

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

FIRST APPEAL NO.370 OF 2017

Shriram General Insurance Co. Ltd	}	
601, 6th Floor, Raunak Arcade, Gokhale	}	
Road, Naupada, Thane (West)-600001	}	
Through Mr.Sagar Gangurde-Manager	}	
Legal	}	...Appellant

Versus

NILAM
SANTOSH
KAMBLE

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1. Smt.Chhaya Anna Chavan	}	
R/at-Gulumb, Tal : Wai, District-Satara	}	
2. Dattu Nivrutti Chavan	}	
R/at-48-B, Redgaon Budruk, Taluka-	}	
Niphad, District-Nashik	}	
3. Shri.Shamrao Bhausaheb Kadam	}	
R/at Murum, Tal. Baramati, District-Pune	}	...Respondents

Mr.Rahul Mehta i/b KMC Legal Venture, for the Appellant.
Ms.Manisha Deokar, for Respondent No.1.

CORAM : S.G. DIGE, J.

DATE : 13 APRIL 2023

JUDGMENT :-

1. The issues involved in this Appeal are negligence of driver of offending truck and future prospects.

2. It is contention of the learned counsel for the Appellant that the Tribunal has awarded future prospectus on the

income of the deceased, when the Tribunal has considered the notional income of the deceased then future prospectus should not have been awarded by the Tribunal. The learned counsel further submit that there was no negligence of driver of offending truck, but the Tribunal has not considered this fact and has awarded exorbitant and excessive compensation. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents that offense was registered against the driver of offending truck. The Claimants are entitled future prospects on notional income. Hence, requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Tribunal, Satara (for short 'The Tribunal').

5. It is Claimants case that on 18 December 2011, deceased Vishwas alongwith his friend Rahul, was proceeding to Jejuri for darshan of lord Khandoba on Bajaj Discover motorcycle, when they reached near village Kadegaon one Rajdoot motorcycle bearing No.MXX-1611 came from Opposite side in a very high speed and gave dash to the motorcycle of deceased, due to said dash deceased and his friend thrown on the road, at that time Truck No.MH-15/AG-6279 came in rash and

negligent manner and ran over the heads of deceased and his friend. The offence was registered against the driver of offending truck.

6. Considering evidence on record the Tribunal has held 50% contributory negligence of driver of offending truck and rider of Rajdoot motorcycle, I do not find any infirmity in it. Moreover, the driver of offending truck did not step into witness box to prove his innocence, hence I do not see merit in contention of the learned counsel for the Appellant that there was no negligence of driver of offending truck.

7. It is the contention of the learned counsel for the Appellant future prospectus should not have been granted on notional income, as per view of Hon'ble Apex Court in the case of *National Insurance Co. Ltd. V/s. Pranay Sethi*¹, the Claimants are entitled for future prospects on notional income. The Appeal is devoid of merit and I pass following order.

ORDER

(i) Appeal is dismissed, no order as to cost.

(ii) The statutory amount of Rs.25,000/- be transmitted to the Motor Accident Claims Tribunal, Satara.

¹ 2017 ACJ 2700 (SC)

(iii) The parties are at liberty to withdraw the amount.

(iv) The Claimants are permitted to withdraw deposited amount, alongwith accrued interest thereon.

(v) All pending Civil Applications, if any, are disposed of.

(S.G. DIGE, J.)