

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 533 OF 2018

Oriental Insurance Company Ltd.  
Nilkanth Prestige, Nityanand Marg,  
Pioneer Society, Thane Naka, Panvel,  
Dist:- Panvel, Through Claims Hub  
M.R.O.2, SBI Building Annexe, 3<sup>rd</sup>  
floor, Bank Street, Fort, Mumbai – 23.

....Appellant

V/s.

1.Puja Pravin Sheth

....Respondents

age: 46 yrs. Occu:- Household work,  
for herself and as guardian and natural  
mother of Applicants No. 2 and 3.

2. Pranjali Pravin Sheth

Age about: 17 yrs, Occu: Education

3. Prajakta Pravin Sheth,

Age: 17 yrs, Occ: Education,

All R/o. Reliance Tonwship, B/112,  
Nagothane, Tal, Roha, Dist:- Raigad.

4. Bhagwandas Velji Sethia

Age: 50 years, Occu: Business

R/o. Apolo Consumering Turbhe  
Stores Thane, Belapur Road, Thane.

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Smt S. S. Dwivedi, for the Appellant.

Mr. Nitesh Bhutekar, a/w. Aniket Nagare, for the  
Respondent Nos. 1 to 4.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 16<sup>th</sup> FEBRUARY, 2024

**ORAL JUDGMENT:-**

1. The issue involved in this Appeal is accident occurred due to negligence of the deceased.

2. It is contention of the learned counsel for the Appellant-Insurance Company that accident is occurred due to sole negligence of the deceased but this fact is not considered by the Tribunal. To prove the defence, the Appellant-Insurance Company has examined the driver of offending vehicle, he has stated that accident occurred due to negligence of the deceased. This fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondents-Claimants that driver of the offending vehicle gave dash to the motorcycle of the deceased when he was proceeding on the road. The offending vehicle was on high and excessive speed. The spot panchanama shows negligence of driver of the offending vehicle. While passing the order, the Tribunal has considered all the aspect. Learned counsel further submitted that the Tribunal has awarded consortium

amount on higher side.

4. I have heard both learned counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal, Mangaon, Raigad [“The Tribunal” for short].

5. It is the Claimants’ case that on 22<sup>nd</sup> September, 2014 at 9.00 a.m. deceased- Pravin Sheth was proceeding on his motorcycle bearing No. MH-06/BC-2890 from Nagothane towards Mahad by Mumbai-Goa Highway. When his motorcycle reached at Vighavali Phata, Truck No. MH-04/C-964 came from his backside. The said truck was in high and excessive speed and the Driver of the said truck was driving the same in rash and negligent manner. The said truck gave dash to motorcycle of the deceased. Due to which, Pravin Sheth received grievous injuries and died on the spot. Offence was registered against the driver of the offending truck.

6. It is the contention of the learned counsel for the Appellant-Insurance Company that accident occurred due to negligence of the deceased. To prove his defence, the

Appellant examined, the driver of the offending truck Triveni Prasad Mishra DW-1. He has stated that the motorcycle of the deceased and his truck were proceeding on Mumbai-Goa Highway, in same direction, near village Vighavali Phata, the deceased who was riding on motorcycle tried to overtake his truck, while doing it, he suddenly accelerated his speed and came to wrong side in violation of traffic rules. He further stated that deceased could not control his motorcycle and the same was speeded and came under the rear wheel of the truck. He further stated that he immediately stopped his truck. In cross-examination, he admitted that at Vighavali Phata, there are speed breaker. Therefore, vehicles are required to be drive in slow speed. He admitted that offence was registered against him by the police and charge-sheet is filed against him.

7. While dealing with the issue of negligence, the Tribunal has observed that F.I.R. Exhibit 25 goes to show that Police Nike H. S. Jamdade held the inquiry of the said accident and on the basis of inquiry, he concluded that the

truck driver drove said truck in rash and negligent manner and took his truck on the left side of the road and due to that, motorcycle came under the rear wheel of the truck. The Tribunal further observed that after investigation charge-sheet is filed against the truck driver. The spot panchanama Exhibit 26 shows that the offending truck was standing on the Eastern side facing towards the Southern side. After carefully considering the contents of the spot panchanama Exh. 26 and considering the standing position of truck as well as condition of the motorcycle, it supports the Claimants' case that accident occurred due to negligence of the offending truck driver. I do not find infirmity in it. In my view, the sketch of the spot panchanama which is at Exhibit 26, shows that the motorcycle was lying behind 15 fts of the truck. It shows that after giving dash, the truck went ahead. It shows that the truck was in excessive and high speed or the position of the motorcycle shows that it was on the left side of the road. It proves that accident occurred due to negligence of the truck driver. I do not see

merit in the contention that accident occurred due to negligence of the deceased.

8. The learned counsel for the Appellant submits that, the Tribunal has awarded total consortium amount of Rs.2,75,000/- it should be Rs.1,92,000/-. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram<sup>1</sup>*, each claimant is entitled for Rs.48,000/-, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. There are four Claimants, it comes to Rs.2,28,000/-. If this amount deducts from amount of Rs.2,75,000/-, it comes to Rs.47,000/-. It is excess amount. The Appellant is entitled for refund of Rs.47,000/-. The Tribunal was awarded interest @ 10% on compensation amount. In my view, it is on higher side. Hence, I am considering @7.5% interest on compensation amount.

9. In view of above, I pass following order:

### **ORDER**

- i. The Appeal is partly allowed.
- ii. The Appellant is permitted to withdraw

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Rs.47,000/- with proportionate interest out off deposited amount.

- iii. The Claimants are permitted to withdraw Rs.1,18,20,672/- @ 7.5% interest per annum from the date of filing claim Petition till realization of amount.
- iv. The share of Respondent No.4 who is died, be distributed equally amongst the Claimants.
- v. All pending Civil/Interim Applications are disposed of.

**(SHIVKUMAR DIGE, J.)**