

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 638 OF 2020

	Reliance General Insurance Co. Ltd. 4 th Floor, Chintamani Avenue, Off. Western Express Highway, Next to Virwani Industrial, Goregaon (W), Mumbai	...	Appellant (Org. Opp. N.1)
	versus		
1	Surekha Sitaram More Age 50 years		
2	Sushil Sitaram More Age 30 years Residing at room No.-4/B, Balaji Nagar, 1-2, Sector 25, Near NOCIL Naka, Ghansoli, Navi Mumbai – 400 701		Respondents (Resp. 1 & 2 Org. Applicants)
3	Navnath D. Dhabekar At post Rath Khurd, Taluka-Roha District-Raigad	...	Respondent (Org. Insured/Opp. Party No.1)

Ms. Yashika Jain i/b. Ms. Kalpana R. Trivedi, Advocate for the Appellant.
 Mr. Amol Gatne i/b. Ms. Swati Uday Mehta, Advocate for Respondent
 No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 26th MARCH, 2024.

Oral Judgment :

- The issues involved in this appeal is that the accident occurred due to sole negligence of deceased and the income of the deceased is considered on higher side.

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2. It is contention of learned counsel for the appellant-Insurance Company that there was head-on collision between two vehicles i.e. motor cycle of the deceased and the offending truck but the Tribunal has fixed the liability of the accident on the driver of the offending truck, which is erroneous. Learned counsel further submitted that the Tribunal has considered ad-hoc allowances as a part of salary, which is erroneous, hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos.1 and 2/claimants that the accident occurred due to sole negligence of the driver of the offending truck as he gave dash to the motor-cycle of the deceased. An offence was registered against the driver of the offending truck. To prove the negligence of the deceased, the driver of the offending truck did not enter into the witness box. Learned counsel further submitted that, at the time of the accident, the deceased was working in the office of Securens System Pvt.Ltd. and he was getting monthly salary of Rs.18500/- and after deducting allowances, the Tribunal has considered his monthly income at Rs.13800/-, which is proper. Learned counsel further submitted that the Tribunal has not awarded consortium amount to the claimants, it be awarded. Hence, requested to dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short "the Tribunal").

5. It is claimants' case that on 8th June 2015 at about 8.15 pm, deceased was riding motor-cycle bearing No.MH-04-AQ-6504. One Prashant Parit was the pillion-rider. The deceased was riding the motor-cycle cautiously and by observing traffic rules. When the motorcycle reached in the vicinity of village Sukeli, Taluka Roha, a truck bearing No. MH-06-AC-6111 came from the opposite direction in high speed, in rash and negligent manner, and gave a violent dash to the motorcylcle. Due to collision, the motor-cycle as well as the truck went into deep valley and caught fire. The deceased and the pillion rider charred to death. An offence was registered against the driver of the offending truck.

5.1. To prove the negligence of the truck driver, the claimants relied upon police papers. The appellant- insurance company has not examined the driver of the truck to prove the negligence of the deceased. While dealing with the issue of negligence, the Tribunal has observed that the contents of FIR at Exhibit-29 and spot-panchanama at Exhibit-30 shows that the offending truck went to the wrong side of the road and knocked down the deceased who was riding the motor-cycle. The spot-panchanama shows that there were brake marks of the offending truck stretching for about 60 feet and the deceased was dragged for a considerable distance, it shows that the offending truck was in high and excessive speed. I do not find infirmity in the observations of the Tribunal. In my view, the police papers produced on record shows that the accident occurred due to sole negligence of the driver of the offending truck.

Moreover, the driver of the offending truck did not step into the witness box to prove the negligence of the deceased, hence, I do not see merit in the contention that the accident occurred due to negligence of the deceased.

5.2. To prove the income of deceased, the claimants have examined claimant No.1- Sushil More. He has stated that the deceased was working in Securens System Private Limited and he was drawing salary of Rs.18,500/-. In support of the evidence of CW-1, the claimants have examined CW2-Tushar Joshi – Senior Monitoring Executive. He has stated that deceased was working in their company and was drawing salary of Rs.18,500/-. Nothing elicited in cross-examination of this witness to disbelieve his evidence.

5.3. While dealing with the issue of income of the deceased, the Tribunal has observed that the salary certificate produced on record indicates that the deceased was working in private company and he was drawing ad-hoc allowances to the tune of Rs.5200/- after deducting 50% of the ad-hoc allowances, the net income of the deceased considered by the Tribunal at Rs.13,800/-per month. I do not find infirmity in it. In my view, the salary slip, which is at Exhibit-46 shows that deceased was drawing salary at Rs.17,919/-. After deducting allowances, the Tribunal has considered it at Rs.13,800/- per month, which is proper.

5.4. The Tribunal has not awarded consortium amount. 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. There are two claimants, they are entitled for Rs.96000/- as consortium amount.

6. Considering the above reasons, I pass following order :

ORDER

1. The appeal is dismissed. No order as to cost.
2. The claimants are entitled for Rs.96000/- towards consortium amount @ 7.5% per annum from 1st November 2017 till realisation of the amount.
3. The appellant-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.
4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
5. The statutory amount be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
6. The claimants shall pay court fees on enhanced amount as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)