IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1236 OF 1996

1	Sulabai Shamrao Navasare, Aged about 44 years		
2	Dipak Shamrao Navasare, Aged about 21 years, Occupation : Education.		
3	Ganesh Shamrao Navasare, Aged about 18 years, Occupation Education, All residing at Humgon, Taluka Javali, District Satara.	....	Appellants
	Versus		
1	Balkrishna Namdeo Jadhav, Aged about 40 years, Occupation driver, Residing at Khanapur, Taluka Wai, District Satara No.1 deleted vide Exhibit 15 dated 11th January 1994.		
2	Ramchandra Tukaram More, Aged about 44 years, Occupatin Truck Owner, Residing at Pandya House, Building No.6, Room No.3, 3rd Khetwadi Lane, Bombay 400 004.		
3	United Indian Insurance Company Limited, Yashoda Building, 2nd Floor, Opposite Y. C. College of Science, Satara, District : Satara.	.....	Respondents

Mr. Pradeep S. Gole, Advocate for the Appellants.
Ms. Varsha Chavan, Advocate for Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th MARCH, 2024.

Oral Judgment. :

1. This appeal is preferred by the appellants/claimants against the judgment and order passed by the Motor Accident Claims Tribunal, Satara (for short "the Tribunal").

2. It is contention of learned counsel for the appellants/claimants that, at the time of accident, the offending vehicle was insured with respondent No.3 – Insurance Company. The RTO record produced on record, shows that the offending vehicle was insured for one year but the Tribunal has considered that it was for one month, on that ground, the Tribunal has directed the owner of the vehicle to pay the compensation and has exonerated the Insurance Company. Learned counsel further submitted that the Tribunal has observed that the deceased was working with BEST Undertaking as Establishment Officer and was drawing Rs.1902.91 as gross salary and Rs.1381/- as net salary. While calculating the compensation, the Tribunal has considered monthly income of the deceased at Rs.900/- per month, which is on lower side. Learned counsel further submitted that the Tribunal has applied wrong multiplier, not awarded future prospects and has awarded consortium amount on lower side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent No.3- Insurance Company that the insurance policy of the offending vehicle was for the period of one month only. In the column of special condition of the cover note, it was mentioned that the period of insurance was for one

month only and its shows the amount of premium paid to be Rs.46/-. The column No.4 mentioned in the cover note is a clerical error. A booklet was produced on record, which is at Exhibit-135. It shows that the premium for public risk policy is at least Rs.120/-. In the present case, only Rs.46/- was paid as premium, it is only for one month. Learned counsel further submitted that the Tribunal has discussed the evidence regarding premium of policy in detail and, on that basis, the Tribunal has come to the conclusion that, at the time of the accident, the offending vehicle was not insured with the Insurance Company and has directed the owner of the offending vehicle to pay the compensation, which is proper. Learned counsel further submitted that the owner of the offending vehicle did not produce the original policy before the Tribunal, it shows that the cover not was only for one month and the Tribunal has considered this fact. Learned counsel further submitted that the income of the deceased considered by the Tribunal is proper, no evidence was produced on record to prove the income of the deceased. Hence, requested to dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. It is contention of learned counsel for the appellants that the cover note of the insured vehicle shows that the offending vehicle was insured with respondent – Insurance Company for a period of one year. To prove the said fact, the appellants have examined RTO Officer and the

RTO Officer has produced RTO extracts of the offending vehicle, which is at Exhibit-39, which shows that the offending vehicle was insured from 10th March 1987 to 9th March 1988, it was for a period of one year. To prove its defense that the offending vehicle was insured for one month only, Respondent No.3-Insurance Company has examined their investigator- Hindurao Shinde. He has stated that he has recorded the statement of the owner of the offending vehicle and the owner has stated before him that although insurance of his vehicle had expired, he had wish to insure it again but it could not be done in rush of work. While dealing with this issue, the Tribunal has observed that the statement given by the owner of the vehicle is admissible by virtue of Section 32(3) of the Indian Evidence Act. The respondent-owner was not available in spite of service of notice by the Tribunal. Hence, the cover note is for the period of one month only.

5.1. It is contention of learned counsel for the appellant that, out of the same accident, four accident claims were filed. In three accident claims, the liability of paying compensation was fixed on the insurance company, whereas in present claim petition, the insurance company has been exonerated from paying compensation. Admittedly, the respondent No.3- Insurance Company has not produced original cover note on record. The witness from RTO has stated the the insurance of the offending vehicle was for one year. Though the owner of the vehicle did not appear before the Tribunal, it cannot be said that the liability must be fixed on him as RTO witness has stated that as per their record, the insurance policy was for one year. It is contention of learned counsel for respondent No.3-Insurance Company that it was clerical error, but no application was filed before the RTO to correct the said clerical error. Moreover, out of the four claim petitions in respect of the same accident, in claim petition No.224 of 1987, the respondent No.3-Insurance Company has been held liable for payment of compensation. No documents are produced on record to show if the Insurance Company has challenged the said order or not. It is settled principle of law that the evidence produced by the RTO Office has to be considered while deciding the claim petition and RTO Extract is a public document, which shows the period of insurance was for one year, but this fact is not considered by the Tribunal, hence, I am considering that at the time of the accident, the offending vehicle was insured with respondent No.3-Insurance Company.

5.2. While dealing with the issue of income, the Tribunal has considered the income of deceased at Rs.900/- per month. As per net salary, I am considering it at Rs.1381/- per month.

5.3. While awarding compensation, the Tribunal has not awarded future prospects. As per the view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC),*** the claimants are entitled for 30% future prospects.

5.4. The Tribunal has awarded consortium amount on lower side. 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 for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

5.5. The Tribunal has multiplier of 10, it should be 14 as deceased was 42 year old at the time of the accident. Hence, I am considering multiplier of 14.

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

Particulars	Rs.	Amount
Monthly Income of the deceased	Rs.	1381.00
30% future prospects	Rs.	414.00
Total	Rs.	1795.00
1/3rd deductions towards personal expenses	Rs.	598.00
Total	Rs.	1197.00
Rs.1197/- x 12 (months) x14(multiplier)	Rs.	201096.00
Consortium (Rs.48000/- x 3 claimants)	Rs.	144000.00
Loss of Estate	Rs.	18000.00
Funeral Expenses	Rs.	18000.00
Total Compensation.		**381096.00**

5.7. The Tribunal has awarded Rs.1,20,000/-, if this amount is deducted from the amount of Rs.3,81,096/- considered by this Court, it comes to Rs.2,61,096/-. The claimants are entitled for this amount.

6. In view of above, I pass the following order :

O R D E R

1. The appeal is allowed.
2. The claimants are entitled for enhanced compensation of Rs. 2,61,096/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.1,80,000/-is consortium amount, the claimants are entitled for 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.
3. Respondent No.3-Insurance Company shall pay the compensation amount fixed by the Tribunal @ 7.5% interest per annum instead of 12% interest.
4. Respondent No.3-Insurance Company shall deposit the compensation amount along with accrued interest thereon within eight weeks from the receipt of this order.
5. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
6. The claimants shall pay court fees on enhanced amount as per Rule.

7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)