IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 202 OF 2018

1. Smt.Manjushri Rajednra Jadhav	}	
Age-41 years, Occ : Household	}	
	}	
2. Swati Rajendra Jadhav	}	
Age-22 years, Occ : Education	}	
	}	
3. Kumari Shweta Rajendra Jadhav	}	
Age-17 years, Occ: Education	}	
	}	
4. Saish Rajendra Jadhav	}	
Age-11 years, Occ : Education	}	
Applicant Nos.3 and 4 minor, Thr. Natural Guardian Mother Manjushri Rajendra Jadhav	}	
	}	
5. Shakuntala Sadashiv Jadhav	}	
Age-67 years, Occ : Household,	}	
All R/o Lakshyatirth Vasahat, Shahuchowk,	}	(Org. Claimants)
Taluka-Karveer, District-Kolhapur.	}	**...Appellants**

Versus

1. Shri.Rohit Raghunath Jadhav	}	As per courts
Age-Major, Occ: Business,	}	order dt.
R/o. 1906, "A" Ward, Rankala Tower,	}	10.06.22 FA
Kolhapur.	}	stands dismissed
	}	against R-1
2. The Branch Manager	}	
Tata AIG General Insurance Co. Ltd.,	}	
Jeamstone Building, Parikh Bridge, Behind	}	
Central S.T. Stand, 'E' Ward, Kolhapur	}	

3. Mayur Rajendra Chougule	}	As per courts
Age-28 years, Occ : Business,	}	order dt.
R/o. 1927, 'A' Ward, Rankala Tower,	}	10.06.22 FA
Mandap Bol, Kolhapur	}	stands dismissed
	}	against R-3
	}	**...Respondents**
	}	

Mr.Jayant Joseph Bardeskar, for the Appellants.
Mr.Nikhil Mehta i/b KMC Legal Venture, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th MARCH 2024

ORAL JUDGMENT :-

. By way of this Appeal, the Appellant's-Claimant's are seeking enhancement of the compensation.

2. It is contention of the learned counsel for the Appellant's-Claimant's that, the deceased was owner of the Autorikshaw and he was riding autorikshaw, from it he was earning Rs.15,000/- to Rs.17,000/- per month, but Tribunal has considered his monthly income at Rs.6,000/- per month, which is on lower side. The learned counsel further submitted that, the Tribunal has not awarded future prospects, it be awarded. The

accident occurred due to sole negligence of the rider of the offending motorcycle, but Tribunal has fixed 25% contributory negligence on the deceased, which is erroneous. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Insurance Company that, there was contributory negligence of the deceased in the said accident. The learned counsel further submitted that the Tribunal has awarded consortium amount on higher side. The Tribunal has considered all the aspects while passing the 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), Kolhapur.

5. It is Claimant's case that on 17th November 2015 at about 8.00 p.m. while deceased Rajendra Jadhav along with his wife was returning towards Kolhapur from Pachagaon by motorcycle bearing MH-09/AA-9646. He was riding his

motorcycle slowly, cautiously and on correct side of the road. When they reached near the spot of incident at the relevant time another motorcycle bearing No. MH-09/DR-140 came from opposite side in high speed in rash and negligent manner and by coming on wrong side, gave dash to the motorcycle of the deceased. Due to that dash deceased fell down and sustained grievous injuries and he succumbed to the injuries. The offence was registered against the rider of offending motorcycle.

6. To prove the negligence of the rider of the offending motorcycle the Claimant's have examined Claimant No.1 Manjushree Jadhav wife of the deceased, who was pillion rider on the motorcycle of the deceased, at the time of the accident. She has stated that the deceased was riding motorcycle with moderate speed, at that time the rider of the offending motorcycle came from wrong side and gave dash to the motorcycle of the deceased. She further stated that the accident occurred due to sole negligence of the driver of the rider of the offending motorcycle. In cross-examination she has stated that the rider of the offending motorcycle fled away by giving dash. Nothing elicited in her

cross-examination to disbelieve her evidence.

7. To prove the defence the Insurance Company examined has rider of offending motorcycle DW-1 Mayur Chougule at Exhibit-44/C. He has stated that on the day of the accident he was riding motorcycle when he reached near the spot of accident, there was a ditch on the road and when he attempted to save himself from that ditch. He suddenly turned his motorcycle, at the same time, one Hero Honda motorcycle came from front side and dashed his motorcycle. There was tar road having 10 feet width and there were side strips on the both sides of road. The accident took place in the middle of the road. He further stated that he had some fault in the said accident and offence is registered against him for the said accident and after investigation charge-sheet is filed against him. In cross-examination he admitted that the accident occurred at 8.00 p.m. The road was straight. The motorcycle of the deceased was coming from left side of the road and after the accident he went to police station to give the information.

8. While dealing with the issue of negligence the

Tribunal has observed that the Claimants have not proved the sole negligence of the rider of the offending motorcycle. Hence, Tribunal has considered contributory negligence of the rider of the offending vehicle at 75% and the deceased at 25%. I am unable to understand the observations of the Tribunal as the rider of the offending vehicle DW-1 has admitted that due to ditch of road he suddenly turned his motorcycle and went on wrong side and at that time his motorcycle was dashed to the deceased. The accident is witnessed by PW-1 wife of the deceased. She has stated that their motorcycle was dashed by the rider of offending vehicle. The accident occurred at 8.00 p.m. there was dark. After the investigation Police has registered the offence against the rider of offending motorcycle, but these facts are not considered by the Tribunal. Hence, I am considering that accident occurred due to sole negligence of the rider of the offending motorcycle while calculating compensation the Tribunal has not awarded future prospects. As per view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. V/s. Pranay Sethi*[1]*,*** the Claimants are

1 2017 ACJ 2700 (SC)

entitled for 25% future prospects.

9. To prove the income of the deceased, PW-1 wife of the deceased has stated that, the deceased was owner of the autorikshaw and he was driving autorikshaw. The Permit of the autorikshaw and driving license of the deceased are at Exhibit-31 and 32. She further stated that the deceased was earning Rs.15,000/- to Rs.17,000/- per month. While dealing with the issue of income the Tribunal has considered monthly income of deceased at Rs.6,000/- per month, in my view, it is on lower side. As deceased was owner of the autorikshaw and he was diving the autorikshaw and he was skilled driver. He was maintaining family of six members. I am considering monthly income at Rs.10,000/- Considering these calculation's the Claimants are entitled for following compensation.

Particulars	**Amount**
Monthly Income	Rs.10,000.00
Annual Income (Notional Income X 12 months)	Rs.1,20,000.00
(+) Future Prospects (25% - Age 43 Yrs) Annual Income After Future Prospects	Rs.1,50,000.00
(-) Personal Expenses (1/4th amount)	(-)Rs.37,500.00 ------------------

Net Annual Loss of Income	Rs.1,12,500.00
Multiplier 14 Rs.1,12,500/- x 14	**Rs.15,75,000.00**
Tribunal Claim granted under Loss of Dependency	(-)Rs.7,56,000.00
Enhanced amount under Loss of Dependency	**Rs.8,19,000.00**

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

<u>ORDER</u>

(i) The Appeal is allowed.

(ii) The Claimant's are entitled for enhanced amount of Rs.8,19,000/- @ 7.5% interest per annum from the date of the filing of the Claim Petition till realization of the amount.

(iii) The Respondent-Insurance Company shall deposit enhanced amount within six weeks after receipt of the order.

(iv) The Respondent's-Claimant's are permitted to withdraw deposited amount along with accrued interest thereon.

(v) The Claimants shall pay Deficit Court Fees on enhanced amount.

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

(SHIVKUMAR DIGE, J.)