



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3229 OF 2015

The New India Assurance Company,
Ltd., Through it's Authorized Official
and Divisional Manager, Legal Hub,
Adalat Road, Aurangabad.

Appellant.
(orig resp No.2.)

Versus

1. Archana Rajendra @ Dagadu Gawade,
age 25 yrs, Occ Household,
2. Viresh Rajendra @ Dagadu Gawade
age 7 yrs, Occ. Education.
3. Sakshi Rajendra @ Dagadu Gawade
age 5 yrs, Occ. Education.
4. Sarthak Rajendra @ Dagadu Gawade
age 1 year, Occ. Nil.
(Resp Nos.2 to 4 u/g of their mother
Resp No.1.)
5. Vishwanath Murlidhar Gawade,
age 55 yrs, Occ. Nil.
6. Muktabai Vishvanath Gawade,
age 50 yrs, Occ. Nil.

Resp No. 1 to 6 r/o Kolhar Budruk,
Tq. Rahata, Dist. Ahmednagar.

7. Dattatraya s/o Jagannath Raut,
age-major, Occ. Business,
R/o Shani Shinganapur, Tq. Newasa,
Dist. Ahmednagar.

Respondents.
(Resp 1-6 orig claimants
& Resp No.7 orig resp 1)

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Mr.A.S. Usmanpurkar, advocate for appellant.
Mr.Shaikh Mazhar A. Jahagirdar advocate for
Respondent Nos. 1 to 6.
Respondent No.7 – served.

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CORAM : S. G. CHAPALGAONKAR, J.

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Reserved on : 18.04.2024
Pronounced on : 06.05.2024

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JUDGMENT :-

1. The appellant/original respondent no.2-insurer approached this Court under section 173 of the Motor Vehicles Act impugning the judgment and award dated 21.4.2015 passed by the Motor Accident Claims Tribunal, Ahmednagar in MACP no.575 of 2011.

2. Mr. A.S. Usmanpurkar, learned advocate appearing for the appellant submits that the present appeal is filed only on the ground of negligence. The accident in question took place on 4.7.2011 while late Rajendra Gawade was riding on his motorcycle and collided against the insured Jeep bearing registration No.MH-17/AE-1705. He submit that the accident took place in the center of the square due to head on collusion of the jeep and motorcycle, which clearly suggest contributory negligence on the part of the deceased. He would further submit that the spot panchnama at exhibit 24 is admitted in evidence. The Tribunal ignored contents of the panchnama while adjudicating the issue of negligence. He would further submit that Tribunal has erroneously added 50% amount towards future prospects. Multiplier is wrongly applied, since age of the deceased was more than 31 years as per the

contents of the panchnama. He urges that award passed by the Tribunal be appropriately corrected.

3. Mr. Shaikh Mazhar Jahagirdar, learned advocate appearing for respondent nos. 1 to 6-claimants supports the award. He submits that age of the deceased was 28 years at the time of death which could be ascertained on the basis of school leaving certificate depicting date of birth as 19.2.1983. As such, on the date of the accident, age of the deceased was 28 years and 4 months. He would further submit that deceased died leaving behind six dependents. Each of dependent was entitle for loss of consortium to the extent of 40,000/-. The Tribunal, awarded compensation of Rs.1.00 Lakh towards loss of consortium and loss of love and affection only for widow. If the Award is corrected in tune with the law laid down by the Supreme Court of India in case of **National Insurance Company Limited Versus Pranay Sethi & Ors. Reported in (2017)16 SCC 680**, impugned award can be justified no modification is required.

4. Having considered the submissions advanced and after going through the record of the case, it is apparent that there is no dispute as regards to accidental death of the deceased arising out of use of the insured vehicle. The claimants have raised claim against owner and insurer of the jeep bearing registration No.MH-17/AE-1705 with specific allegation of rash and negligent driving on the part of the jeep driver. The claimants have relied upon the contents of police papers in support of their contentions. It is not disputed that jeep driver was prosecuted for rash and negligent driving. The

respondents have not brought on record oral or documentary evidence in support of their defence on the point of negligence. The jeep driver failed to step into witness box. Even, Insurance company made no attempt to bring him before the Court. Therefore, merely on the basis of contents of the spot panchnama, it would be difficult to draw any inference of contributory negligence. It is trite that contents of the panchnama depicts position of vehicle after the accident. It is only driver of the vehicle or eye witness can throw light on manner of accident and position of the vehicles at the relevant time. When, respondent/Insurer has failed to bring on record best possible evidence of the jeep driver, submissions advanced on behalf of the insurer to draw inference of contributory negligence only on the basis of position of vehicles depicted in the panchnama cannot be accepted. Hence, there is no reason to disturb the finding recorded by the Tribunal on the issue of negligence.

5. So far as the quantum of compensation is concerned, Mr. Usmanpurkar is right in contending that the Tribunal has erroneously added 50% amount towards future prospects. It is trite that, in case of non-salaried victim, addition of 40% of income can be made by way of future prospects. In the present case, deceased was agriculturist. His notional income is fixed @ Rs.5,000/- p.m. Therefore, addition of 50% towards future prospectus appears to be erroneous. Furthermore, Tribunal awarded compensation of Rs.50,000/- towards loss of consortium to wife and Rs.50,000/- towards loss of love and affection . It is trite that

loss of consortium is available to wife, minor children so also parents. However, separate compensation for loss of love and affection is disapproved once loss of consortium is awarded. If this Court considers Rs.40,000/- towards loss of consortium to each of six claimants in light of the dictum in case of **Magma General Insurance Company Limited Versus Nanu Ram Alias Chuhru Ram & Ors. reported in (2008)18 SCC 130** that amount comes to Rs.2,40,000/-. Therefore, even after deducting the amount of Rs.50,000/- granted towards loss of love and affection and adding loss of consortium correctly to the widow and other dependents; assessment of compensation is not likely to be reduced. Application of the multiplier appears to be correct considering age of the deceased as per school record.

6. Resultantly, there is no merit in the appeal hence dismissed with costs.

7. The compensation amount deposited by the insurance company be released to the claimants.

(S. G. CHAPALGAONKAR)
JUDGE

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aaa/- (f)