

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

**FIRST APPEAL NO.889 OF 2017**

|                                                  |   |                     |
|--------------------------------------------------|---|---------------------|
| <b>The Manger,</b>                               | } |                     |
| <b>Bajaj Alliance General Insurance Co. Ltd.</b> | } |                     |
| G Plaza, Airport Road Ervada, Pune               | } | <b>...Appellant</b> |

*Versus*

|                                   |   |  |
|-----------------------------------|---|--|
| 1. <b>Smt.Rupali Laxman Zanje</b> | } |  |
| Age-27 years, Occ : Household     | } |  |

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| 2. <b>Kum.Sahil Laxman Zanje</b>                                                                  | } |  |
| Age-07 years, Occ : Nil                                                                           | } |  |
| Respondent No.1 for herself and on behalf<br>of Applicant No.2 being Natural Guardian<br>(Mother) | } |  |

|                                        |   |  |
|----------------------------------------|---|--|
| 3. <b>Shri.Pandurang Baburao Zanje</b> | } |  |
| Age-61 years, Occ : Agriculturist      | } |  |

|                                      |   |                 |
|--------------------------------------|---|-----------------|
| 4. <b>Sou. Anita Pandurang Zanje</b> | } | (Org. Claimant) |
| Age-59 years, Occ: Household         | } |                 |
| All R/o-Barasgaon, Taluka-Mahad,     | } |                 |
| District-Raigad                      | } |                 |

|                                          |   |                        |
|------------------------------------------|---|------------------------|
| 5. <b>Shri.Prakash Sadashiv Deshmukh</b> | } | (Owner)                |
| Age-30 years, Occ : Business             | } |                        |
| R/o. Varandh, Taluka-Mahad,              | } |                        |
| District-Raigad                          | } | <b>....Respondents</b> |

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Ms.Yogita Deshmukh-Chitnis, for the Appellant.

Mr.Aniket Nangare i/b Mr.N.V. Bhutekar, for Respondent Nos.3 and 4.

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**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 21<sup>st</sup> MARCH 2024**

**ORAL JUDGMENT :-**

. The issues involved in this Appeal are accident occurred due to contributory negligence of the deceased and compensation is awarded on higher side under the non-pecuniary heads.

2. It is contention of the learned counsel for the Appellant that, the accident occurred due to contributory negligence of the deceased as, deceased who was riding on the motorcycle gave dash to the offending jeep, but this fact is not considered by the Tribunal. The learned counsel further submitted that, the Tribunal has awarded total amount of Rs.3,75,000/- under non-pecuniary heads, which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, when the deceased was riding on

motorcycle, at the relevant time, the driver of the offending jeep came from wrong side of the road and gave dash to the offending jeep. The offence was registered against offending jeep driver. Moreover, the driver of the offending jeep did not step into witness box. The Tribunal has considered all the aspects while passing judgment and order, no interference is required in it. Hence, requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Mangaon, District-Raigad.

5. It is Claimant's case that on 2<sup>nd</sup> September 2012 at about 6.30 p.m. deceased Laxman Zanje was proceeding on his motorcycle to Mahad-Pandarpur road. When he was in the vicinity of the village Barasgaon, one pickup jeep MH-06-AG-6287 came from opposite side in rash and negligent manner, the jeep was in high and excessive speed and gave dash to the motorcycle of the deceased. Due to said dash, deceased died on the spot. The offence was registered against the driver of the offending jeep.

6. To prove the negligence of the driver of the offending jeep the Claimants have relied on police papers. The Appellant-Insurance Company has not examined driver of the offending jeep.

7. While dealing with the issue of negligence, the Tribunal has observed that from the contents of FIR and spot panchanmma it appears that the tar road was of 14 feet wide. It appears from the record that jeep driver drove the jeep in rash and negligent manner and by going on wrong side of the road, gave dash to the motorcycle of the deceased. I do not find infirmity in it. In my view, the police papers produced on record shows that, the driver of the offending jeep came on wrong side of the road and gave dash to the motorcycle of the deceased. It shows that accident occurred due to sole negligence of the driver of the offending jeep. Moreover, to prove the negligence of the deceased, the driver of the offending jeep did not step into witness box. I do not find merit in the contention that accident occurred due to negligence of the deceased.

8. While awarding compensation, the Tribunal has

awarded Rs.3,75,000/- under non-pecuniary heads, in my view, it is on higher side. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*<sup>1</sup>, 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. There are four Claimants, it comes to Rs.2,28,000/-, if this amount deducts from the amount of Rs.3,75,000/- it comes to Rs.1,47,000/- It is excess amount. The Appellant-Insurance company is entitled for this amount.

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

### **ORDER**

- (i) The Appeal is partly allowed.
- (ii) The Appellant is permitted to withdraw excess amount of Rs.1,47,000/- with proportionate interest out of deposited amount. The Claimant's are permitted to withdraw balance amount with proportionate interest.

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(iii) The Application for Additional Evidence is not relevant, hence disposed of.

(iv) The Statutory amount along with interest be transferred to the Tribunal. The Appellant is permitted to withdraw this amount along with accrued interest thereon as per Rule.

(v) All pending Civil and Interim Applications are disposed of.

**(SHIVKUMAR DIGE, J.)**