

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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FIRST APPEAL NO. 39 OF 2020

Reliance General Insurance Co. Ltd.)
 4th Floor, Chintamani Avenue, Off. Western)
 Express Highway, Next to Virvani Indl. Estate,)
 Goregaon {E}, Mumbai - 400 053)
 Policy No. 1110722334005022)
 Validity: 27.3.2013 to 26.03.2014)

....Appellant
 {Org. Opp. No. 2}

Versus

1. Smt. Kavita Vilas Jadhav)
 Aged about 23 years, Wife of the deceased)
2. Master Swapnil Vilas Jadhav)
 Aged 7 years, Son of the deceased)
3. Miss. Shrutika Vilas Jadhav)
 Aged 4 years, Daughter of the deceased)
4. Smt. Motabai Sitaram Jadhav)
 Aged 63 years, Mother of the deceased)
5. Mr. Sitaram Vithoba Jadhav)
 Aged 66 years, Father of the deceased.)

All are residing at Village Jevali, Vijay Nagar,)
 West Taluka - Lohara, Dist. Osmanabad)

....Respondents

{Resp. 1 to 5 Org. Applicant.}

6. Tasawar Hussain Khan)
 119, Tansa Bhavse, Shahpur)
 Maharashtra - 421 601)

....Respondents

{Org. Resp. 1 - Insured.}

Ms. Kalpana R. Trivedi for the Appellant
Mr. Jitednra P. Gor for the Respondent

CORAM : S. G. DIGE, J.

DATE : 9th MARCH 2023.

JUDGMENT :

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

2. It is contention of learned counsel for the appellant that accident was occurred due to sole negligence of the deceased, but tribunal has not considered this fact and held that the accident was occurred due to negligence of driver of offending truck. Learned counsel further submits that tribunal has considered monthly income of deceased at Rs. 20,000/- per month which is on higher side, no evidence was led before the tribunal, to prove the income of deceased in spite of that monthly income of deceased considered on higher side, on that basis compensation is awarded which is exorbitant and

excessive. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondents /claimants that deceased was riding on motorcycle, at that time driver of offending truck gave him dash from the backside, due to which deceased died so no question of negligence of deceased arises. Moreover, no witness is examined by the appellant to prove the negligence of deceased. Learned counsel further submits that deceased was serving as a police constable at Maharashtra Railway Police Department and he was earning Rs.35,000/- p.m. but, Tribunal has considered his last drawn salary and considered monthly income at Rs. 20,000/- per month which is proper.

4. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short 'the Tribunal). In respect of issue of negligence, it appears from record that on 30 October, 2013 at about 9:45 a.m. deceased was riding motorcycle towards Thane. When he came at Kanjurmarg T-Junction Mumbai, the offending truck came at high speed in rash and negligent manner and gave forcefully dash to the deceased from

backside. The deceased fell down and sustained serious injuries and died while taking treatment. The offence was registered against the driver of offending truck while deciding the issue of negligence, the tribunal has observed that FIR was lodged against the offending truck driver from spot panchanama it reveals that dash was given to the motor cycle of deceased from backside it proves accident occurred due to sole negligence of driver of offending truck. In my view the documents on record proves negligence of driver of offending truck. Moreover, the driver of offending truck did not enter into the witness box to prove the negligence of deceased. Hence, I do not find merit in the contention of learned counsel for the appellant that accident was occurred due to negligence of deceased.

5. In respect issue of income of deceased, the tribunal has observed that as per the evidence of AW-2 Mr. Govind Mahila Head Clerk from the office of Commissioner of Police Mumbai gross salary of deceased was Rs. 20,948/- the salary certificate is at Exhibit 41. Form No. 16 for the years 2011-12 and 2012-13 deceased had drawn same salary. Hence tribunal considered salary of deceased at Rs. 20,000/-. I do not find infirmity in it.

6. The tribunal has awarded consortium amount of Rs. 40,000/-, to one claimant only, there are five claimants. As per the view of Hon'ble apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)*** remaining four claimants are entitled for consortium amount at Rs. 40,000/- each as consortium amount, they are entitled for Rs. 1,60,000/- as consortium amount.

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

ORDER

- i. Appeal is dismissed. No order as to cost.
- ii. The claimants are entitled for additional amount compensation of Rs. 1,60,000/- @ 7.5% from from 1 October, 2017 till realization the amount.
- iii. The appellant is directed to deposit the additional amount along with accrued interest thereon, within four weeks after receipt of the order.
- iv, The claimants are permitted to withdraw deposit amount along with accrued interest thereon.

- v. The statutory amount be transmitted to the tribunal.
The parties are at liberty to withdraw it, as per Rule.
- 7. All pending application stands disposed of.

(S. G. DIGE, J.)