



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2579 OF 2017

1. Savita W/o Gurunath Waghmare
Age – 38 years, Occu.: Household
2. Suraj S/o Gurunath Waghmare
Age – 20 years, Occu.: Education
3. Sujata D/o Gurunath Waghmare
Age – 18 years, Occu.: Education
4. Padminbai W/o Manohar Waghmare
Age – 73 years, Occu.: Household

.... Appellants
(Orig. Claimants)

VERSUS

1. Suryakant S/o Dnyanoba Kotambe
Age – Major, Occu.: Driver
R/o. Lanji, Tq. Ahmedpur,
Dist. Latur
2. Ankush S/o Shivajirao Pawar
Age: Major, Occu.: Business
R/o Vyapari Dharmashala,
Latur, Tq. & Dist. Latur
3. Parmeshwar S/o Maroti Waghmare,
Age : Major, Occu.: Business,
R/o. Hrangul (Bk.),
Tq. & Dist. Latur
4. The Oriental Insurance Co. Ltd.
Through its Br. Manager,
Latur Branch, Subhash Chouk,
Latur

.... Respondents
(Orig. Respondents)

.....
Mr. Satish S. Manale, Advocate for Appellants
Mr. V.N. Upadhye, Advocate for Respondent No.4
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

Reserved on : 18.07.2024

Pronounced on: 24.07.2024

ORDER :

1. Original claimants have filed this first appeal being aggrieved and dissatisfied with the judgment and award passed by the Motor Accident Claims Tribunal, Latur, in M.A.C.P. No.77 of 2014.

2. Claimants filed claim petition contending that on 24.10.2013, Gurunath Manohar Waghmare (deceased) was proceeding from his field to his village Harangul (Bk) by motorcycle No. MH-24-P-6834. When he reached near Jewali-Pati on Latur-Kalamb road, Tractor Head bearing No. MH-24-L-5669 came from opposite direction in excessive speed and gave forceful dash to the motorcycle of deceased, due to which deceased sustained multiple injuries to his head and chest. During the treatment, he succumbed to the injuries on 05.11.2013. The accident was reported to M.I.D.C. Police Station, Latur and F.I.R. at C.R. No.183/2013 was registered against the driver of the Tractor under sections 279 and 304-A of the Indian Penal Code and section 184 of the Motor Vehicle Act. Deceased was 40 years of age at the time of accident. He was running a hotel and pan shop at village Harangul (Bk) and

was earning Rs.15,000/- p.m month from the business. He was also having agricultural land and earning Rs.24,000/- p.a. from the same. The claimants, therefore, filed claim seeking compensation of Rs.33,53,000/-. Later on, they restricted their claim to Rs.10,00,000/- along with interest.

3. Driver and owners of the Tractor opposed the claim contending that accident occurred due to negligent driving of deceased.

Insurance company opposed the claim submitting that in the accident the Tractor was falsely involved by police in collusion with claimants. It is also stated that owner has breached the terms and conditions of insurance policy.

4. The Tribunal after recording the evidence, partly allowed the claim and awarded compensation of Rs.8,48,000/- along with interest @ 7.5 p.a. This appeal is filed seeking enhancement of compensation.

5. Heard learned advocate for appellants, learned advocate for respondent No.4-insurance company. Though served, none for respondent Nos.1 to 3. Perused the record.

6. Learned advocate for appellant assailed the impugned judgment submitting that the Tribunal has awarded meager compensation ignoring the evidence brought on record. Though medical bills were proved of Rs.2,03,686/-, only Rs.1,50,000/- is granted. The Tribunal has wrongly held notional income of deceased at Rs.5,000/- p.m. ignoring the Village Panchayat rent receipts of hotel run by deceased and ignoring the photographs on record placed by claimants. No compensation towards future prospectus is awarded. All the claimants are entitled for consortium. The Tribunal has erred in recording a finding that there was contributory negligence on the part of deceased, in absence of any evidence on record.

7. Learned advocate for insurance company supported the judgment of the Tribunal. By relying the observations of Tribunal, he submits that the Tribunal is justified in holding that 20% contributory negligence was there on the part of deceased. He submits that in absence of Shop Act licence brought on record, the Tribunal has rightly held notional income of deceased at Rs.5,000/- p.m. He submits that no case is made out by claimants to interfere in the judgment and award passed by Tribunal.

8. Perusal of record indicates that claimant, wife of deceased has examined herself to prove the fact that deceased was running hotel at a place taken on rent from the Village Panchayat. She has placed on record the deposit receipt and rent receipts of the said place issued in the name of deceased by the Village Panchayat. Profession tax receipt of deceased is also placed on record. Photographs of the hotel which was being run by deceased showing the deceased sitting and selling tea in the hotel are also placed in record. In one of the photograph, Pan Stall is also seen. A certificate is issued by Village Panchayat that deceased was running hotel Guru and Pan Stall in the land owned by Village Panchayat since last 15-20 years and since his death on 05.11.2013, the hotel and pan stall are closed is also brought on record. It is necessary to mention here that claimant-wife was not cross-examined on the point of income of deceased from running of the hotel. The Tribunal has ignored these documents by observing that Shop Act licence is not produced on record. The approach of the Tribunal in ignoring these documents is erroneous and contrary to the settled position of law that claimants have to prove their case on the touch stone preponderance of probabilities, the Tribunal is not bound by strict rules of pleadings and evidence. The material produced on record by

claimants is sufficient to prove that deceased was running Tea Stall and Pan Center at the place rented by Village Panchayat. Though claimants asserted that deceased was earning Rs.15,000/- p.m. from the said hotel, considering the fact that Tea Stall was being run along with Pan Center at a rural place, the said claim appears to be on higher side. However, it can be safely held that deceased was earning Rs.7,500/- p.m. from the said Tea Stall and Pan Center. The Tribunal, therefore has wrongly assessed notional income of deceased at Rs.5,000/- p.m.

Though claimants placed on record 7/12 extract of the land owned by deceased on record, which shows that the land admeasuring 0.35 R in Gut No.457 was standing in the name of deceased, nothing is brought on record to show that he was earning any income from the said land.

9. The Tribunal without there being any evidence on record has wrongly come to a conclusion that there was contributory negligence to the extent of 20% on the part of deceased in the accident. Though the Tribunal has observed that spot panchanama (Exhibit-33) was prepared on 13.11.2013 i.e. after 20 days of accident, the same could not have been relied by the Tribunal. Admittedly, the death of

deceased had occurred in accident, which occurred due to head on collision of Tractor with the motorcycle. In this view of matter, the finding recorded by the Tribunal that there was 20% contributory negligence on the part of deceased is based on surmises and conjectures and in absence of any material in support of the same, it is not sustainable. The Tribunal committed an error in deducting the an amount of Rs.2,12,000/- towards contributory negligence of deceased, from the compensation amount.

10. Claimants have brought on record the medical bills and expenses incurred for treatment given to deceased by examining Administrative Officer of Ashwini Accident and Neuro Care Center at Latur and Clerk of Shri Markande Solapur Sahakari Rugnalaya and Research Center, Solapur, thereby proving on record medical bills and expenses of Rs.2,03,686/-. The Tribunal without assigning any reason has awarded only Rs.1,50,000/-, when the claimants are entitled for Rs.2,03,686/-.

The Tribunal has failed to award compensation towards future prospectus. Tribunal has further erred in awarding loss of consortium of Rs.1,00,000/- only to the wife.

Since there are four claimants, they are entitled for loss of consortium Rs.40,000/- each.

11. In terms of *National Insurance Co. Ltd. v. Pranay Sethi and Others, 2017 (16) SCC 680 and Smt. Sarla Verma and Others v. Delhi Transport Corporation and Another, AIR 2009 SC 3104*, claimants are entitled for future prospectus @ 40% of the annual income of the deceased and loss of consortium of Rs.40,000/- each and Rs.15,000/- for loss of estate.

12. In view of the aforesaid discussion, claimants are entitled for following compensation:-

Sr. No.	Heads	Amount (Rs.)
1.	Annual Income (7,500 x 12 = 90,000) + Future prospectus @ 40% of computed income i.e. 36,000)	Rs.1,26,000/-
2.	1/4th Deduction towards personal expenditure of deceased (Rs.1,26,000 - Rs.31,500)	Rs. 94,500/-
3.	Annual dependency multiplied by multiplier (Rs.94,500 x 15)	Rs.14,17,500/-
4.	Non-pecuniary Losses:- Loss consortium 40,000 X 4 = 1,60,000 Loss of Estate = 15,000/- Funeral Expenses = 25,000/- (as already granted by Tribunal)	Rs.2,00,000/-
5.	Unsustainable deduction of Contributory negligence by Tribunal.	Rs.2,12,000

6.	Medical charges incurred by claimants	Rs.2,03,686/-
7.	Total compensation needs to be awarded	Rs. 20,33,186/-
8.	Compensation awarded by the Tribunal	Rs.8,48,000/-
9.	Enhanced compensation (Rs.20,33,186 – Rs.8,48,000)	Rs.11,85,186/-

13. In the result, following order:-

ORDER

- (i) First Appeal is partly allowed.
- (ii) Claimants are held entitled for enhanced compensation of Rs. 11,85,186/- along with interest @ 6.5% per annum from the date of claim petition till realization of the amount.
- (iii) Enhanced compensation shall be deposited by the insurance company within 12 weeks from today in the Motor Accident Claims Tribunal, Latur.

**[NITIN B. SURYAWANSHI]
JUDGE**