

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1015 OF 2023

The Manager, The New India Assurance Co. Ltd.
Branch Alibag, Taluka – Alibag, District Raigad

Appellant

Versus

1. P. Chandrahas V. Sanjiv Shetty
Age – 48 years, Occ.-Nil
2. Sulochana Chandrahas Shetty
Age – 45 years, Occ. Household
Both residing 3/17, J.B.D. Co-operative Housing
Society, Jangal Mangal Road, Bhandup (West),
Mumbai – 400 078
3. Ganpat Sayaji Shinde
Age – 35 years, Occ – Business
R/o – Kasti, Taluka-Shirgonda,
District- Ahmednagar

Respondents

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Mr. D.R.Mahadik, Advocate for the Appellant.
Mr. T. J. Mendon, Advocate for Respondent Nos. 1 and 2.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 18th DECEMBER, 2023**JUDGMENT :**

1. The issues involved in this appeal are, at the time of accident the driver of the offending vehicle was under the influence of alcohol and future prospects awarded on higher side.

2. It is the contention of learned counsel for the appellant that at the time of accident the driver of offending vehicle was under the influence of alcohol but this fact is not considered by the Tribunal. Learned counsel further submitted that while awarding compensation the Tribunal has awarded 50% future prospects it should be 40% and funeral expenses awarded at Rs.25,000/- it should be Rs.15,000/- hence requested to allow the appeal.

3. It is the contention of learned counsel for respondent Nos. 1 and 2 / claimants that the issue of driver of offending vehicle was under the influence of alcohol at the time of accident was not raised before the Tribunal and for the first time it is raised before this Court. Moreover, no evidence was laid before the Tribunal to prove that the driver of offending vehicle was under the influence of alcohol. Learned counsel further submitted that at the time of accident deceased was 25 years old. The proper multiplier is 18 but the Tribunal has applied the multiplier of 17 which is wrong. Learned counsel further submitted that if the calculations of multiplier added in the compensation it will match with 10% more future prospects awarded including Rs.10,000/- the amount awarded for consortium, hence requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Raigad (for short

“**the Tribunal**”). In respect of issue regarding at the time of accident driver of the offending vehicle was under the influence of liquor, no evidence was laid before the Tribunal by the appellant/Insurance Company nor this issue was raised before the Tribunal, hence I do not find any merit in it. It has come on record that at the time of accident deceased was 25 years old. As per the view of the Hon'ble Apex Court in the case of *Sarla Verma and Ors versus Delhi Transport Corp. & Anr.*¹, the proper multiplier for the age of 25 is 18, the Tribunal has applied it 17 which is not proper. The Tribunal has awarded 50% future prospects it should be 40%. The Tribunal has awarded Rs.25,000/- towards funeral expenses it should be Rs.15,000/-. As observed earlier, the proper multiplier was not applied and after application of multiplier of 18, the compensation amount goes more than 10% extra awarded future prospects and Rs.10,000/- consortium amount.

5. In view of the above, I pass following Order:

ORDER

- (i) The Appeal is dismissed.
- (ii) Respondent Nos. 1 and 2/ claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- (iii) The statutory amount along with accrued interest be

¹ AIR 2009 SC 3104

transferred to Motor Accident Claim Tribunal, Alibag.

The parties are at liberty to withdraw it as per rule.

6. All pending Applications are also disposed off.

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SATISH
KILAJE

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by SONALI
SATISH KILAJE
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(SHIVKUMAR DIGE, J.)