IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1237 OF 2023

Bajaj Allianz General Insurance Co. Ltd, }
Registered Office at 603, 6th Floor, BSEL }
Tech Park, Plot No.36/5A, Sector-30A, }
Opponent Vashi Railway Station, Vashi, Navi }
Mumbai. } **...Appellant**

Versus

1. Smt.Mangal Mahadeo Salunkhe }
Age-57 years. }
2. Mr.Yogesh Mahadeo Salunkhe }
Ag-32 years. } **...Respondents**
Respondent Nos.1 and 2 R/at B/3/37/2/2, } (Res. Nos.1
MSEB Colony, Sector-15, Vashi Navi } and 2 are
Mumbai. } original
} Claimant &
3. Abhishek Brahamdutt Khullar } Resp No.3 is
Plot No.61, Sector No.29, Parshik Hill, CBD } original Res.
Belapur, Navi Mumbai. } No.1)
}

Mr.Sarthak S. Diwan, for the Appellant.
Mr.S.R. Gupta, for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th JANUARY 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal are, there was contributory negligence of the deceased in the said accident, at the time of the accident the driver of the offending vehicle was not holding effective and valid driving licenses, income of deceased is considered on higher side and rate of interest is considered on higher side.

2. It is contention of the learned counsel for the Appellant that, the deceased was crossing the road, when accident occurred. There was contributory negligence of the deceased in the said accident, but the Tribunal has not considered this fact. The learned counsel further submitted that, at the time of the accident the driver of the offending car was not holding effective and valid driving license. The learned counsel further submitted that, the Tribunal has considered monthly income of deceased on higher side, which is not proper. The learned counsel further submitted that, the Tribunal has awarded interest @ 8% per annum on compensation amount, which is on higher side.

Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondents-Claimants that to prove the negligence of the deceased no witness was examined. The learned counsel further submitted that, to prove that driver of the offending car was not holding valid and effective licenses no witness was examined. The learned counsel further submitted that, the deceased was working in semi government company and was drawing salary of Rs.60,000/- but after deducting Income Tax the Tribunal has considered monthly income of deceased at Rs.46,997/-, which is proper. The judgment and order passed by the Tribunal is legal and valid, hence, no interference is required in it.

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

5. It is Claimant's case that, on 6th November 2015 at about 8.30 p.m., when the deceased was crossing the road at Sion-Panvel Highway near Trubhe bridge bus stop, at relevant time motor car bearing registration No.MH-43-R-9468 came

from Panvel side proceeding towards Mumbai in high speed, rash and negligent manner without taking proper care and precaution of road dashed the deceased. Due to said dash, deceased sustained injuries and succumbed to injuries.

6. It is contention of the learned counsel for the Appellant that, accident occurred due to sole negligence of the deceased as he was crossing the road.

7. While dealing with this issue the Tribunal has observed that, accident took place at 8.30 p.m. There was no material on record to show that, there was zebra crossing and signal at the spot of incident. Nothing produced on record to prove that, the deceased was responsible for the said accident. Therefore, the Tribunal has considered negligence of the driver of offending car. I do not find infirmity in it.

8. In my view, to prove the negligence of the deceased the best witness was driver of the offending car who dashed the deceased, but he has not been examined as a witness by the Appellant-Insurance Company. The offence was registered against the driver of the offending car. The Police paper shows

the negligence of the driver of the offending car. Without any evidence on record this Court cannot accept the defence taken by the Appellant-Insurance Company. Hence, I do not see merit in the contention that, accident occurred due to negligence of the deceased.

9. It is contention of the learned counsel for the Appellant that, driver of the offending car was not holding effective and valid driving licenses at the time of the accident. But to prove this defence no evidence produced on record. Hence, I do not see merit in it.

10. To prove the income of deceased the Claimant's have examined PW-1 Mangal Salunke, wife of the deceased. She has stated that, the deceased was serving in Maharashtra State Power Generation Co. Ltd., Bandra and his monthly salary was of Rs.60,000/- per month. In support of her evidence the Claimant's have examined PW-2 Randhirkumar Pathak, Senior Manger (HR), Maharashtra State Power Generation Co. Ltd. He has stated that, the deceased had joined the Company in the year 1979 and at the time of the death his salary was Rs.51,723/-, after

deducting Income Tax of Rs.4,526/- and professional tax of Rs.200/-, the Tribunal has considered monthly income of deceased at Rs.46,997/- per month. I do not find infirmity in it. Rate of interest awarded by the Tribunal is proper.

11. The Tribunal has awarded consortium amount to Applicant No.1 only. As per view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram[1],*** each Claimant is entitled for consortium amount of Rs.48,000/-. There are two Claimant's. The Tribunal has awarded consortium for Applicant No.1. Hence I am considering Rs.48,000/- for other Claimant.

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

ORDER

(i) The Appeal is dismissed.

(ii) The Claimant's are entitled for enhanced amount of Rs.48,000/- @ 7.5% per annum from1st November 2017, till realization of the amount.

1 *2018 ACJ 2782 (SC)*

(iii) The Appellant-Insurance Company shall deposit the enhanced amount along with interest within six weeks, after receipt of the Order.

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

(v) The statutory amount alongwith interest be transferred to the Tribunal. The parties are at liberty to withdraw it.

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

(SHIVKUMAR DIGE, J.)