

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

**FIRST APPEAL NO.56 OF 2023
WITH
CIVIL APPLICATION NO.3472 OF 2014
IN
FIRST APPEAL NO.56 OF 2023**

The National Insurance Co. Ltd.
MBRO-III, Royal Insurance Bldg.,
1st Floor, 14, J. Tata Road,
Churchgate, Mumbai- 400 001

...Appellant

Versus

1. Ms Reshma Vijay Kiratkar
2. Mast. Tejas Vijay Kiratkar
3. Mast. Kranti Vijay Kiratkar
4. Pratap Ravji Kiratkar
5. Mrs. Shantabai Pratap
Kiratkar
R/at Gautam Nagar, Din
Quarry Road, Panjarpol,
Chembur, Mumbai-400 088.
6. S. Kalaiselvam S/o. Sivasamy
near Sadhana Hotel, A.B.
Road, Indore M.P.

...Respondents

....

Smt. Urmila K. Sanil for the Appellant.
Mr. Prosper D'souza for Respondent Nos.1 to 5.

CORAM: SHIVKUMAR DIGE, J.

DATE : 11th DECEMBER, 2023.

ORAL JUDGMENT:-

1. The issues involved in this appeal are of contributory negligence of the deceased and income of the deceased considered

on higher side.

2. It is the contention the learned counsel for the Appellant-Insurance Company that the accident occurred due to sole negligence of rider of the motorcycle on which the deceased was a pillion rider. The motorcycle was in high speed. It skidded on road and dashed the offending truck, but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has considered monthly income of the deceased at Rs.8,000/-, without any evidence on record, which is on higher side. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for the Respondents-Claimants that no witness was examined to prove the contributory negligence of the rider of the motorcycle. Learned counsel further submitted that the deceased was getting Rs.16,000/- per month but Tribunal has considered Rs.8,000/- per month, which is on lower side. Hence, it be considered at Rs.16,000/- per month and without filing the appeal the Claimants are entitled for enhancement of income of the deceased. He has relied upon

decisions of the Apex Court in *Sanobanu Nazirbhai Mirza and Ors. vs. Ahmedabad Municipal Transport Service, 2013 ACJ 2733* and *Rajesh and Others vs. Rajbir Singh and Others, 2013 ACJ 1403*.

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

5. In respect of the issue of negligence the Appellant has not examined any witness to prove the contributory negligence of the rider of the motorcycle. To prove the negligence of the driver of the offending truck, the Claimants have examined the motorcycle rider-Bhupesh Lohokare at Exhibit-38. He has stated that on the day of the accident he alongwith the deceased were going on motorcycle and the speed of the motorcycle was moderate. The offending truck came from opposite direction and dashed the motorcycle in an uncontrolled way. Due to the said dash the motorcycle fell on ground and the deceased went under the back side tyre of the said truck. From the evidence of this witness it shows that the accident occurred due to sole negligence of driver of the offending truck.

Offence was registered against the driver of offending truck. Moreover, the driver of the truck did not step into the witness box. Hence, I do not see merit in the contention of learned counsel for the Appellant that there was contributory negligence of the rider of the motorcycle.

6. To prove the income of the deceased, the Claimants have examined employer of the deceased-Mr. Raj Manjar. He has stated that the deceased was working with him and he used to pay Rs.16,000/- per month salary in cash to the deceased. While dealing with the issue of income of the deceased the Tribunal has observed that documents produced on record regarding salary of the deceased are not trustworthy. Considering evidence on record the Tribunal has considered monthly income of the deceased at Rs.8,000/- per month. I do not find infirmity in it. It is the contention of the learned counsel for the Respondents-Claimants that income should be increased. The Respondents-Claimants have not challenged the findings of the Tribunal regarding the income of the deceased. Moreover, considering the evidence on record the monthly income of the deceased considered by the Tribunal is proper. I have gone

through the case laws relied upon by the Respondents -Claimants. Facts of the cited cases and of the present case are different.

7. It is the contention of learned counsel for the Appellant that consortium amount awarded by the Tribunal is on higher side. The Tribunal has awarded Rs.1,00,000/- for loss of love and affection, Rs.1,00,000/- for consortium and Rs.25,000/- for funeral expenses. There are five Claimants. As per the view of the Hon'ble Apex Court in case of ***Magma General Insurance Company vs. Nanu Ram (2018 SCC 1546)*** each Claimant is entitled for Rs.48,000/- as consortium amount and Rs.18,000/- for funeral expenses and Rs.18,000/- loss of estate. Considering total of these amounts the Claimants are entitled for Rs.2,76,000/-. If the amount awarded by the Tribunal of Rs.2,25,000/- is deducted from from this amount, it comes to Rs.51,000/-. The Claimants are entitled for this amount.

8. Considering the above reasons, I pass following order:

ORDER

(i) The First appeal is dismissed.

(ii) The Claimants are entitled for an enhanced

amount of Rs.51,000/- @ 7.5% p.a. from 1st
November-2017 till realization of the amount.

(iii) The Appellant-Insurance Company shall deposit
the enhanced amount with interest within a
period of six weeks from the date on which this
order is uploaded.

(iv) The Claimants are allowed to withdraw the
deposited amount alongwith accrued interest
thereon.

(v) The statutory amount be transmitted to the
Tribunal alongwith accrued interest thereon.
The parties are at liberty to withdraw it, as per
Rule.

9. All pending Civil /Interim applications are disposed of.

(SHIVKUMAR DIGE, J.)