

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1321 OF 2012

1	Vishnu Gunda Kumbhar Age 68 years, Occ. Agriculture.		
2	Yogesh Bharat Kumbhar Age 16 years, Occ. Education		
3	Girish Bharat Kumbhar Age 9 years, Occ. Education		
4	Jijabai Vishnu Kumbhar Age – 63, Occu. Household All are residing at Narsingpur, Tal. Walva, Dist. Sangli, (Nos. 2 to 3 are minors through their guardian No.1)	...	Appellants (Orig. Claimants)
	Versus		
1	Pundlik Ramchandra Lokhande, Age-Adult, Occu. Business, R/o. Tulsi Nilaya, "C" Block, Vidyanagar Haveri, Tal. Haveri, Karnataka, State – 581 110.		
2	The New India Insurance Co. Ltd., Gupta Building, Ashok Circle, Ranibennur, Karnataka State	...	Respondents

Mr. Tejpal S. Ingale along with Ms. Priyanka Babar, Advocate for the Appellants.

Mr. Sujit Padarat i/b. Mr. Sandeep Waghmare, Advocate for the Respondent No.1.

Mr. Ketan Joshi, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st FEBRUARY, 2024.

Oral Judgment :

1. By way of this appeal, the claimants are seeking enhancement of compensation.

2. It is the contention of learned counsel for the appellants/claimants that the deceased was BAMS doctor. He was running a hospital but the Tribunal has considered his monthly income at Rs.15,000/- per month, which is on lower side. Learned counsel further submitted that the Tribunal has not awarded future prospects while awarding compensation and the Tribunal has deducted $\frac{1}{2}$ amount for personal expenses, it should be $\frac{1}{4}$ th as there are four claimants. Learned counsel further submitted that the consortium amount is awarded on lower side, it be awarded. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent No.2- Insurance Company that the accident occurred due to sole negligence of the deceased as he tried to cross the highway, hence, contributory negligence of 50% considered by the Tribunal is proper. He further submitted that while passing the order, the Tribunal has considered all the aspects and, on that basis, the judgment and order is passed. No interference is required in it. Learned counsel further submitted that no

evidence was produced on record to prove that the deceased was earning Rs.15,000/- per month.

4. It is contention of learned counsel for respondent No.1-owner of the vehicle that appropriate order be passed.

5. I have heard all learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Sangli (for short "the Tribunal").

6. It is claimants' case that on 7th December 2005, the deceased was going on his scooter with his wife and his son Girish from Narsinhpur to Karad, when he was turning to enter in to the city of Karad on Zebra crossing at that time truck No.K-25-C-8585 came from backside. The said truck was in high and excessive speed. The driver of the said truck was driving it negligently and gave dash to the scooter of the deceased. Due to the said dash, the deceased and his wife sustained injuries and succumbed to injuries.

6.1. To prove the income of the deceased, the claimants have examined claimant No.1-Vishnu Kumbhar. He has stated that the deceased was his son. He further stated that the deceased and his wife were running a ten bedded hospital by name "Suyog Hospital". In cross-examination, he has admitted that he is not aware whether the deceased was paying income tax or not. In support of the evidence of PW1, the claimants examined PW2-Vaibhav Kamble, who was working as a Compounder, in the hospital of the deceased. He has stated that he

knew deceased and Dr. Smita, wife of the deceased. He was working with them as a compounder, since three years before the accident. The deceased and his wife were running hospital by name "Suyog Hospital" in Shivnagar. This witness was doing duty for 12 hours and he was getting a salary of Rs.1500/- per month. Two more nurses were working in that hospital. The hospital was ten bedded hospital. In cross-examination, this witness admitted that the deceased and his wife were practising separately but in the same building. Nothing elicited in his cross-examination to disbelieve his evidence. Considering the evidence on record, the Tribunal has considered monthly income of the deceased at Rs.15,000/- per month. In my view, it is on lower side. It has come on record that the deceased was BAMS Doctor and he was running a ten bedded hospital. In their hospital, one compounder and two nurses were working. They were paying salary to these persons. Considering the evidence on record, I am considering Rs.16,000/- as monthly notional income of the deceased.

6.2. While calculating the compensation, the Tribunal has deducted 1/2th amount for personal expenses. The deceased was married, there are four claimants, it should be 1/4th. Hence, I am considering 1/4th amount for personal expenses.

6.3. 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.

6.4. 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 future prospects.

6.5. The Tribunal has considered 50% contributory negligence of the deceased. While dealing with the issue of negligence, the Tribunal has observed that the deceased, who was riding the scooter, did not take proper precaution while crossing the road. Hence, the Tribunal has considered 50% negligence of the deceased and 50% negligence of the offending truck driver. I am unable to understand the observations of the Tribunal as the offence was registered against the driver of the offending truck. Moreover, the spot-panchanama shows that the scooter of the deceased was dragged upto 27 feet, the brake marks of the truck appeared on the road. It shows that the offending truck was in high and excessive speed, the truck driver could not control the speed of the truck and gave dash to the scooter of the deceased, it was dragged up to 27 feet and brake marks had appeared on the road. It shows that the accident occurred due to sole negligence of the driver of the offending truck but considering the evidence on record and deceased was crossing the road, I am considering 75% contributory negligence of the driver of the offending truck and 25% of the deceased.

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

Head		Amount
Annual Income (Rs.16,000/- x 12)	Rs.	192000.00
1/4th deductions for personal expenses	Rs.	48000.00
Total	Rs.	144000.00
25% future prospects	Rs.	36000.00
Total	Rs.	180000.00
Rs. 180000/- x 14 (multiplier)	Rs.	2520000.00
Medical Expenses	Rs.	57290.00
Loss of consortium (Rs.48000/- x 4 claimants)	Rs.	192000.00
Loss of estate	Rs.	18000.00
Funeral Expenses	Rs.	18000.00
Total Compensation	Rs.	2805290.00
Less 25% Contributory Negligence	Rs.	701323.00
Less Compensation awarded by Tribunal	Rs.	708650.00
Enhanced Compensation	Rs.	1395317.00

The claimants are entitled for enhanced amount of Rs.13,95,317/-.

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

O R D E R

1. The appeal is allowed.
2. The claimants are entitled for enhanced amount of Rs. 13,95,317/-@ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of

this amount, Rs.2,28,000/- 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.

3. The respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.
4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
8. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)