

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

FIRST APPEAL NO. 1232 OF 2023

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1. Rucha Pradyumna Sant)
Age: 34 years, Occ: Household)
2. Mukta Pradyumna Sant)
Age: 8 years, Occ: Education)
Through her natural guardian the mother)
i.e. the Applicant No.1.)
3. Rajani Chandrashekhar Sant)
Age: 62 years, Occ: Household)
4. Chandrashekhar Bhalchandra Sant)
Age: 65 years, Occ: Service)
All residing at Shayog Society,)
Bhigwan Road, M. Post, Jalochi)
Taluka Baramati, Dist: Pune)....Appellants

Versus

1. United India Insurance Co. Ltd.)
Having its Branch office at)
Bhigwan Chowk, Baramati,)
Taluka Baramati, Dist: Pune)
2. Sandeep Shivaji Shenkar)

Age: Adult, OccU: Transport,)
 Residing at Pimpri, Tal. Purandar)
 Dist: Pune.)
 3. Vinayak Dhondiba Kapre)
 Aged adult, Occ: Driver)
 Residing at Nazare, Post: Jejuri,)
 Tal. Purandar, Dist: Pune)....Respondents

WITH

FIRST APPEAL NO. 94 OF 2013

United India Insurance Co. Ltd.)
 Having its Branch Office at)
 Bhigwan Chawk Baramati, Tal- Baramati,)
 Dist: Pune.) ...Appellant

Versus

1. Rucha Pradyumna Sant)
 Age: 28 years, Occ: Household)
 2. Mukta Pradyumna Sant)
 Age: 2 years, Occ: Nil R/o through)
 Its natural guardian Respondent No.1)
 Mother.)
 3. Chandrashekher Bhalchandra Sant)
 Age: 59 years. Occ: Service)
 4. Rajanigandha Chandrashekher Sant)
 Age: 56 years, Occ: Household)

- R/o. All are residing at Sahayog society)
- Bhigwan road, M. Post Jalochi,)
- Tal – Baramati, Dist: Pune.)
5. Sandip Shivaji Shendkar)
- Age: adult, Occ: Transport)
- At. Pimpri Tal. Purandar)
- Dist. Pune.)
6. Vinayak Dhondiba Kapare)
- Age: adult, Occ: Driver,)
- R/at. Nazare Post: Jejuri)
- Tal. Purandar Dist: Pune)....Respondents

Mr. Parth Modak i/b Mr. Bhushan Walimbe, Advocate for the Appellants in FA/1232/2023 and Respondent Nos.1 to 4 in FA/94/2013.

Mr. K. N. Kandekar, Advocate for the Appellant in FA/94/2013.

Ms. Varsha Chavan, Advocate for the Respondent No.1 in FA/1232/2023.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19th APRIL, 2024.

Oral Judgment. :

1. These appeals are preferred by the Appellant/Insurance Company against the judgment and order passed by the Motor Accident Claims Tribunal, Pune (for short “the Tribunal”).

2. The Claimants have also filed cross appeal for enhancement of compensation. As, appeal and cross appeal are against the same judgment and order hence, I am deciding it by this common judgment.

3. It is contention of learned counsel for the Appellant/Insurance Company that accident occurred due to sole negligence of the deceased as, he tried to over take the offending truck from left side, without giving any signal or horn. To prove the negligence of the deceased, the driver of offending tanker has examined himself but the Tribunal has fixed 80% liability on the driver of the offending vehicle and 20% on deceased, which is erroneous. The Tribunal should have considered 100% negligence of the deceased or 50% contributory negligence of the deceased. Learned counsel further submitted that the Tribunal has considered income of the deceased on higher side without any evidence on record. Hence, requested to allow the Appeal.

4. It is contention of learned counsel for the Respondents/Claimants that accident occurred due to sole negligence of the driver of offending truck as, he was driving the offending vehicle near the divider without leaving space to other vehicle to go

ahead. Suddenly, the driver of the offending vehicle gave dash to the motorcycle of the deceased, due to which, deceased fell on ground and the offending vehicle ran over the body of the deceased. Learned counsel further submitted that the deceased was working as Paint-shop Executive in Paiggio Company and he was getting salary of Rs.32,022 per month but the Tribunal has not awarded future prospects. The Tribunal has deducted 1/3 amount for personal expenses, it should be 1/4 as, there are four Claimants. Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded and requested to allow the Cross Appeal and dismiss the Appeal filed by the Appellant/Insurance Company.

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

6. It is Claimants’ case that on 1st April, 2010 at about 9 p.m. deceased Pradyumna Sant was coming from Baramati City towards his house by his motorcycle. When he reached near Lilaj Hotel, the truck bearing registration No. MH-05-12-F-5230 was going on in same direction. The said truck gave dash to the motorcycle of the deceased,

due to dash, deceased fell on ground and rear wheel of the truck ran over his body, the deceased died on the spot. The offence was registered against the driver of offending truck. To prove the negligence of driver of offending truck, the Claimants have relied on police papers. The driver of offending truck Vinayak Kapre examined himself in its defense at Exhibit-20. He has stated that on the day of accident, he was proceeding on the road. At the relevant time, the deceased was trying to over take his truck from left side. He lost control on his motorcycle. When he saw that other motorcycle is coming from other side and he gave dash to the rear side of the truck and came under the wheel of the truck. In cross examination, he admitted that he was driving the truck on the right side of the road and he should have driven the vehicle from the left side of the road and the right side space should have kept open for other vehicles.

7. While dealing with the issue of negligence, the Tribunal has observed that accident occurred at 9:00 p.m. The driver of offending truck was driving his loaded truck in city area at 9:00 p.m. The Tribunal further observed that police papers shows that driver of the offending truck was driving the truck in rash and negligence manner. Considering evidence on record, the Tribunal has considered

contributory negligence of driver of offending truck at 80% and deceased at 20%. In my view, the truck driver in his evidence admitted that he was driving the truck from right side of the road abutting to the divider. It has come on record that the length of the truck was 25 feet. The police has registered the offence against the driver of offending truck after making inquiry of the incident and charge-sheet has been filed against him. It has not come on record that by seeing other motorcycle deceased lost control of his motorcycle and gave dash to the truck. The police papers produced on record supports the Claimants case. Hence, I hold that accident occurred due to sole negligence of driver of the offending truck.

8. While awarding compensation, the Tribunal has not awarded future prospects. The deceased was permanent employee. To prove the income of the deceased, the Claimants have examined Claimant No.1. She has stated that the deceased was working as executive Paint-shot Executive in Piaagio Company, Baramati and he was getting annual income of Rs.4,92,630. The income tax returns are produced on record. In supports of evidence of PW-1, the Claimants have examined PW-2 Eknath, Manager of Paiggio. He has stated that deceased was serving as an Executive Paint Manager Grade-2 in his

company and he was earning Rs.39,600 per month and his yearly package was Rs.4,72,490 and Form No.16 of the deceased for the year 2008 to 2009 is at Exhibit-31 and for the year 2009 to 2010 at Exhibit-33 it shows the gross salary income for the year 2009-2010 was Rs.4,97,630/-. Considering evidence on record the Tribunal has considered yearly income of the deceased at Rs.4,72,790/-. The income of the deceased is considered after deduction of the taxes. I do not find infirmity in it.

9. In my view, the deceased was permanent employee but the Tribunal has not awarded future prospects. As per 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 for 50% future prospects. The Tribunal has deducted 1/3 amount for personal expenses, there are four Claimants, it should be 1/4 deduction for personal expenses. Hence, I am deducing 1/4 for personal expenses. The Tribunal has awarded consortium amount on lower side. As per 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 to Rs.48,000/- for consortium amount and Rs.18,000/- for personal expenses and Rs.18,000/- for loss of estate.

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

Monthly Income	Rs.39,399/-
Annual Income	Rs.4,72,790
Add: 50% future prospects	Rs.2,36,395/-
Total income	Rs.7,09,185/-
1/4th deduction for personal expenses	Rs.1,77,296/-
Total	Rs.5,31,889/-
Multiplier X 16	Rs.85,10,224/-
Funeral Expenses	Rs.18,000/-
Loss of Estate	Rs.18,000/-
Consortium Rs.48,000/- X 4 (Claimants)	Rs.1,92,000/-
Total Compensation	Rs.87,38,224/-
Less awarded by the Tribunal	Rs.43,34,639/-
Enhanced amount	Rs.44,03,585/-

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

ORDER

- i. Appeal is dismissed and cross appeal is allowed.
- ii. The Claimants are entitled for enhanced amount of Rs.44,03,585/- @ 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 per annum on this amount from 1st November, 2017, till realisation of the amount. The Claimants are not entitled for interest on enhanced amount for delayed period of four year and 17 days.

- iii. The Appellant/Insurance Company shall deposit the enhanced 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.
 - iv. The Claimants shall pay the deficit Court fees on enhanced amount, as per Rule.
 - v. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
12. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)