

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

FIRST APPEAL NO. 927 OF 2018

1. Smt.Chayabai Rjau Pawar }
Aged 31 years, Occ : Housewife }
2. Sunil Raju Pawar }
Aged – 14 years, Occ: Education }
3. Reshma Raju pawar }
Aged – 13 years, Occ : Education }
4. Sushma Raju Pawar }
Aged – 10 years, Occ : Education }
(Appellant Nos.2 to 4 are minors }
represented through their guardian }
Appellant No.1) }
All are R/at Bhavani Peth, Maddi Vasti, }
Vadar Galli, Solapur }

....Appellants

V/s.

1. Shri.Changdeo Dnyaneshwar Jadhav }
Age- Adult, Occ : Trader, }
R/at Subhash Nagar, Barshi, Taluka- }
Barshi, District-Solapur. }
2. National Insurance Co. Ltd. }
(Summons to be served on Divisional }
Manager, Solapur Division, Solapur) }

....Respondents

Mr.Mohansinh U. Rajpur a/w Mr.Sachin A. Ambulkar, for the
Appellants.

Ms.Shalini Shankar, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th JANUARY 2024

ORAL JUDGMENT :-

. This appeal is preferred by the Appellant's-Claimant's against the judgment and order passed by the Motor Accident Claims Tribunal, ('The Tribunal' for short), Solapur.

2. It is contention of the learned counsel for the Appellant that, the deceased died in the accident when he was going in autorikshaw and one Indica car had given dash to the said autorikshaw. Offence was registered against the driver of the Indica car. But while deciding the Claim Petition the Tribunal has observed that, no sufficient evidence was produced on record to establish that deceased was died in the accident and dismissed the Claim Petition, which is not proper. The learned counsel further submitted that, deceased was 35 years old at the time of accident. He was driver on the dumper owned by Sai Samarth Stone Crusher and he was getting Rs.6,500/- per month as salary. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the

Respondent-Insurance Company that, initially offence was registered against unknown vehicle. There is dispute about involvement of the Indica car in the said accident. The Tribunal has considered evidence produced on record and on that basis judgment and order is passed, which is legal and valid and 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), Solapur.

5. It is Claimant's case that, on 6th March 2010, the deceased was returning home in auto rickshaw bearing registration No.MH-12/BD-4435, the rickshaw reached near Pophalikar habitant, in front of house of Sahebrao Vitthal Chandanshive, it was dashed by Indica Car bearing registration No.MH-09/AQ-2704, it was coming from opposite direction in high and excessive speed and it was being driven in a rash and negligent manner. Due to dash, rickshaw had turned turtle and deceased sustained multiple bodily injuries, including injuries on both of his legs. After the dash driver of the car ran away from

the spot. The deceased succumbed to the injuries sustained in the accident. The Claim Petition was filed by the Appellant-Claimant before the Tribunal for getting compensation. The Tribunal has considered evidence on record. The Tribunal has observed that, there is sufficient evidence on record to establish that, the deceased has died in motor accident, but it is difficult to hold that Indica car must have been involved in the occurrence of the accident, since the Claimant's failed to prove involvement of the car in the occurrence of the accident. The Claimant's are not entitled for any compensation. I am unable to understand the observations of the Tribunal in respect of the involvement of Indica car. As the complaint was given by the Vijay Dhade, driver of the rickshaw, he has stated that on 6th March 2010 he was going to Tulzapur road in autorikshaw, at that time deceased had halted his rickshaw and asked him to drop him at Tulzapur. When deceased boarded in autorikshaw and they were proceeding on Tulzapur road, at that time one India car came from opposite direction in rash and negligent manner and gave dash to his autorikshaw. Due to said dash the rickshaw turned

turtle. He tried to hold the door of India car but the driver dragged him for some distance and ran away from the spot. Thereafter, he lodged complaint against the driver of the unknown Indica car. In investigation Police has arrested the driver of the offending Indica car in connection with the accident. The driver of offending car was examined as witness Sudhir Doijode at Exhibit-39. He has stated that, he had given dash to the auto rickshaw. Due to said dash, autorikshaw was turtled. As he was frightened, he fled away from the spot. This witness has accepted about the dash given to the rickshaw, in which the deceased was travelling. In my view, mere on assumption, the Tribunal has considered that, the said vehicle was not involved in the accident. Admittedly, there was accident to the autorickshaw in which the deceased was travelling. Complaint was lodged immediately after the accident. In complaint it is mentioned that dash was given by Indica car. In investigation police has arrested the driver of the Indica car. He is accepting about the happened incident.

7. The Appellant-Insurance Company has not examined

the Investigating Officer to rebut the contention of the Claimant and prove the false involvement of offending Indica car. Hence, I hold that accident occurred due to sole negligence of the driver of the Indica car. It is Claimant's case that, Claimant was working as a driver on the dumper in Sai Samarth Stone Crusher Company. He was getting salary of Rs.6,500/- per month. To prove the income of deceased the Claimant's examined employer of deceased Laxman Chougule at Exhibit-23. He has stated that, the deceased was working as a driver in his company and he was paying him Rs.6,500/- per month. Nothing elicited in his cross-examination. The Tribunal has considered monthly income of Rs.6,500/- per month. Considering the evidence on record I am considering monthly income of deceased at Rs.6,000/- per month. The Claimant's are entitled for consortium amount. As per view of the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram***¹, each Claimant is entitled for Rs.48,000/- as consortium amount and Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses. As per

1 2018 ACJ 2782 (SC)

view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. V/s. Pranay Sethi²***, the Claimants are entitled for future prospects.

8. Considering the above calculation the Claimant's are entitled for following compensation.

Particulars	Amount
Monthly Income Rs.6,000/- + 40% Future Prospects Rs.2,400/-	Rs.8,400.00
Income taken 3/4th of Total Income Income deducted for personal expenditure 1/4th of Income Rs.2100/-	Rs.6,300.00
Dependency Rs.6300/- X 12 months X 16 (Multiplier)	Rs.12,09,600.00
Consortium Rs.48,000/- each (Total 4 Claimants)	Rs.1,92,000.00
Loss of Estate	Rs.18,000.00
Total compensation	Rs.14,19,600.00

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

ORDER

- (i) The Appeal is allowed.
- (ii) The Claimants are entitled for compensation of Rs.14,19,600/- @ 7.5% interest per annum from the date of the filing of Claim Petition till realization of

² 2017 ACJ 2700 (SC)

the amount. Out of this amount Rs.2,28,000/- is consortium amount, the Claimant's are entitled @ 7.5% interest on it from 1st November 2017, till realization of the amount.

(iii) The Respondent-Insurance Company shall deposit compensation amount along with accrued interest thereon, within eight weeks from the receipt of this order.

(iv) The Claimants are permitted to withdraw the deposited amount alongwith interest.

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

(SHIVKUMAR DIGE, J.)