

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

FIRST APPEAL NO. 459 OF 2011

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1. Asha Ramchandra Pawar)
Widow of deceased Shri. Ramchandra Pawar)
Aged about 40 years,)
Occupation: Housewife,)
2. Supriya Ramchandra Pawar)
Daughter of deceased Shri. Ramchandra Pawar)
Aged about 20 years,)
Occupation : Student.)
3. Soniya Ramchandra Pawar)
Daughter of deceased Shri. Ramchandra Pawar)
Aged about 18 years,)
Occupation: Student)
4. Master Suraj Ramchandra Pawar)
Son of deceased Shri. Ramchandra Pawar)
Aged about 14 years,)
Occupation : Student)
- All are residing at Room No.15,)

Building No.5, New Police Colony,
Thane, Dist. Thane.

)
)Appellants
(Orig. Complainants)

Versus

1. Mr. Sohanlal Shankarlal Sharma,
C/o. Rajasthan Gujarat Road Lines,
Chanderiya, Chittorgarh,
Rajasthan – 312001
(Owner of Traillor bearing
No. RJ-06-/G-4177)

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2. M/s. Choramandalam Ms.
General Insurance Co. Ltd.
Registered Office at:
Dare House, 2nd Floor,
No.234, N. S. C. Bose Road,
CHENNAI – 600 001

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)

)....Respondents
(Orig. Opponents)

Mr. I. S. Thakur i/b Global Juris Consults, Advocate for the
Appellants.

Ms. Yogita M. Deshmukh, Advocate for the Respondent No.1.

Mr. Rajesh Kanojia i/b Res Juris, Advocate for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th MARCH, 2024.

Oral Judgment. :

1. This appeal is preferred by the Appellants/Claimants against the dismissal of claim petition.

2. The brief facts of the case are as follows.

3. The deceased Ramchandra Pawar was Traffic Police Constable. On 7th April, 2007, he was on duty at Parisk Reti Bunder Naka, Traffic police chowki and he was controlling the traffic proceedings towards Mumbra road. The road leading towards Mumbra was 'No Entry' road for heavy vehicles and the heavy goods vehicles were prohibited from proceeding by the said road. At 9:30 p.m., a heavy goods vehicle i.e trailer bearing registration No. RJ-06-G-4177 entered in the Mumbra road, which was 'No Entry zone' for heavy vehicles. Therefore, Ramchandra Pawar gave signal to the driver of trailer to stop it but, trailer proceeded further. Therefore, Ramchandra Pawar chased the trailer along with one Mr. Sanjiv Kirtane on his Hero Honda motorbike bearing registration No. MH-04-

BT-2075. He overtook the trailer and gave signal to the driver of the trailer to stop it. Deceased Ramchandra then asked the cleaner of the said trailer to turn back the trailer but, the cleaner did not respond to it. Therefore, Ramchandra approached the driver of the trailer. The driver of the trailer had not reversed back the trailer, on the contrary, the driver of the trailer deliberately knocked down Ramchandra with an intention to kill him and thereafter fled away with vehicle. Sanjiv Kirtane then chased the trailer with the help of 2 to 3 rickshaw drivers and stopped it. The driver of the truck fled away from the spot. The police registered offence against the driver of the offending trailer under Section 302, 353 of the Indian Penal Code (for short “the IPC”) and under Section 17(1), 177 of Motor Vehicles Act.

4. It is contention of learned counsel for the Appellants/Claimants that the death of of deceased is caused due to accident but this fact is not considered by the Tribunal and has dismissed the claim petition on the ground that the driver of offending trailer intentionally killed the deceased, hence, it would not come under the accident. Learned counsel further submitted that at the time of accident, income of the deceased was at Rs.9,421/- per

month. He was 42 years old at the time of accident. Hence, requested to allow the Appeal. He relied on *(1) United India Insurance Co. Ltd. Vs. Laxmamma & Ors. 2012 AIR (c) 2817, (2) National Insurance Co. Ltd. Vs. Abhaysing Pratapsing Waghela & Ors. 2008 (9) SCC 133, (3) HDFC ERGO General Insurance Company Limited Vs. nayajoddin Nijamuddin & Ors. 2023 DGLS (Bom.) 4792, (4) Smt. Rita Devi & Ors. Vs. New India Assurance Co. Ltd. & Anr. 2000 (3) Supreme 698, (5) Dipa Ganguly & Anr. Vs. New India Assurance Co. Ltd. & Anr. (2010) ACC 532 (DB), (6) Smt. Renu Devi & Ors. Vs. Gufran Ahmad & Ors. Allahabad High Court and (7) Kalim Khan & Ors. Vs. Fimidabee and Ors. 2018 (7) SCC 687.*

5. It is contention of learned counsel for the Respondent No.2/Insurance Company that the death of the deceased is not caused by the accident but, he was knocked down by the driver of offending trailer intentionally. So, it would not come under the definition of accident. The Act of the driver was deliberate. The offence under section 302 of IPC is registered against the driver of offending trailer. The Tribunal has considered all the aspects while dismissing the claim petition hence, no interference is required in it. He relied on *Smt.*

Rita Devi and Ors. vs. New India Assurance Co. Ltd. And Anr. 2000 (3) SCC 698 and Oriental Insurance Co. Ltd. vs. Premlata Shukla & Ors. (15th May 2007).

6. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short “the Tribunal”).

7. To prove the negligence of the driver of offending trailer, the Claimants have examined Sanjiv Kirtane at Exhibit – 45. He has stated that at the time of accident, he was walking on the road, at that time, a trailer was passing by the road, and he saw that police head constable was blowing whistle to that trailer therefore, this witness went towards police constable Ramchandra Pawar, on inquiry, Shri. Pawar told to this witness that there was a prohibition to drive heavy vehicles towards Mumbra side but the trailer has gone by ‘No Entry Zone’ therefore, Shri. Pawar requested this witness to accompany him to follow the trailer. Thereafter, Shri. Pawar started his motorcycle, this witness sat on it as pillion rider and they started chasing the trailer. They stopped the trailer near Dhanraj Seth plot. Then Shri.

Pawar went towards the trailer and directed the driver of the trailer to turn his trailer. Thereafter, Shri. Pawar went towards left side of the trailer from its front side. At that time, the driver of trailer started the trailer and gave dash to Shri. Pawar therefore, Shri. Pawar fell on the road and driver of the trailer fled away with the trailer. This witness saw the registration number of trailer. This witness chased the trailer with the help of the motorcycle of Shri. Pawar and 2 to 3 auto rickshaw drivers. The trailer was stopped and driver fled away. This witness gave complaint about the said accident to the police. In cross-examination, this witness has denied the suggestion that it is not true that the driver of the trailer had intentionally given dash to the deceased Shri. Pawar.

8. No witness has been examined by the owner of the vehicle or insurance company to prove that the death of the deceased was not due to accident. While dealing with the issue of negligence or accident, the Tribunal has observed that death of the deceased Shri. Pawar was caused due to act of driver of offending trailer, with intention to kill Shri. Pawar. The Claimants have failed to prove that deceased Ramchandra died in a motor vehicle accident and because

of the rash and negligence driving of the driver of offending trailer. The Tribunal has further observed that the Act of causing the death of the deceased Ramchandra was intentional and it is a case of murder and for that purpose, driver of the trailer was prosecuted for the offence punishable under Section 302 of IPC. Therefore, the application of the Claimant under Section 166 of the Motor Vehicles Act is not maintainable as, it is incumbent on the Claimants to prove the rashness and negligence on the part of the driver of the offending trailer for claiming compensation under section 166 of the MV Act. Hence, the Tribunal has come to conclusion that the Claimants are not entitled for compensation and has dismissed the claim petition. I am unable to understand the observations of the Tribunal, as admittedly, the death of Shri. Pawar is caused by the dash of the offending trailer.

9. As per Section 147 (5) of MV Act, the insurance company is liable to indemnify to third party. In the present case, though, offence is registered against the driver of offending vehicle under section 302 of of IPC but, the said case is pending before the sessions Court. Mere filing an FIR, cannot be a ground to consider that the said offence is proved against the driver of offending vehicle. From the contents of the FIR,

it reveals that deceased was controlling the traffic and when he saw that driver of offending trailer had gone in 'No Entry Zone' he tried to stop him, at that time, instead of stopping the trailer, driver had started the vehicle and tried to flee away, in that attempt, he knocked down the deceased. Whether his act was intentional or not, cannot be decided by this Court. Admittedly, deceased died due to dash of the offending trailer. The PW-2, who was eye witness to the incident, has stated that in attempt to flee from the spot, the driver knocked down the deceased-Pawar and, in cross-examination, he has admitted that the act of the driver was not intentional. It shows that the driver had no intention to kill the deceased, it was rash and negligent act of the driver of offending vehicle. As per the view of Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Chamundeswari & Ors. C.A. @ SLP(c) No.4705 OF 2019***, the Court has to consider the evidence given before the Court rather than contents mentioned in the FIR. Hence, I hold that, as death of the deceased is caused due to the dash of offending trailer and at the time of accident, offending trailer was insured with the Respondent No.2/Insurance Company, the Respondent No.2/Insurance Company is liable to pay the compensation.

10. To prove the income of the deceased, the Claimants have examined Claimant No.1 wife of the deceased, she has stated that deceased was working as police constable and he was getting salary of Rs.9,615/- per month. Nothing elicited in her cross-examination to disbelieve her evidence. After deducting professional tax, it comes to Rs.9,421/-, I am considering this amount as monthly income of the deceased. At the time of accident, deceased was 42 year old. As per the view of Hon'ble Apex Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and Ors. (2017) 16 SCC 680***, the claimants are entitled for 30% future prospects. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Company vs. Nanu Ram (2018 SCC 1546)***, each claimant is entitled to Rs.48,000/- for consortium amount and Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

11. I have gone through the case laws cited by the learned counsel for the Respondent No.2/Insurance Company. The facts of cited cases and case in hand are different, hence, not applicable to the present case. Moreover, in the present case, the eye witness has stated that the act of the driver was not intentional.

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

Monthly Income	Rs.9,421/-
Add: 30% Future Prospects	Rs.2,827/-
Total Income	Rs.12,249/-
Income Tax Deduction	-----
Professional Tax Deduction	-----
Income After Tax Deductions	12,249/-
Personal deduction	Rs.3,062/-
Income After All Deductions	Rs.9,187/-
Annual Income	Rs.1,10,244/-
Multiplier 14	Rs.15,43,416/-
Loss of Estate	Rs.18,000/-
Funeral Expenses	Rs.18,000/-
Consortium Rs.48,000/- X 4	Rs.1,92,000/-
Total compensation	Rs.17,77,416/-

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

ORDER

- i. Appeal is allowed.
- ii. The claimants are entitled for compensation of
Rs.17,77,416/- @ 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 @7.5% interest on this amount from 1st November, 2017, till realisation of the amount.

- iii. The Respondent/Insurance Company shall deposit the compensation amount along with accrued interest thereon, within eight weeks after receipt of the order.
 - iv. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - v. The claimants shall pay the deficit Court fee on compensation amount as per Rule.
14. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)