IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1817 OF 2018
WITH
CIVIL APPLICATION NO. 13093 OF 2018
IN FA/1817/2018

Shriram General Insurance Co. Ltd.
Through it's Authorized Signatory
Having Office At. E/8, EPIP, Risco
Industrial Area, Sitapura,
Jaipur (Rajasthan). ....APPELLANT
[Orig. Resp. No. 2]

VERSUS

1. Nabab Balaji Khemnar,
   Age: 52 years, Occu. Agriculture.

2. Kusum Nabab Khemnar
   Age: 47 years, Occu: Household

   Both R/o. Dadh (Bk), Tal. Rahata,
   Dist. Ahmednagar.

3. Shaikh Afjal Mehmood
   Age: Major, Occu: Transport
   R/o. Raheman Nagar, Naikwadpura,
   Dist. Ahmednagar. .....RESPONDENTS
[Res. No. 1 and 2-Orig. Claimants]
Resp. No. 3- Orig. Respondent No. 1

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Mr. S.S. Rathi, Advocate for appellant
Mr. R.B. Temak, Advocate for respondent Nos. 1 and 2

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 7th OCTOBER, 2024

Bhagyawant Punde

JUDGMENT :

1. This appeal filed by appellant/Insurance Company under Section 173 of Motor Vehicles Act challenges judgment and award dated 18.01.2018, passed by learned Member, Motor Accident Claims Tribunal, Kopargaon in Motor Accident Claim Petition No. 31 of 2015.

2. Admitted facts leading to this first appeal can be stated as follows:

On 11.07.2013, Kiran Nabab Khemnar was coming from Shrirampur to Bhabaleshwar on motorcycle No. MH-17-DD-4939. At about 6.00 pm, when he came near Dr. Mhaske vasti, offending jeep No. MH-17-T-9234 came from opposite direction in high speed and gave dash to the motorcycle, causing his death. The driver of the jeep did not stop at the place of accident. Claimants, therefore, filed claim seeking compensation of Rs. 9,00,000/- from the owner and the insurance company of offending jeep. The Tribunal after recording evidence allowed the claim and awarded compensation of Rs. 30,54,000/- along with interest @ 7% p.a. from the date of application till realization of the amount. Insurance company is aggrieved by the same.

3. Heard learned advocate for Insurance Company and learned advocate for claimants.

4. Learned advocate for insurance company has assailed the impugned judgment and award on two counts. According to him, there is no material on record to show that offending vehicle was involved in the accident. He submits that FIR was lodged against unknown vehicle and subsequently offending vehicle was shown to be involved in the accident. In the spot panchnama no brake marks are seen and broken glass pieces were found on the spot. No eye witness of the accident is examined by claimants, hence, there is no material on record to show involvement of the offending vehicle in the accident.

5. He submits that excessive compensation is awarded by the Tribunal. Without there being any material on record to show income of the deceased, the Tribunal has assessed notional income of deceased at Rs. 15,000/- per month. According to him, at the most Rs. 6,000/- can be said to be notional income of the deceased. Though, deceased was bachelor and 50% amount has to be deducted as personal expenses, the Tribunal has erroneously deducted only 1/3rd amount. He submits that at the most, claimants can be said to be entitled for compensation

of Rs. 10,28,000/-. In support of his submissions he relied on decisions of this Court in First Appeal No. 2369 of 2020 and First Appeal No. 1366 of 2012.

6. Per contra, learned advocate for respondents No. 1 and 2/claimants supported the impugned judgment and award. He submits that it was specifically pleaded before the Tribunal that deceased was supplying milk to the dairy and was cultivating agricultural land and was earning Rs. 15,000/- per month. Hence, Tribunal is justified in assessing his notional income at Rs. 15,000/- per month. Since deceased was working in unorganized sector, claimants could not place any evidence on record in respect of income of deceased.

In respect of involvement of offending vehicle in the accident, he submits that during the investigation statements of four eye witnesses of the accident were recorded which revealed involvement of the offending vehicle in the accident. On completion of investigation, charge sheet was filed against the driver of the offending vehicle. This material is sufficient to show involvement of offending vehicle in the accident. According to him, there is no merit in the first appeal and same is liable to be dismissed. He relied on ***Sunita v. Rajasthan State Road Transport***

Corporation, AIR 2019 SC 994 and ***Sanjay Kumar vs. Ashok Kumar and Another***, (2014) 5 SCC 330.

7. Heard learned advocate for insurance company and learned advocate for claimants at length. Perused the record.

8. Accidental death of Kiran Nabab Khemnar is not in dispute. Appellant has disputed involvement of offending vehicle in the accident. During the investigation four eye witnesses have given description of the offending vehicle and it's driver. On the basis of their statements offending vehicle was traced. These statements are brought on record at Exhibits- 44, 45, 46 and 47. Admittedly, charge sheet is filed against driver of the offending vehicle. It is well settled that claimants have to prove their case on the touchstone of preponderance of probability and not beyond the reasonable doubt. In Sunita (supra) Apex Court has held that, "*filing of charge sheet against the driver of offending vehicle, prima facie, proves the involvement of offending vehicle in accident and that the driver was rash and negligent.*" In this view of the matter, Tribunal is justified in recording a finding that offending vehicle was involved in the accident. Decisions in First Appeal Nos. 2369 of 2020 and 1366 of 2012 are rendered in different facts and hence are of no help to the appellant's case.

9. There appears substance in the arguments of appellant on the point of quantum. Without there being any evidence on record, the Tribunal has assessed notional income of deceased at Rs. 15,000/- per month. No evidence about milk supplied by the deceased and/or crops taken in the agricultural field is brought on record. In absence of any material on record, Tribunal has erred in assessing notional income of deceased at Rs. 15,000/- per month. However, appellant's contention that income of the deceased should be assessed at Rs. 6,000/- per month is unacceptable in view of notification published by Ministry of Labour and Employment under section 4(1B) of the Employee's Compensation Act, 1923, in Gazette of India on 31.05.2010, the Central Government has specified minimum monthly wages of unskilled workers at Rs.8,000/- p.m. Considering the facts of the present case, notional income of deceased needs to be held at Rs. 8,000/- per month.

The Tribunal has committed an error in deducting only 1/3rd amount towards personal expenses of the deceased. In view of the fact that deceased was bachelor at the time of accident 50% amount is liable to be deducted from the compensation towards personal expenses. The Tribunal further failed to award compensation towards non pecuniary loss of filial compensation. Claimants are entitled for Rs. 44,000/- each i.e. Rs. 88,000/- towards filial compensation.

10. Claimants are therefore entitled for following compensation;

Sr. No.	Heads	Amount in Rs.
1	Notional Income (8000 x 12)	96,000/-
2	40% future prospects i.e. 38400	1,34,400/-
3	Less 50% deduction towards personal expenses (1,34,400 – 67,200)	67,200/-
4	Multiplier of 18 (67,200 x 18)	12,09,600/-
5	Non pecuniary loss: (I) Filial compensation Rs. 88,000/- (II) Funeral Expenses as awarded by Tribunal Rs. 15,000 (III) Loss of Estate as awarded by Tribunal Rs. 15,000	1,18,000/-
	Compensation Needs to be awarded	**13,27,600/-**

11. For the aforestated reasons, following order:

ORDER

(I) First Appeal is partly allowed.

(II) Impugned judgment and award dated 18.01.2018, passed by learned Member, Motor Accident Claims Tribunal, Kopargaon in Motor Accident Claim Petition No. 31 of 2015 is hereby quashed and set aside.

(III) Claimants are held entitled for compensation of Rs. 13,27,600/- (including No Fault Liability amount) along with interest @ 7% p.a. from the date of filing of application till the date of depositing compensation amount by the appellant in this Court.

(IV) Claimants are permitted to withdraw amount of Rs. 13,27,600/- by deducting No Fault Liability amount along with proportionate interest accrued thereon.

(V) Appellant is entitled to withdraw remaining amount along with proportionate accrued interest.

(V) Civil Application No. 13093 of 2018 stands disposed of.

[NITIN B. SURYAWANSHI, J.]