IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1384 OF 2013

1	Anthony Devathasan Age : 47 Years, Occ. Service	
2	Anithadevi Anthony Devathasan Age : 44 years, Occ. Household Both Residing at 198, Perumpathu, II Street, Nangueri, Taluka South Nanguneri, Dist. Tirunelveli – 627 108	… Appellants
	Versus	
1	Sushil M. Sawant R/at Block No.103, A Wing, Gangotri, Ahemadabad, State of Maharashtra. (Owner of the bus bearing No. MH-04-G-5258) **(Amendment carried out as per order dated 2nd September, 2015 in FA/1384/2013 a/w CA/1353/2015)** 27, Rose Building, Fellowship Apartment, Road No.4, Postmaster, Chembur, Mumbai	
2	New India Assurance Co. Ltd. Thane Divisional Office, Shiv Krupa Commerical Complex, 3rd Floor, Gokhale Road, Naupada, Thane. (Insurer of the bus bearing No. MH-04-G-5258)	… Respondents

……….

Ms. Ketki Gokhale i/b. Mr. Avinash Gokhale, Advocate for the Appellants.
Mr. Devendranath S. Joshi, Advocate for Respondent No.2-Insurance Company.

CORAM : SHIVKUMAR DIGE, J.
DATE : 18th APRIL, 2024.

ORAL JUDGMENT :

1. This appeal is preferred against the dismissal of claim petition.

2. It is contention of learned counsel for the appellants that the deceased was proceeding on motorcycle at that time his motorcycle was dashed from back side by driver of offending bus, due to dash deceased sustained grievous injuries and he died while taking treatment. The offence was registered against the driver of offending bus. The deceased was doing job of mechanic, he was earning Rs.4,500/- p.m. but the Tribunal has not considered this fact and has dismissed the claim petition on the ground that the claimants failed to prove the negligence of the offending bus which is erroneous. Learned counsel further submitted that the respondent No.2/Insurance Company in their written statement and written notes of argument has taken a defence of contributory negligence but this fact is not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2/ Insurance Company that it is claimant's case that motorcycle of the deceased was dashed from back side but spot panchanama shows there was damage to the front side, there was no damage to the back side of the motorcycle. Moreover, in FIR it is mentioned that bus ran over the deceased but no grievous injuries were caused to the deceased. The Tribunal has considered all the aspects while passing Judgment and Order hence no interference is required in it. Learned counsel further submitted that the person who has filed FIR about the accident Mr. Nadar has deposed before the Court but he has not deposed about the accident, hence requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Thane (for short "**the Tribunal**"). It is claimant's case that on 07.05.2010 the deceased was proceeding towards Manpada on motorcycle for taking trial when he reached near Manpada at the relevant time the bus bearing No. MH-04-G-5258 came from back side and dashed to the motorcycle of the deceased from its back side. Because of the dash the deceased was thrown on the road and crushed under the wheel of the said bus. He was admitted in the hospital. He died while taking treatment. The offence was registered against the driver of offending bus. To prove the negligence of the driver of offending bus the claimants have relied on police papers. It appears from the record that Mr. Nadar has deposed before the Tribunal but he has not stated about the accident. He has stated about income and employment of the deceased. While dealing with the issue of negligence, the Tribunal has observed that Mr. Nadar, first informant has not stated before the Tribunal about the negligence issue. Moreover spot panchanama shows damage was caused to the front side of motorcycle when dash was given from the back side and headlight of the motorcycle was found damaged. The ADR report shows that accident occurred not on account of rash negligent driving on part of driver of the bus but it was occurred as the motorcycle of the deceased collided on bus from its back side and the Tribunal has observed that the claimants failed to prove the negligence of bus driver and accident occurred due to negligence of the deceased and dismissed the claim petition. The Tribunal has further observed that the postmortem report disclosed that large intestine, liver and gall bladder, pancreas, supraenals, spleen and kidneys of the deceased were found intact and there was only contused lacerated wound on left inguinal region and the small intestine was found punctured. It means the injuries mentioned in the postmortem report are also not in support of the case of the claimants that the bus ran over the body of the deceased. Had it been fact that the bus ran over the body of the deceased, then in that case the large intestine, liver and gall bladder, pancreas, supraenals, spleen and kidneys were not expected to be intact. I am unable to understand the observations of the Tribunal as admittedly after making enquiry, the police registered offence against the driver of offending bus. The driver of offending bus did not enter into witness box to prove the negligence of the deceased. The Tribunal by figment of imagination has observed that there was no damage to the body parts of the deceased, no one knows how the accident was occurred. It appears from the record that after the accident when witness Mr. Nadar meet the deceased, he had stated to him that the bus had given dash to his motorcycle from back side and injured him, it does not mean it ran over whole body of the deceased it may on some part of body. It appears that the legs of the deceased were grievously injured. The Insurance Company in its written statement filed before the Tribunal has stated that the deceased was also guilty of contributory negligence in the alleged incident but this fact is not considered by the Tribunal. Considering the evidence on record, I am considering 75% negligence of the driver of offending bus and 25% of the deceased.

5. It is claimant's case that the deceased was working as a Mechanic. To prove the income of deceased, the claimants have examined Mr. Nadar, he has stated that the deceased was working with him and he was paying salary of Rs.4,500/- p.m. In cross examination he has admitted that he has no documents to show that deceased was working with him and he was paying to him Rs.4,500/- p.m. In my view, at the time of accident, the deceased was 21 year old, he was the only son of the claimants, he was maintaining his family, there is no reason to disbelieve the evidence of Mr. Nadar that the deceased was mechanic. Considering the evidence on record, I am considering Rs.4,500/- as monthly income of the deceased. 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 for 40% future prospects.

As per the view of the 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/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

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

Particulars	Rs.	Entitlement
Monthly Income	Rs.	4,500.00
40 % Future prospects	Rs.	21,600.00
Annual Income X 12	Rs.	54,000.00
½ deduction towards personal expenses	Rs.	37,800.00
Multiplier Rs. 37,800 X 18	Rs.	6,80,400.00
Consortium (Rs.48,000/- X 2 claimants)	Rs.	96,000.00
Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
Total	Rs.	8,12,400.00
75% of the total compensation comes to	Rs.	6,09,300.00

Considering the above calculations, claimants are entitled for compensation of Rs.6,09,300/-.

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

<u>ORDER</u>

i. The appeal is allowed.

ii. The claimants are entitled for compensation amount of

Rs.6,09,300/- with @7.5% interest per annum from the date of filing claim petition till realisation of the amount.

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

iv. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

v. The claimants shall pay deficit court fees on enhanced amount as per rule.

8. The appeal is disposed of. All pending applications if any, also disposed of.

(SHIVKUMAR DIGE, J.)

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2024.05.04 12:03:45 +0530