IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 119 OF 2015
with
CROSS OBJECTION (ST) NO. 3762 OF 2015

	ICICI Lombard General Insurance Company Ltd. 206-209, Sohrab Hall, Sasoon Road, Pune-1	…	Appellant
	versus		
1	Shobha Tanaji @ Tayappa Hajare Age : 34 years, Occupation : Household		
2	Amol Tanaji @ Tayappa Hajare Age : 14 years, Occupation : Education		
3	Aparna Tanaji @ Tayappa Hajare Age : 12 years, Occupation : Education All R/o. 3, Abhimanshri Nagar In front of Arvind Dham Murarji Peth, Solapur		
4	~~Mr. Bablu @ Asif Aalim Bhagwan~~ ~~Age : Adult, Occupation : Business~~ ~~R/o : 451/52, A Tulshanti Nagar, Solapur~~ ~~[Owner of Tempo Nos : MH-10/A-2094]~~ ~~(deleted as per Courts order dated 8/1/15)~~ **Amendment carried out as per Court order dt.8/1/15**	…	Respondents

Mr. Nikhil Mehta i/b. KMC Legal Venture, Advocate for the Appellant.
Mr. Ashok B. Tajane a/w. Mr. Yogesh G. Thorat and Mr. Hrishikesh M. Khupsare, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 2nd MAY, 2024.

<u>Oral Judgment :</u>

1. This appeal is preferred by the appellant – Insurance Company against the Judgment and Order dated 11th March, 2013 passed by Motor Accident Claims Tribunal, Solapur (for short "the Tribunal") in

M.A.C.P. No. 54 of 2010. The claimants have also filed cross objection for enhancement of compensation. As the appeal and cross-objection are against the same judgment and order, I am deciding it by this common judgment.

2. It is contention of learned counsel for the appellant that the Tribunal has considered monthly income of the deceased at Rs.21,000/- per month without any evidence on record. Learned counsel further submitted that as per the claimants' case, the deceased was an agriculturist and was having grocery shop and apart from it, he was getting sugarcane income. The sugarcane income is continued after the death of the deceased. The income tax returns produced on record by the claimants does not show that deceased was getting Rs.21,000/- per month but the Tribunal has not considered these facts. Learned counsel further submitted that the Tribunal has considered contributory negligence of the deceased at 30%, it should be 100%. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos.1 to 3/claimants that the accident occurred due to sole negligence of the offending vehicle as he applied brakes suddenly, due to which, the deceased gave dash to the tempo from backside but this fact is not considered by Tribunal. Learned counsel further submitted that the Tribunal has not awarded future prospects and consortium amount is awarded on lower side. Hence, requested to allow the cross-objection

and dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. It is claimants' case that on 2nd December 2009 at about 7.40 pm., deceased – Tanaji @ Tayappa Hajare was riding on his motorcylce towards Solapur. At the relevant time, the tempo bearing registration No. MH-20/A-2904 was also proceedings towards Solapur. The tempo was ahead of the motorcycle. The driver of the tempo was driving the tempo in rash and negligent manner and was not observing traffic rules. All of a sudden, the driver of the tempo applied brakes carelessly and stopped the tempo on the road. The motorcycle was behind the tempo, it gave dash to the tempo from backside and motorcyclist died on the spot. The driver of the tempo ran away from the incident spot. An offence was registered against the driver of the tempo.

5.1. To prove the negligence of the driver of the tempo, the claimants have relied on police papers. The driver of the tempo did not enter into the witness box.

5.2. While dealing with the issue of negligence, the Tribunal has observed that the deceased had given dash to the tempo from backside. It shows that the speed of the motorcycle was high. Hence, he could not control the speed. The deceased should have kept safe distance from the tempo. On that ground, the Tribunal has considered 70% negligence of the driver of the tempo and 30% negligence of the deceased. I am unable to understand the observation of the Tribunal as the Tribunal as observed that brake marks of the tempo were appearing on the road. It shows that the tempo was stopped on the road suddenly. No one knows deceased was travelling behind the tempo for how long distance. Admittedly, the driver of the tempo stopped the tempo suddenly on the road without giving any signal. As per the Motor Vehicles Rules if any vehicle has to stop, the driver of the vehicle has to give signal but in this matter, this did not happen, moreover offence is registered against the driver of tempo and he did not enter into witness box to prove the negligence of the deceased hence, I hold that the accident occurred due to sole negligence of the driver of the tempo. To prove the income of the deceased, the claimants have examined claimant No.1-Shobha, wife of the deceased. She has stated that deceased would run grocery shop and he would cultivate crop. The 7/12 extracts of the agricultural land are produced on record. These are at Exhibits-27, 28 and 29. In support of evidence of PW1, the claimants have examined Vaijnath Indure at Exhibit-43, the clerk in Legal Department of Siddeshwar Sugar Factory. He has produced the statement in respect of sugarcane supplied by claimant No.1-Shobha and payment thereof received by her for the year 2009-2010, 2010-2011 and 2011-2013. The said statements are at Exhibits-45. The claimants have examined Shreni Hukumchand Shah, Chartered Accountant at Exhibit-37. He has stated that deceased used to pay income tax and sales tax in respect of his business and income from agricultural lands. He has further stated about the statement of income tax paid by the deceased for the years 1999-2000 to 2006 to 2007. The said statement shows the total income of the deceased for the Assessment Year 2007-2008 was Rs.1,91,000/- and for Assessment Year 2006-2007 was Rs.1,68,000/- and Rs.1,31,000/- for the Assessment Year 2005-2006. These are at Exhibit-38. The income tax returns shows that the income from grocery shop and agricultural land was about Rs.2,00,000/-.

5.3. While dealing with the issue of the income of the deceased, considering evidence on record, the Tribunal has considered yearly income of the deceased at Rs.21,000/- per month. In my view, it is on higher side. It is settled principle of law that if income tax returns are filed on record, the Court has to consider the average income of the income tax returns filed on record. The average income of the income tax returns comes to around Rs.13,7000/-, hence, I am considering Rs.14,000/- as income of the deceased.

5.4. The Tribunal has not awarded future prospects. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. ltd. vs. Pranay Sethi , 2017 ACJ 2700(SC) ,*** the claimants are entitled for 40% amount of total income as future prospects.

5.5. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for Rs.48000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18000/- for funeral expenses.

5.6. Considering the above calculations, the claimants are entitled for following compensation :

Particulars	Rs.	Amount
Monthly Notional Income of the deceased	Rs.	14,000.00
40% future prospects	Rs.	5,600.00
TOTAL	Rs.	19,600.00
Yearly Income (Rs.19600/- x 12)	Rs.	2,35,200.00
1/3rd deductions towards personal expenses	Rs.	78400.00
TOTAL Income	Rs.	1,56,800.00
Dependency Rs.1,56,800/-x 15(multiplier)	Rs.	23,52,000.00
Consortium (Rs.48000/- x 3 claimants)	Rs.	1,44,000.00
Loss of Estate	Rs.	18,000.00
Funeral Expenses	Rs.	18,000.00
Total Compensation.	Rs.	25,32,000.00

The Tribunal has awarded Rs.19,10,000/-, if this amount is deducted from the amount of Rs.25,32,000/- considered by this Court, it comes to Rs.6,22,000/-. The claimants are entitled for this amount.

6. In view of above, I pass the following order :

O R D E R

1. First Appeal No.119 of 2015 is partly allowed.
2. Cross Objection Stamp No.3762 of 2015 is allowed.
3. The claimants are entitled for enhanced compensation of

Rs. 6,22,000/-@ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs. 1,80,000/- is consortium amount, the claimants are entitled for 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.

4. The appellant-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.

5. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

6. The claimants shall pay deficit court fees on enhanced amount as per Rule.

7. The statutory amount in First Appeal No.119 of 2015 be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)