IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1080 OF 2012

1	Rabiya Begam Irshad Ali Shaikh, Aged 30, Occ. Housewife,	
2	Ejaz Irshad Ali Shaik, 10 years, Occ. Student.	
3	Tasmin Irshad Ali Shaikh Aged 7 years, Occ. Student.	
4	Jasmin Irshad Ali Shaikh Aged 1 year, (No.1 for self and mother and natural guardian of Applicant Nos.2 to 4) All R/at – Grampanchayat Puresidhari, (Mafipurva), Taluka Bishvambharpur, Block Mujhehana, Taluka Itiyathok Dist. Gonda, Uttar Pradesh (U.).)	….Appellants/ (orig. Claimants)
	Versus	
1	Suil Tukaram Bharadkar, House No.203, Kosbad, Manor Road, Taluka Palghar, Dist. Palghar. (Owner of Swift Car No. MH-04-DC-4141)	
2	Reliance General Insurance Co.Ltd. Palghar Divisional Office Malhar Theatre Compound, Naupada, Gokhale Road, Palghar – 400 602. (Insurers of Swift Car No.MH-04-DC-4141) (Policy No.109000846132 Valid from 20/10/2009 to 19/10/2010)	...Respondents (Orig. Opp.)

Ms. Ketki Gokhale i/b. Mr. Avinash M. Gokhale, Advocate for the Appellant.
Mr. Rajesh Kanojia i/b Res Juris, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th FEBRUARY, 2024.

Oral Judgment :

1. By way of this appeal, the appellants/claimants are challenging the dismissal of the claim petition.

2. It is contention of learned counsel for the appellants/claimants that the deceased was returning on motorcycle with his friend. When they were proceeding on the road, at that time, the offending Swift Car dashed the said motorcycle. Due to the dash, the deceased sustained injuries and died while taking treatment. An offence was registered against the driver of the offending car but the Tribunal has dismissed the claim petition on the ground that the claimants could not prove that the deceased himself was not responsible for the accident, which is erroneous. Hence, requested to allow the appeal.

3. It is contention of leaned counsel for the respondent No.2-Insurance Company that no one witnessed the accident. It has not come on record who was riding the motorcycle, so no negligence is proved before the Tribunal. The Tribunal has considered all the aspects while passing the judgment and order. No interference is required in it.

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

5. It is claimants’ case that on 26th October 2009, deceased - was returning on motorcycle as pillion-rider via Mumbai Ahmedabad Highway.

Near Amboli Village, one Swift car came from the backsiden in excessive speed and gave dash to the motorcycle. The deceased sustained injuries and died while taking treatment. The offence was registered against the car driver.

To prove the negligence, claimant No.1- Rabiya Shaikh examined herself. She has stated that her husband was pillion rider on the motorcycle, the car driver gave dash to the motorcycle, due to dash, her husband sustained injuries and died while taking treatment. While dealing with the issue of negligence, the Tribunal has observed that from complaint at Exhibit-22 and spot-panchanama at Exhibit -23, it is clear that three persons were riding on motorcycle including the deceased. The Tribunal further observed that the claimant No.1 herself has admitted in her cross-examination that they were three persons on the motorcycle, it is in contravention of Traffic Rules and Motor Vehicle Act and Rules, it shows that the deceased was tort-feasor. The Tribunal further observed that the claimants have not examined any witness to prove the negligence of the car driver and it was necessary for the claimants to prove that deceased himself was not responsible for the accident. On that ground, the Tribunal has dismissed the claim petition. I am unable to understand the observations of the Tribunal as it has come on record that the deceased was a pillion-rider on the motorcycle, so no question of his negligence or contributory negligence arises. Moreover, the offence was registered against the driver of the offending car. The car driver did not step into the witness box to prove the negligence of the deceased or the rider of motorcycle. The police paper shows that the accident occurred due to negligence of the car driver but these facts are not considered by the Tribunal and the Tribunal has mechanically without applying its mind and without going through the papers held that claimants failed to prove the negligence of the car driver. Hence, I am setting aside the observation of the Tribunal.

The Hon'ble Apex Court in the case of ***Mohammed Siddique and Anr. versus National Insurance Company Ltd. and ors.reported in 2020(3) SCC 57*** has observed that deceased was riding on motorcycle along with driver and another, then, it cannot be considered as contributory negligence of the deceased. To prove the income of the deceased, the claimants have examined PW-1, she has stated that the deceased was working in Saw Mill and was earning salary of Rs.6,000/- per month. To support her evidence, the claimants have examined PW2-Tazbul Shaikh at Exhibit-41. He has stated that he is the owner of the New Star Saw Mill and deceased was working in his Saw Mill as cutter and loader and he was paying him Rs.6000/- per month as salary. Nothing elicited in his cross-examination to disbelieve his evidence. Considering the evidence on record,I am considering monthly income of deceased at Rs.5000/-.

In view of above, the claimants are entitled for following compensation :

Annual Income(Rs.5000/- x 12 months)		60000.00
40% future prospects		24000.00
Total		84000.00
1/4th deduction towards personal expenses		21000.00
Total		63000.00
Rs.63,000/- x 16(multiplier)		1008000.00
Loss of consortium (Rs.48000/- x 4 claimants)		192000.00
Loss of Estate		18000.00
Loss of Funeral Expenses		18000.00
Total		1236000.00

The claimants are entitled for the amount of Rs.12,36,000/-.

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 compensation of Rs. 12,36,000/- @ 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 for 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.

3. The respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.

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

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

(SHIVKUMAR DIGE, J.)