

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

FIRST APPEAL NO. 1693 OF 2013

- | | | |
|----|--|-----------------|
| 1. | V. JAYA LAKSHMI |) |
| | An Adult, Indian Inhabitant, |) |
| | Residing at Flat No.A-5, State Bank of India |) |
| | Officer's Complex, Rajendra Nagar, |) |
| | Opp. Rajendra Nagar Telephone Exchange, |) |
| | P.S.Kadam Kaun, District – Patna, U.P |) |
| | |) |
| 2. | V. L. N. Ganapathy |) |
| | An Adult, Indian Inhabitant |) |
| | Residing at Flat No.A-5, State Bank of India |) |
| | Officer's Complex, Rajendra Nagar, |) |
| | Opp. Rajendra Nagar Telephone Exchange, |) |
| | P.S.Kadam Kaun, District – Patna, U.P |) |
| | Representing through their Power of Attorney |) |
| | Holder Nikhil Bhat, Aged 30 years, |) |
| | Occupation : Service, Residing at 4, Vasant |) |
| | Vihar Apartment, Ideal Colony, Paud Road, |) |
| | Pune. |)... APPELLANTS |

Versus

- | | | |
|----|--|-----------------|
| 1. | P. R. BAFNA |) |
| | An Adult, Indian Inhabitant, |) |
| | Occupation : Business, Residing at A/21-3, |) |
| | Siddharth Apartment, Shankar Sheth Road, |) |
| | Pune. |) |
| | |) |
| 2. | MANIK BAPUJI SHEJWAL |) |
| | Age Adult, Occupation : Service, |) |
| | R/o.175, Bhekrai Nagar, Hadapsar, Pune |) |
| | |) |
| 3. | THE ORIENTAL INSURANCE CO. LTD. |) |
| | 821/A-2, Oswal Badhu Building, |) |
| | Opp. 7 Loves Hotel, J.N.Road, Pune. |)...RESPONDENTS |

CORAM : **ABHAY AHUJA, J.**
RESERVED ON : **17th AUGUST, 2023**
PRONOUNCED ON : **11th JANUARY, 2024**

JUDGMENT :

1. This Appeal has been filed by the Original Claimants under section 173 of the Motor Vehicles Act, 1988 (the “M.V. Act”) challenging the judgment and award dated 28th June, 2010 passed by the Motor Accident Claims Tribunal, Pune (the “Tribunal”) in Motor Accident Claim Petition No.660 of 1999 partly allowing the Claim Petition of the Appellants directing the Respondents No.1 and 3 to jointly and severally pay a compensation amount of Rs.2,29,266/- (inclusive of N.F.L.) to the Appellants along with proportionate costs and interest @ 7% p.a. from the date of the petition till realization of the entire amount. The Appeal was admitted by an order of this Court dated June 13, 2019.

2. The challenge in this appeal is to the contributory negligence attributed to the deceased and also to the quantum of compensation with respect to the last drawn salary of the deceased as well as the multiplier applied, future prospects, loss of consortium etc. in addition to the deduction due to contributory negligence.

3. The relevant facts are that on 30th June, 1998 at around 9:30 a.m., Ravi Kishore (the deceased), being the son of the Appellants was going on a Hero Honda motorcycle bearing registration No. BR-1K/2059 and when he reached Bhosari, M.I.D.C., T Block, 131, Dist. Pune, one tanker bearing registration No. MH-12/7903 came from the opposite direction in high speed without following traffic rules and gave a dash to the motorcycle of the deceased in which he was dragged by the said vehicle. The deceased sustained multiple injuries and he was admitted to Lokmanya Hospital for treatment. However the same day he succumbed to his injuries.

4. It is the case of the Appellants that the deceased was aged 25 years at the time of the accident, was highly qualified and having a bright future and was getting a salary of Rs.19,120/- and was the only son of the Appellants and therefore the Appellants filed a claim petition seeking compensation of Rs.27,00,000/-.

5. The claim was contested by the Respondent No.3 insurance company by filing their Written Statement denying liability stating that the Appellants have not produced on record the driving license of the deceased as well as of the driver of the offending vehicle. The Respondent

No.3 alleged that this was a case of contributory negligence and prayed for dismissal of the claim.

6. On the issue whether the driver of the offending tanker vehicle drove it in a rash and negligent manner at the time of the accident and whether the deceased died in the accident due to such driving, the Tribunal held that from a perusal of the spot panchnama it clearly reflected that the accident was not caused due to the sole negligence of the tanker driver and held that the negligence on the part of the deceased and driver of tanker was 50%:50%.

7. On the issue of compensation, after noting that the Appellants claim that the deceased was qualified and had completed his M.B.A. and had taken admission for a computer software course at NIIT, and at the time of the accident he was working as marketing executive at Softcell Trade and Technologies Ltd. and as per evidence led by Appellant No.2 his total gross emoluments were Rs.5614/- per month and he was getting Rs.4934/- in hand. That to prove the income of the deceased, the Appellants examined the Corporate Head of the said company Raghunath Pandurang Gavade, being AW2, who deposed before the Tribunal that the deceased had drawn

last salary of Rs.7000/- per month. However, the Tribunal recording that no salary certificate was produced on record, held that the income of the deceased was Rs.5494/- per month and after deducting 50% of the amount of Rs.5494/- towards personal expenses as the deceased was a bachelor, computed the amount to Rs.2747/-. The Tribunal applied the multiplier of 13 to the said amount and calculated the dependency compensation to be Rs.4,28,532/-, plus loss of estate of Rs.10,000/- and funeral expenses of Rs.5000/- totaling to Rs.4,43,532/- less deduction of 50% towards contributory negligence and awarded the Appellants a total compensation of Rs.2,29,266/- along with interest at the rate of 7% p.a. from the date of the petition till its realization. The Tribunal held that since the driver of the offending vehicle was holding a valid and effective license, the Respondent No.3 Insurance company would be jointly and severally liable along with the Respondent No.1 owner to make payment of the compensation.

8. Accordingly, the Tribunal directed the Respondents No.1 and 3 to jointly and severally pay a compensation amount of Rs.2,29,266/- (inclusive of N.F.L.) to the Appellants along with proportionate costs and interest @ 7% p.a. from the date of the petition till realization of the

entire amount of compensation to be divided as follows, an amount of Rs.1.5 lakhs along with proportionate cost and interest to be paid to the Appellant No.1 and remaining amount along with proportionate cost and interest to be paid to Appellant No.2.

9. The Respondents No.1 to 3 have not challenged the award.

10. However the Original Claimants being aggrieved and dissatisfied by the Impugned Judgment and Award only partly allowing the Claim Petition of the Appellants as noted above have preferred this appeal.

11. On the issue of contributory negligence of the deceased, learned Counsel for the Appellants has submitted that there was no material in the spot panchnama indicating that there was contributory negligence on behalf of the deceased or that he was rash and negligent. Learned Counsel has relied on the decision in the case of ***Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and Another***¹ submitting that in a similar case where the offending truck hit the deceased from behind and he was dragged by the offending truck up to a distance of about 25 ft, the Hon'ble Supreme Court held that to be able to create this kind of

¹ (2015) 2 SCC 180

enormous effect on the two wheeler of the deceased, the offending truck must have been traveling at a fairly high speed and that its driver did not have sufficient control over his vehicle. The Court further held that the driver of the offending truck should have been aware that that he was driving the heavy motor vehicle and taken sufficient caution. That there was no direct evidence to show negligence on the part of the deceased and the Hon'ble Supreme Court set aside the contributory negligence apportioned to the deceased. Learned Counsel has also relied on the decision in the case of *Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak and Others*² in which the Hon'ble Supreme Court held that the question of contributory negligence arises when there has been some act or omission to the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly described as "negligence". Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence" it does not mean breach of any duty. It only means failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an "author of his own wrong".

² 2002 ACJ 1720.

12. On the issue of enhancement of compensation, Learned Counsel for the Appellants submitted that the salary certificate of the deceased dated 23rd January, 1999 indicating the deceased's three months gross salary which was produced on record would clearly suggest that the monthly last drawn salary of the deceased was about Rs.7000/-per month which has been confirmed in the AW2's deposition. The learned Counsel for the Appellants has relied on the decisions of the Hon'ble Supreme Court in the cases of *National Insurance Company Limited v. Pranay Sethi & Ors.*³ and *M.K. Gopinath v. J. Krishna and Ors.*⁴ and has also tendered a Chart for Enhancement of Claim across the Bar with respect to increasing the annual salary after deduction to be increased from Rs.2747/- per month (50% of Rs.5494/-) to Rs.6373/- per month, future prospects of 50% of the monthly salary to be added, loss of estate to be enhanced from Rs.10,000/- to Rs.16,500/-, to add loss of consortium of Rs.44,000/-, to enhance funeral expenses from Rs.5000/- to Rs.16,500/-, to add medical expenses of Rs.71,390/- and to apply multiplier of 18 and not 13 as applied by the Tribunal and enhance the rate of interest from 7% p.a. to 10 % p.a.

3 (2017) 16 SCC 680.

4 (2015) 11 SCC 235.

13. The learned Counsel for the Respondent No.3 on the other hand defended the judgment and award of the Tribunal and submitted that this appeal ought to be dismissed.

14. I have heard learned counsel for the Appellants and learned counsel for the Respondent No. 3. I have also perused the papers and proceedings in the matter and considered the rival submissions.

15. On the issue of contributory negligence of the deceased, it is clear from the principles laid down by the Hon'ble Supreme Court in the case of *Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak and Others (supra)* in which the Hon'ble Supreme Court held that “contributory negligence” only means failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an “author of his own wrong”. Further in the case of *Meera Devi and Another vs. Himachal Pradesh Road Transport Corporation and Others*⁵, the Hon'ble Supreme Court has observed that to prove the contributory negligence, there must be cogent evidence. The word ‘cogent’ means clear, logical and convincing.

⁵ (2014) 4 SCC 511

16. I have examined the decision of the Tribunal, post mortem report, cause of death certificate of deceased and the police papers including Spot Panchnama in the matter. The Spot Panchnama records that at the scene of the accident, the offending tanker was standing at the spot of the accident with its front part facing south. It was moving from north to the south. The offending tanker was standing on the north left side of the road and below its rear right wheel the deceased's motorcycle was lying on the right side with its front head pump and meter broken. The jerking of the deceased was caught in the right tyre and the motorcycle of the deceased was blown 14 feet away.

17. The Tribunal in its Judgment and Award held that a minute perusal of the Spot Panchnama clearly showed that the deceased came under rear wheel of the tanker and there is a turn on the spot and that it clearly establishes that the offending tanker might have passed its major portion on that road after the turn, the deceased might have dashed to its back side tyre. If the situation on the road is considered, it also appears that the tanker was coming from the northern side and proceeding towards the

southern side. At the same time the deceased was proceeding from south to north. The Tribunal therefore held that perusal of the Spot Panchnama clearly reflects that the accident was not caused due to the sole negligence on the tanker driver and that the deceased was equally liable for the accident.

18. However, it stands to reason that if the major part of the tanker of the body of the offending tanker had already crossed while turning, how the deceased would have anticipated that the rear right wheel would have dragged him along with his vehicle. As can be visualized from the fact of the mangled remains and the damage to the motorcycle as mentioned in the Spot Panchnama, there was damage to the motorcycle and the deceased was dragged to a distance of 14 ft. by the offending tanker. In such circumstances, it was in my view not possible for the deceased to use reasonable care or safety for himself. Therefore he could not have been held to be blameworthy or the author of his own wrong. There is no cogent evidence to prove the contributory negligence or that he was rash and negligent. Also as held by the Hon'ble Supreme Court in the case of *Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and Another(supra)*, the driver of the offending tanker should have been aware

that he was driving the heavy motor vehicle and taken sufficient caution. As in the said case even in the facts of the case at hand there is no direct evidence to show negligence on the part of the deceased.

19. In the light of the above discussion, I am, therefore, of the view that, the finding of the Tribunal with respect to the attribution of contributory negligence of accident to the extent of 50% to the deceased, deserves to be set aside and is hereby set aside. This Court is of the view that the accident was caused due to the rash and negligent driving of the offending tanker driver.

20. On the issue of quantum of compensation, I have examined the Salary Certificate dated January 23, 1999 admittedly containing the deceased's three months gross salary which was produced on record and also the Examination-in-chief of Mr. Raghunath Pandurang Gavade, AW2, who was working as Corporate Head in the company in which the deceased was employed and his Cross-examination by Advocate for Respondent No.3. From the same, it emerges that the monthly last drawn gross salary of the deceased was about Rs.7000/-per month which has been confirmed in the AW2's deposition and not Rs.5494/- per month as

held by the Tribunal. The Tribunal also erroneously held that the multiplier to be applied in this case was 13.

21. On the issue of the multiplier to be applied, as per the decision of the Hon'ble Supreme Court in the case of ***Sarla Verma v. Delhi Transport Corporation and others***⁶ this Court is of the view that the correct multiplier to be applied in the present case would be 18 and not 13 as held by the Tribunal as the deceased was 25 years old at the time of the accident.

22. The Hon'ble Supreme Court in the case of *National Insurance Company Limited v Pranay Sethi and Ors. (supra)* has clearly laid down the law with respect to future prospects and held that while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made, that the conventional heads with respect to loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs 15,000/- respectively and that the said amounts should be enhanced at the rate of 10% in every three years. Paragraph 61 of the said decision is usefully quoted as under:-

6 2009 ACJ 1298 (Supreme Court).

“61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

23. In *Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram & Ors.*⁷ the Hon'ble Supreme Court has observed that filial consortium is the right of the parents to compensation in the case of an accidental death of a child as the same causes great shock and agony to the parents. It has also been observed that the Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

24. Ergo and in the light of the principles laid down by the Hon'ble Supreme Court as above, this Court is of the view that the Appellants are entitled to compensation as per the following computation:

Sr. No.	Particulars	Amount
1.	Annual Salary after deduction (Rs.6373/- x 12)	Rs.76,476/-
2.	Less personal and living expenditure (50% of annual salary after deduction)	Rs.38,238/-

⁷ Civil Appeal No. 9581 of 2018

3.	Add future prospects (50% of annual salary after deduction)	Rs.38,238/-
4.	Multiplier	18
5.	Total (1-2+3x4)	Rs.13,76,568/-
6.	Add Loss of estate	Rs.16,500/-
7.	Add Loss of consortium	Rs.44,000/-
8.	Add Funeral expenses	Rs.16,500/-
9.	Add Medical expenses	Rs.71,390/-
10.	TOTAL COMPENSATION (7+8+9+10)	Rs.15,24,958/-

25. In the light of the above, the Appellants are entitled to a total compensation of Rs.15,24,958/- inclusive of amount of compensation under 'no-fault' liability along with interest thereon at the rate of 7% per annum to be paid by the Respondents No.1 and 3 jointly and severally, from the date of filing of the petition till realization, to be distributed to the Appellants in the manner and proportion as mentioned in the judgment and award dated 28th June, 2010 of the Motor Accident Claims Tribunal, Pune in Motor Accident Claim Petition No.660 of 1999, less the amount already withdrawn, if any.

26. The judgment and award dated 28th June, 2010 of the Motor Accident Claims Tribunal, Pune in Motor Accident Claim Petition No.660 of 1999 be modified to the above extent.

27. The appeal of the Appellants is allowed as above. No order as to costs.

(ABHAY AHUJA, J.)

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