

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 787 OF 2017

The Oriental Insurance Co. Ltd.	)	
RO II, SBI Building, 3rd Floor, Fort,	)	
Mumbai – 400023	)	
(Insurer of motor truck bearing No.	)	
MP-09-K-7236 Policy No.122300/31/	)	
2007/9067/Validity	)	
Period 29.3.2007 to 28.3.2008	)	Appellant

versus

- | | | |
|---------------------------------------|---|--|
| 1. Pushpa Vijayshankar Tiwari |) | |
| Aged about 27 years (Widow of |) | |
| deceased) |) | |
| 2. Swati Vijayshankar Tiwari |) | |
| Age about 10 years Occ Education |) | |
| 3. Dhruv Vijayshankar Tiwari |) | |
| Aged 7 years occ education |) | |
| minor, son of deceased |) | |
| 4. Ramnarayan B Tiwari |) | |
| Aged about 62 years |) | |
| father of deceased |) | |
| 5. Chameli Ramnarayan |) | |
| Tiwari about 58 years mother of |) | |
| deceased Applicant No.2 & 3 being |) | |
| minors are applying through their |) | |
| next friend and natural Guardian |) | |
| i.e. applicant No.1 all r/o room No.5 |) | |
| shinde Chawl, Raghunath Nagar, |) | |
| Wagle Estate, Thane (W) 400 604 |) | |
| 6. Motor Transport of India |) | |
| C/o. MTI Logistics Pvt. Ltd. |) | |
| Kawal House, 40, P.D.Mello Road, |) | |

Mumbai	)	
(Owner of motor truck bearing No.	)	
MP-09-K-7236)	)	
7. Arun Dudhanath Mishra	)	
r/at room No.5212 Laxmi Nagar,	)	
Ghatkopar, Mumbai – 400 055.	)	
(owner of motor car bearing no.	)	
MH-04-BQ-6290)	)	Respondents

Ms. Poonam Mital, Advocate for the Appellant.

Ms. Rina Kundu, Advocate for the Respondent Nos. 1 to 5.

CORAM : S. G. DIGE, J.

DATE : 8th FEBRUARY 2023.

Judgment:

1. Being aggrieved and dissatisfied by the judgment and order passed by the Motor Accident Claims Tribunal, Thane, the appellant-Insurance Company preferred this appeal.

2. The brief facts of the case are as under :

On 7th June 2017, the deceased along with his friend was driving in Tata Indica Car bearing registration No. MH-04-BQ-6290. They were proceeding towards Mumbai - Agra road. The driver of the said car was driving the car in slow and moderate speed and on

the extreme left side of the road with full care and caution. When the said motor car reached in the vicinity of Pundhe Village, District Thane, at the relevant time, one truck bearing registration No.MP-09-K-7236 came from opposite side in high and excessive speed and in rash and negligent manner and dashed the said car. The deceased was seriously injured. He was shifted to hospital but there he was declared dead. The offence was registered against the driver of the offending truck. Respondent Nos. 1 to 5/original claimants (for short "the claimants") filed claim petition before the Motor Accident Claims Tribunal, Thane, (for short "the Tribunal") for getting compensation. The Tribunal has awarded compensation. Against the said judgment and order, this appeal.

3. It is the contention of learned counsel for the appellant that the said accident occurred due to sole negligence of the deceased but this fact is not considered by the Tribunal. Learned counsel further submits that the Tribunal has considered the income of the deceased on higher side when there was no evidence produced on record to prove the income of the deceased. Hence, requested to allow the appeal.

4. It is the contention of learned counsel for the claimants

that the said accident occurred due to sole negligence of the truck driver. The offence was registered against the truck driver. No witness was examined before the Tribunal to prove the negligence of the car driver. Learned counsel further submits that the deceased was working as a teacher in St. Xavier's Nigh High School and BMC School and he was getting more than Rs.23,010/- per month. The Tribunal has considered the income of the deceased at Rs.17,000/- which is on lower side. Learned counsel further submits that the Tribunal has not awarded consortium amount, amount for funeral expenses and amount for loss of estate.

5. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

6. It is the contention of learned counsel for the appellant that the accident had occurred due to sole negligence of the driver of Tata Indica Car, in which, the deceased was travelling. To prove the negligence of the driver of the Tata Indica Car, appellant has not examined any witness. The FIR was registered against the driver of the offending truck. Moreover, the driver of the Tata Indica Car was examined as witness. In his evidence, he has stated that the offending truck came from the opposite direction in high and

excessive speed and in rash and negligent manner. Due to high speed, the driver of the truck lost control over the vehicle and came on the wrong side of the road and dashed his motor car. Nothing elicited in the cross-examination of this witness. In my view, from the evidence of this witness as well as the FIR lodged against the driver of the offending truck, it shows that the accident had occurred due to sole negligence of the driver of the offending truck. No evidence is brought on record by the appellant to prove that the accident had occurred due to negligence of the driver of Tata Indica Car. Hence, I do not find merit in the contention of learned counsel for the appellant that there was negligence of driver of the Tata Indica Car.

7. In respect of income of the deceased, the claimant No.1- wife of the deceased - Pushpa has stated that her husband was working as teacher in BMC, Tilak Nagar School at Chembur, Mumbai.. He was getting a salary of Rs.14,000/- per month and her husband was also doing part-time service with St. Xavier's Night School at Lokmanya Tilak Marg, Mumbai as Assistant Teacher and he was getting salary of Rs.4354/- pm. As per her evidence, the monthly income of her husband was Rs.18,000/-. The salary slips of the deceased are at Exhibits "31" and "32". To support the evidence

of this witness, Kashinath Jadhav, who was serving as an Administrative Officer in BMC, 'N' Ward is examined at Exhibit "50". He has stated that the deceased was serving as Assistant Teacher in Tilak Nagar English School, Ghatkopar, and in May 2008, he had drawn total salary of Rs.13,664/-. The salary slip is at Exhibit "53". Witness – Dagdu Shedge, who was the Headmaster in St. Xavier's Nigh High School, Dhobi Talao, Mumbai, has stated that at the time of the accident, deceased was serving as Assistant Teacher in their school and he was getting salary of Rs.4,280/- per month. Considering the documentary evidence and oral evidence of the witnesses, Tribunal has considered the monthly income of the deceased as Rs.17,000/-. I do not find any infirmity in it.

8. The Tribunal has awarded Rs.10,000/- for funeral expenses, Rs.10,000/- for loss of consortium/compensation, Rs.20,000/- for loss of estate and Rs.30,000/- for loss of love and affection. As per the view of the Hon'ble Apex Court in case of **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, each claimant is entitled to 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 the total amount comes to

Rs.2,30,000/-. If this amount is deducted from the amount considered by the Tribunal i.e. Rs.70,000/-, it comes to Rs.1,60,000/-. So the claimants are entitled for an amount of Rs.1,60,000/-.

7. In view of the above, I pass the following order :

ORDER

1. The appeal is dismissed. No order as to costs.
 2. The claimants are entitled for an amount of Rs.1,60,000/- @ 7.5% interest per annum from 1st January 2018 till realisation of the amount.
 3. The appellants are directed to deposit an amount of Rs.1,60,000/- along with interest @ 7.5% per annum from 1st January 2018 before the Tribunal within four weeks.
8. All pending applications, if any, stands disposed of.

(S. G. DIGE, J.)