

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

FIRST APPEAL NO. 934 OF 2006

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1. Vasant Bhanudas Dhapate)
Age about: 47 years, Occ: Agriculturist)
2. Ratan Vasant Dhapate)
Age about: 40 years, Occ: Household)
3. Sunita Santosh Dhapate)
Aged: about 19 years, Occ: Household)
4. Kum Didi alias Aarati Santosh Dhapate)
Aged: 2 years)
Being minor through legal Guardian)
Applicant No.1.)

All residing at Anthurne, Tal. Indapur.)
Dist: Pune.)....Appellants

Versus

1. The Oriental Insurance Co. Ltd.)
321/A-2 oswal Banndhu Samaj Building)
Jawaharlal Neharu Road, Pune -42)(Orig. Opp. No.1)

2. Kalyan Jagannath Jadhav)
R/o Sakurde, Tal: Purandar,)(Orig. Opp. No.2)
Dist: Pune.)Respondents

Mr. D. D. Shinde a/w Mr. Yogesh G. Thorat i/b Mr. Uday Nighot,
Advocate for the Appellants.

Ms. Poonam Mital, Advocate for the Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4th MARCH, 2024.

Oral Judgment. :

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

2. It is contention of learned counsel for the Appellants/Claimants that deceased was the only son of Appellants. He was working in Sugar Factory as well as he was doing a milk business. He was earning Rs.7,000/- to Rs.8,000/- per month. Learned counsel further submitted that the accident occurred due to sole negligence of driver of offending water tanker but Tribunal has not considered this fact and has dismissed the claim petition, which is erroneous. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent No.1/Insurance Company that Appellants/Claimants failed to prove the negligence of driver of offending tanker. The evidence produced on record shows that accident occurred due to sole negligence of the deceased. No evidence was produced on record to prove the income of the deceased, the Tribunal has considered all the aspects and on that basis the judgment and order is passed, no interference is required in it.

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

5. It is claimants' case that on 29th September, 2003 at about 7 p.m. deceased Santosh was riding on his motorcycle in a moderate speed by observing the traffic rules and regulations along with his son, from Pune to village Anthrune Tal. Indapur. While they were proceedings on the road near village Daundaj a water tanker bearing registration No. MH-12-FA-9801 came from opposite direction in rash and negligent manner, without following the traffic rules and safety of others and gave a heavy dash to the motorcycle of the deceased. Due to said dash the deceased and his son died in the said accident. The

offence was registered against the driver of offending tanker. To prove the negligence of the driver of offending tanker, the Claimants have examined Manohar Sankpal Police Constable at Vallah Police Station at Exhibit-35. He has stated that he did enquiry in respect of the occurred accident and lodged FIR against the driver of offending tanker, it is at Exhibit-36. He further stated that accident occurred due to rash and negligent driving of the offending tanker. He has not been cross examined by the counsel of Respondent No.1/Insurance Company.

6. While dealing with the issue of negligence, the Tribunal has observed that the Claimants could not prove the negligence of the driver of offending tanker hence, the Tribunal has dismissed the claim petition. I am unable to understand the observations of the Tribunal. As, the offence is registered against the driver of offending tanker. Moreover, PW-3 police constable who has lodged FIR, has stated that FIR was lodged after making enquiry against the driver of offending tanker. The spot panchanama is at Exhibit-37, it supports the claimants' case. Moreover, the driver of tanker did not step into witness box to prove the negligence of the deceased. These facts are not considered by the Tribunal. Considering the evidence on record, I

hold that accident occurred due to sole negligence of driver of offending tanker.

7. To prove the income of the deceased, the Claimants have examined Claimant No.2 Ratan Dhapate at Exhibit-24 mother of the deceased. She has stated that the deceased was working at Chhatrapati Bhawaninagar Sugar Factory, Indapur. He was doing milk business and he was earning Rs.7,000/- to Rs.8,000/- per month. The deceased was the only earning member of his family. He was doing agricultural work and he had completed ITI course. In cross examination, she admitted that she has not produced any documents on record to show that deceased was working in Chatrapati Bhavaninagar Sugar Factory, Indiapur. In support of evidence of PW-1 the Claimants have examined PW-2 Dhanaji Dhapate, Secretary of Jagdamba Co-operative Society Milk Business at Exhibit-31. He has stated that deceased was member of their society and he was supplying milk around 45 to 50 liters and he was paying Rs.4,000 to Rs.5,000/- fortnightly to the deceased. This witness further stated that after death of the deceased milk supply from his house is stopped. Nothing elicited in the cross-examination of this witness to disbelieve his evidence. While dealing with the evidence of income of deceased,

the Tribunal has observed that no documentary evidences are produced on record to prove that deceased was earning Rs.8,000/- to Rs.9,000/- per month. Moreover, there is no evidence on record to show that the Claimants are required to sell cows due to the death of Santosh. I am unable to understand the observations of the Tribunal, as it has come on record that deceased was working in Chatrapati Bhavaninagar Sugar Factory, Indapur as well as he was doing milk business and he owned agriculture land. The 7/12 extract is at Exhibit-26. PW-2 Dhanaji Dhapte has stated that deceased was supplying milk to their co-operative society and he was paying Rs.4,000/- to Rs.5,000/- fortnightly to the deceased. He has further stated that after the death of the deceased, milk supply is stopped from their house. It shows that after the death of deceased milk supply is stopped but these facts are not considered by the Tribunal. Considering evidence on record , I am considering monthly income of deceased at Rs.8,000/- per month. As per the view of Hon'ble Apex Court in the case of *National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)*, the claimants are entitled 40% future prospects. At the time of accident, deceased was 24 years old so, proper multiplier is 18. As per the view of Hon'ble Apex Court in the case of

Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782

(SC), each claimant is entitled Rs.48,000/- for consortium amount and Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

9. Considering the above calculations, the Claimants are entitled for following compensation.

Monthly income	Rs.8,000/-
Annual Income	Rs.96,000/-
Add: 40% future prospects	Rs.1,34,400/-
¼ deductions for living expenses	Rs.33,600/-
Total	Rs.1,00,800/-
Multiplier 18 (Rs.1,00,800/- X 18)	Rs.18,14,400/-
Loss of consortium Rs.48,000/- X 4 (claimants)	Rs.1,92,000/-
Loss of estate	Rs.18,000/-
Funeral expenses	Rs.18,000/-
Total compensation	Rs.20,42,400/-

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

ORDER

- i. Appeal is allowed.
- ii. The Claimants are entitled for compensation of
Rs.20,42,400/- @ 7.5% interest from the date of
filing claim petition till realisation of the amount,

out of this amount Rs.2,28,000/- is consortium amount. On this amount, Claimants are entitled @ 7.5% interest from 1st November, 2017 till realisation of the amount.

- iii. The Respondent No.1/Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within six 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 Court's fess on enhanced amount.**

11. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)