nos. 8 and 10.

Ms. Poonam Mittal, Advocate for Respondent No.11.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th MARCH 2023.

Oral Judgment :

1. The issue involved in this appeal is 50% contributory negligence fixed on the driver of offending truck.

2. It is contention of learned counsel for the appellant that accident occurred due to head on collusion between two vehicles i.e. Maruti Omni car and offending truck. The said accident occurred due to sole negligence of the driver of Maruti Omni car but this fact is not considered by the Tribunal. Learned counsel further submits that the spot panchanama shows that the accident occurred due to negligence of driver of Maruti Omni car but Tribunal has not given any reason why 50% contributory negligence is fixed on the driver of the offending truck. Learned counsel further submits

that Tribunal has considered monthly notional income of deceased at Rs.5,500/- per month without any evidence, it is on higher side and, on that basis, compensation is awarded which is exorbitant and excessive. Hence, requested to allow the appeal.

3. Learned counsel for respondent No.11-Insurance Company submitted that Tribunal has considered all the aspects while awarding compensation, hence, no interference is required in it.

4. Learned counsel for the respondents/claimants submits that it was the case of claimants that deceased was earning more than Rs.3,00,000/- per annum from two businesses but Tribunal has considered his income on lower side. Learned counsel further submits that accident occurred due to sole negligence of the driver of offending truck, no witness was examined by the appellant to prove the negligence of driver of Maruti Omni Car. The Tribunal has awarded consortium amount on lower side. Hence, requested to award consortium amount.

5. Learned counsel for respondent Nos.8 and 10 submits that appropriate order be passed.

6. I have heard all learned counsel, perused judgment and order passed by Motor Accident Claims Tribunal (for short “the Tribunal”).

7. The FIR was lodged by Pandurang Jadhav, Police Head Constable. In the FIR, it is mentioned that after receiving the information about the incident of accident, the informant went to visit the spot of accident. There he met Sunil Sambhusa Gupta, cleaner of the truck which was involved in the accident. Sunil Sambhusa Gupta informed to the informant that on 9th November 2008 when the truck bearing No. MH-13-E-9055 was going on Pandharpur-Pune Road near Dasurpati, Taluka Malshiras, one white colour - Maruti Omni Car bearing No. MH-10-AG-1534 came from opposite direction. At that time, he was sitting on cleaner side. The said Maruti Omni car gave dash to the truck, there was head-on-collision between the two vehicles. All the three persons in the Maruti Omni Car died in the accident on the spot. Thereafter, the informant inquired with other people about the accident. They informed to the informant that the accident occurred due to negligence of driver of Maruti Omni Car as he tried to overtake other vehicles and, in that attempt, he gave dash to the truck. On that basis, the police

registered FIR against the deceased driver of the Maruti Omni Car. Considering the evidence on record, the Tribunal has observed that the accident occurred due to negligence of the driver of the offending truck and driver of the Maruti Omni car. Hence, the Tribunal has fixed 50% contributory negligence on both the drivers. I do not find any infirmity in it. In my view, Sunil Gupta, who was the cleaner on the offending truck and witnessed the accident, has stated that there was head-on-collision between the two vehicles. The spot panchanama shows that the car had slightly come on right side of the dividing line of the road and the rear side of the car was on the other side of the dividing line. Though the other witnesses with whom the police inquired about the accident stated that the Maruti Omni Car tried to overtake other vehicles and gave dash to the Truck but Sunil Gupta, cleaner, who saw the accident has not stated that the Maruti Omni car was trying to over take other vehicle and it was head-on-collision. It is contention of learned counsel for the appellant that the spot panchanama shows Maruti car had come on right side of dividing line. In my view, it was head-on-collision between two vehicles. After head-on-collision, the position of vehicles can change. Mere because wheel of Maruti car had come on other side, it cannot be said that there was sole negligence of

driver of Maruti car, when the cleaner of the offending truck who witnessed the accident, has stated before police that it was head-on-collision. Moreover, the driver or the cleaner of the offending truck did not enter into the witness box to prove the negligence of the deceased. Hence, I do not see merit in the contention of learned counsel for the appellant that the accident occurred due to sole negligence of deceased.

8. It is contention of learned counsel for respondents that the Tribunal has considered monthly income of deceased at Rs.5,500/- per month, which is on higher side. To prove the income of deceased, claimant No.1 – Madhu examined herself at Exhibit “58”. She has stated that her husband was doing business of Ganesh Fabrication and was also looking after Satyam Engineers and Satyam Engineering and from the said work, he was earning Rs.5,00,000/- to Rs.6,00,000/- per annum and by deducting the maintenance and salaries of workers, net profit was Rs.3,00,000/- per annum. While considering the income of deceased, the Tribunal has observed that the ration card given to the claimants’ family was yellow ration card, which shows that income of family is less than Rs.25,000/- per annum. The Tribunal has further observed that the claimant has admitted in his labour contract that 90% is labour

charges and only 10% is profit and the accident took place within 8 to 9 months after registration of Satyam Engineering. The Tribunal has observed that deceased was serving in Shri Mahankali Sahakri Sakhar Karkhana Ltd., Kauthemahankal Sugar Factory and he was getting salary of Rs.5,500/- per month and on that basis, Tribunal has considered his monthly salary at Rs.5,500/- per month. I do not find any infirmity in it.

9. It is contention of learned counsel for the claimants that Tribunal has allowed Rs.10,000/- as consortium amount, which is on lower side. Learned counsel further submits that the amount of Rs.5000/- for funeral expenses and Rs.5,000/- for loss of estate awarded by the Tribunal is on lower side.

10. Learned counsel for the appellant strongly objected to enhance compensation under consortium as no appeal is preferred by the claimants and in the appeal filed by appellant, the claimants are not entitled for enhancement.

11. It is settled principal of law that claimants are entitled for just compensation. Hence, the claimants are entitled for 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. There are five claimants, so consortium amount comes to Rs.2,00,000/-, Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. Total comes to Rs.2,30,000/-, out of which if Rs.20,000/- awarded by the Tribunal is deducted, it comes to Rs.2,10,000/-. The claimants are entitled for this amount.

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

ORDER

1. The appeal is dismissed. No order as to costs.
2. The claimants are entitled for additional amount of Rs.2,10,000/- at rate of 7.5% from 1st November 2017 till realisation of the amount.
3. The appellant is directed to deposit additional amount along with accrued interest thereon as per their share within six weeks after receipt of the order.

4. Respondent No.11 shall deposit remaining 50% of additional amount along with accrued interest thereon within six weeks from receipt of this order.
 5. The claimants are permitted to withdraw the award amount and additional amount along with accrued interest thereon.
 6. The statutory amount along with accrued interest thereon shall be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.
13. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)