

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 690 OF 2018**

SHRIRAM General Insurance Company Ltd.)
Office No: 106, Road No: 22, Lodha Suprumus-2)
Wagale Estate, Near New Passport Office)
Thane-West, 400 604, Maharashtra)
Through Legal Manager Mr. Satpalsingh Rajput)

(Orig. Opposite Party No.1)
.... Appellant

Versus

1. Smt. Nanda Jivan Gharat)
Age : 37 years, Occupation: Housewife)

...(Original Petitioner No.1)

2. Master Sahil Jivan Gharat)
Age: 17 years, Occupation : Student)

...(Original Petitioner No.2)

3. Kumari Pallavi Jivan Gharat)
Age: 12 years, Occupation: Student)

...(Original Petitioner No.3)

4. Shri Namdev Anant Gharat)
Age : 66 years, Occupation: Retired)

...(Original Petitioner No.4)

All Residing at House No: 1083, Mukam Post)
Jaasai, Taluka: Uran, District: Raigad)

5. Nilesch Bharat Mhatre)
Address: House No: 84, Mukam Post - Jaasai)

Taluka: Uran, District Raigad)

...(Original Opposite Party)

... Respondents

Mr. Nikhil Mehta i/b KMC Legal Venture, Advocates for the Appellant.

Mr. Sandesh Deshpande for the Respondent Nos. 1 to 4.

CORAM : S. G. DIGE, J.

DATE : 6th MARCH 2023.

Oral Judgment :

1. The issue involved in this appeal is income of deceased is considered on higher side and the accident had occurred due to sole negligence of deceased.

2. It is contention of learned counsel for the appellant that deceased was standing on road with his Activa motorcycle, at that time, offending trailer dashed him. It was the duty of the deceased to stand beside the road but deceased was standing on the road, due to which, the accident had occurred, but the Tribunal has fixed the liability of accident on driver of the offending trailer, which is improper. Learned counsel further submits that, at the most, Tribunal should have considered 50% contributory negligence of

deceased but it is not done. Learned counsel further submits that Tribunal has considered monthly income of deceased at Rs.20,000/- per month without any evidence on record. It is on higher side, on that basis, exorbitant and excessive compensation is awarded. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos. 1 to 4/claimants that when deceased was standing on the road, at that time, the driver of the offending trailer was driving the trailer in rash and negligent manner. The speed of the trailer was so excessive, firstly, the trailer gave dash to one car, thereafter, the said trailer gave dash to deceased who had stopped on the bus stop, which shows the sole negligence of driver of offending trailer. Learned counsel further submits that deceased was working in Om Shree Ganesh Containers Private Limited as Yard Manager. Witness was examined by the claimants to prove the income of deceased and that witness has categorically stated that deceased was working in their company and he was getting monthly salary at Rs.20,000/-. Learned counsel further submitted that Tribunal has not awarded consortium amount. Hence, requested to dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal (for short "the Tribunal").

5. The issues involved in this appeal are negligence of deceased and income of deceased.

6. Exhibit "21" is FIR. From the FIR it reveals that at the time of the accident, the offending trailer was in high and excessive speed. The offending trailer after passing the speed breaker had dashed one car, thereafter gave dash to deceased who was standing behind one Activa at the bus stop. It shows that the said accident had occurred due to sole negligence of offending trailer. Moreover, to prove negligence of deceased, no witness is examined by the appellant nor driver of offending trailer stepped into witness box. Hence, I do not find any merit in contention of learned counsel for the appellant that the accident had occurred due to negligence of the deceased.

7. In respect of issue of income of deceased, wife of deceased has stated that her husband was getting monthly income

at Rs.20,000/-, he was working as Yard Manager in Om Shree Ganesh Containers Private Limited. To support the evidence of this witness, the claimants have examined PW2-Narayan-Chief Executive of Om Shree Ganesh Containers Private Limited. He has stated that deceased was working in their Company from three years. At initial appointment, he was getting Rs.5,000/- per month. Thereafter, he was promoted as a Yard Manager and he was getting salary of Rs.20,000/- per month. The salary certificate is at Exhibit "20". On the basis of evidence of this witness, the Tribunal has considered the monthly income of deceased at Rs.20,000/- per month. In cross-examination, this witness admitted that the salary was given to the deceased in vouchers. In my view, there is no reason to disbelieve this witness but no deduction from the salary is considered by the Tribunal. Hence, I am considering Rs.1000/- as deduction from salary of deceased and considering salary of deceased at Rs.19,000/- per month. It is contention of learned counsel for claimants that Tribunal has awarded Rs.1,00,000/- as consortium amount and Rs.25,000/- for funeral expenses. There are four claimants, each claimant is entitled Rs.40,000/- as consortium amount.

8. Considering above calculations, the claimants are entitled for compensation as per the chart given below:

Particulars	Amount
Monthly Income	Rs. 19,000.00
Add 30% Future Prospects	Rs. 5,700.00
less 1/4 deductions for personal expenses	Rs. 6,175.00
Total Monthly Income	Rs. 18,525.00
Annual Income Rs.18,525.00 X 12	Rs. 2,22,300.00
Rs.2,22,300.00 X 14(multiplier)	Rs. 31,12,200.00
Add Consortium amount (4 claimants)	Rs. 1,60,000.00
Add Funeral expenses and loss of estate	Rs. 30,000.00
Total Entitled Compensation	Rs. 33,02,000.00
Compensation awarded by Tribunal	Rs. 34,01,000.00
Difference (Excess Amount to be refunded to Appellant)	Rs. 99,000.00

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

O R D E R

1. The appeal is partly allowed.
2. The claimants are entitled for amount of Rs.33,02,000/- along with interest accrued thereon as awarded by the Tribunal.

3. The appellant is permitted to withdraw excess amount of Rs.99,000/- along with accrued interest thereon.
 4. The claimants are permitted to withdraw the amount of Rs.33,02,000/- deposited by the appellant along with accrued interest thereon.
 5. Statutory amount of Rs.25,000/- be transmitted to the Tribunal. The parties are at liberty to withdraw the same as per Rule.
- Appeal stands disposed of.
10. Pending applications, if any, stand disposed of.

(S. G. DIGE, J.)