IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.360 OF 2018

National Insurance Company Ltd. }
Herlagi Building, Behind Siddheshwar }
Temple, Bijapur, Karnataka-586101, }
Jain Boarding, 2nd Floor, Opposite Sangli }
High School, Aamrai Road, Sangli Thr. }
Mumbai, Regional Office-II, 5th Floor }
Sterling Cinema Building, 65, Murzban }
Road, Fort, Mumbai-1. } **...Appellant**

Versus

1.Smt.Sunita Shankar Suryavanshi }
Age-44 years, Occ : Nothing, }

2. Kum.Parshuram Shankar Suryavanshi }
Age-22 years, Occ: Education }

2. Kum.Pratima Shankar Suryavanshi }
Age-20 years, Occ : Nil }

4. Smt.Anusaya Miraj Suryavanshi }
Age-64 years, Occ: Nil }

5. Shri.Sambhaji Miraj Suryavanshi }
Age-35 years, Occ : Agriculture }

6. Shri.Vinayak Shivaji Suryavanshi }
Age-44 years, Occ : Nothing }
Nos.1 to 6 all R/at Vithalwadi, Umadi, }
Taluka-Jath, District-Sangli. } **...Respondents**

Ms.S.S. Dwivedi, for the Appellant.
Mr.Balwant V. Salunkhe, for Respondent Nos.1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd MAY 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal are delay in filing FIR and compensation is awarded on higher side without any evidence on record.

2. It is contention of the learned counsel for the Appellant-Insurance Company that after 42 days of the incident the FIR was lodged. It shows false involvement of the vehicle. The offending vehicle is belongs to brother of the deceased, but this fact is not considered by the Tribunal. The learned counsel further submitted that the Tribunal has awarded Rs.2,81,223/- for medical expenses without any evidence on record, which is erroneous. The learned counsel further submitted that the Tribunal has awarded consortium amount on higher side. The learned counsel further submitted that the Tribunal has awarded future prospects at 50% it should be 30%, as at the time of the

accident, the deceased was 50 years old, which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, after the accident deceased was admitted in the hospital. The Claimant's were in mental shock due to which they could not file FIR immediately after the accident. Moreover, to prove false involvement of the vehicle, no evidence is produced on record by the Appellant-Insurance Company. The learned counsel further submitted that to prove the medical bills, the Claimant's have examined employee of the hospital where deceased was admitted. The learned counsel further submitted that the Tribunal has considered all the aspects while passing judgment and order, no interference is required in it. Hence, requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Sangli.

5. It is Claimant's case that on 1st December 2012 at about 6.00 pm, the deceased was traveling as a pillion rider on

motorcycle bearing registration No.MH-10-AS-7326 and they were proceeding from Chadchan to Umadi. The rider of the motorcycle was driving the motorcycle in high and excessive speed and in rash and negligent manner, when they were going on suddenly 2 stray dogs came across the motorcycle, rider of the motorcycle applied brakes but the motorcycle slipped on road, due to which the deceased was thrown on the tar road and he sustained fatal injuries. The deceased was admitted in Wanless Hospital, Miraj, but during the treatment he died.

6. To prove the negligence of the rider of the motorcycle, the Claimant's have relied on police papers. The FIR was lodged on 12th January 2013.

7. It is contention of the learned counsel for the Respondent's-Claimant's that the deceased was admitted in the hospital, hence, immediately police complaint could not be lodged. The Opponent No.3-Insurance Company has examined Dr. Ravindra Hattali. He has stated that the deceased was brought to his hospital in one jeep when he checked the deceased he told the person's accompanied him to take him to big hospital.

This witness inquired with them what happened with him, how he got injured. The said person's told him that he got injured as he fell from the two wheeler bike. In cross-examination he admitted that the history of the patient was given he was fallen from motorcycle. The patient was pillion rider on the motorcycle. The Appellant examined Dr.Rajaram Gurav-D.W.3. He has stated that the deceased Shankar was referred to him by Dr.Ravindra Hattalli. The history of the patient was that he was travelling on the motorcycle, he sustained injuries. He has filed case papers on record, it is at Exhibit-83. In cross-examination he admitted that when patient was brought in his hospital, he was unconscious. In the case paper it is not mentioned who was riding the motorcycle. He further clarified that while making the note in case he mentioned as "fall self". When there are two vehicles involved, I note as "road traffic accident". The case papers are at Exhibit-83. From these papers it cannot be made out that the injuries sustained by the deceased as he himself was driving the vehicle when the accident took place. The case history was not given by deceased as he was unconscious. In my view, it appears from record that, immediately after the accident the deceased was admitted in the hospital. He died while taking treatment. In postmortem report of the deceased, which is at Exhibit-40 shows that the history of injuries had shows that "falling from the motorcycle", road traffic accident. This postmortem report is of 24th December 2012 . This postmortem report shows that deceased died due to accident, thereafter, also after 18 days FIR was lodged. It shows that, it was not deliberate delay but due to mental shock of the death of the deceased, as well as rider of the motorcycle was brother of the deceased, hence, the family members of the deceased may not be in a position to lodge complaint against their family member. It cannot be said that there was false involvement of the vehicle DW-2 and DW-3 doctors examined by the Appellant and their evidence shows that when deceased was brought to their hospital, the history of his injuries were given that fallen from motorcycle. Hence, though there is delay in lodging FIR, it cannot be doubted. As police papers produced on record and in the evidence it has come on record that the deceased died due to road accident. Hence, I do not see merit in the contention that there is 42 days delay in lodging the FIR.

8. It is contention of the learned counsel for the Appellant that the Tribunal has considered medical expenses without any evidence on record. To prove the medical expenses the Claimant's have examined Sumanraj PW-3 at Exhibit-68. He has stated that the deceased was admitted in their hospital from 2nd December 2012 till 24th December 2012. He has produced hospital bills and papers which are at Exhibit-70/1 and 70/80 and Exhibit-35/84 and 35/85 and Exhibit-71/1 and 71/2. Nothing elicited in the cross-examination of this witness. This witness has not stated about the specific amount. Hence, I am considering medical bills of Rs.2 lakhs. The Tribunal has awarded amount of Rs.3,75,000/- as consortium amount. In my view, it is on higher side. As per view of Hon'ble Apex Court in case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram*[1]*,** each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of

1 2018 ACJ 2782 (SC)

estate. There are three Claimants.

9. The Tribunal has awarded 50% future prospects. At the time of the accident the deceased was 50 years old and he was permanent in service. As per view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. V/s. Pranay Sethi***[2]***,*** the Claimant's are entitled for 30% future prospects. It is contention of the learned counsel for the Appellant that the rate of interest is awarded 9% it is on higher side. I am considering it @ 7.5%. Considering these calculations the Claimants are entitled for following compensation.

Particulars	Amount
Monthly Income	Rs.26,586.00
Annual Income (Notional Income X 12 months)	Rs.3,19,032.00
1/4th Deduction	Rs.79,758.00
Add : 30% Future Prospects	Rs.71,782.00
Multiplier 13 (Rs.3,11,056 X 13)	Rs.40,43,728.00
Consortium (Rs.48,000 X 4)	Rs.1,92,000.00
Loss of Estate	Rs.18,000.00
Funeral Expenses	Rs.18,000.00
Medical bills	Rs.2,00,000.00

2 2017 ACJ 2700 (SC)

Total	**Rs.44,71,728.00**
Awarded by Tribunal	Rs.48,03,640.00
Difference	**Rs.3,31,912.00**

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

ORDER

(i) The Appeal is partly allowed.

(ii) The Appellant-Insurance Company is permitted to withdraw Rs.3,31,912/- with proportionate interest.

(iii) The Appellant is permitted to withdraw excess interest amount.

(iv) The Claimant's are permitted to withdraw balance deposited amount along with accrued interest.

(v) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(vi) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)