IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1722 OF 2013

1 Mohd. Ajam Mohd. Yusuf Ansari
Age about 53 years, Occupation Nil
{Father of the deceased}

2 Hasina Bano Mohd. Ajam Ansari,
Aged about 43 years, Occupation Household
{Mother of the deceased}

Both Appellants are residing at Jaitunpura, Near Chota Power House, Mangal Bazar Stop, Taluka Bhiwandi, District Thane. … Appellant/ Original Applicants

versus

1 M/s. R. K. Automobiles
Cargo Park, D-184, TTC Industrial Area, Next to Unitech Automobiles, Nerul, Navi Mumbai, District Thane. {Owner of the Motor Truck bearing No.MH-43-U-4075} …. Respondent No.1/Original Opposite Party

2 The HDFC Ergo General Insurance Company Limited., Registered Office Ramon House, H.T. Parekh Marg, 169, Backbay Reclamation, Mumbai- 400 020
{Insurer of the motor Truck bearing No. MH-43-U-4075}
Policy No. VG00023582000100,
Valid from 9.3.2009 to 8.3.2010. …. Respondent No.2/Original Insurer

Ms. Rina Kundu, Advocate for the Appellants.
Mr. Abhijit Kulkarni i/b. Mr. Gourav Shahane, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th FEBRUARY, 2024.

Oral Judgment :

1. This appeal is preferred by the appellants/claimants against the dismissal of the claim petition.

2. It is contention of learned counsel for the appellants/claimants that when deceased was riding motor-cycle, at that time, one truck bearing No. MH-43-U-4075 came from the opposite direction and gave dash to the motor-cycle of the deceased. Due to the said dash, deceased died on the spot. An offence was registered against the deceased. The claim petition was filed under Section 163A of the Motor Vehicles Act, so no question of proving negligence arises but this fact is not considered by the Tribunal and has dismissed the claim petition, which is erroneous. Learned counsel further submitted that deceased was doing tailoring work and he was earning Rs.40,000/- per annum. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2-Insurance Company that the accident occurred due to sole negligence of the deceased as he gave dash to the truck. An Offence was registered against the deceased and charge-sheet was filed against him. The order passed by the Tribunal is legal and valid, hence, requested to dismiss the appeal.

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

5. It is claimants case that on 20th December 2009 at about 6.00 p.m., deceased – Saheb Alam Mohd. Alam Ansari was proceeding towards Jaitunpada by Wada-Bhiwandi Road on motor-cycle bearing No. MH-04-BP-8979. His friend – Ahmedali Qadarji was a pillion rider. The deceased was riding the said motor-cycle in slow and moderate speed with care and caution and on the left side of the road. When he reached within the vicinity of Borpada Village, at that time, one truck bearing No.MH-43-U-4075 came from opposite side in high and excessive speed and in rash and negligent manner and gave dash to the motor cycle of the deceased. Due to the dash, deceased and his friend sustained serious injuries and deceased died while taking treatment. An offence was registered against the deceased.

To prove the negligence of the driver of the truck, the claimants have examined father of the deceased – PW1 but he was not present at the time of the accident, hence, I am not discussing his evidence.

PW2-Ahmedali Qadarji was the pillion rider on the motor-cycle of the deceased. His examination-in-chief on affidavit is at Exhibit-24. He has stated that on the day of the accident, he was riding on the motor-cycle of the deceased as pillion rider. The deceased was riding the said motor-cycle in slow and moderate speed. At the relevant time, at around 6.00 pm., one truck bearing No. MH-43-U-4075 came from opposite direction in high and excessive speed and in rash and negligent manner.

He further stated that the deceased stopped his motor-cycle on the road side of the kaccha road and gave signal to stop the truck, however, the said truck gave dash to their motor-cycle. Due to the said dash, the deceased sustained injuries and died. In cross-examination, he has admitted that Wada-Bhiwandi road is a single road and there is no divider on the said road.

To prove the defense, the Insurance Company has examined - Satish Avhcat, Assistant Manager of the Insurance Company. He has stated that the accident occurred due to sole negligence of the deceased. In cross-examination, he has admitted that he had not witnessed the incident and he is deposing on the basis of certified copy of the final report filed by Bhiwandi Police against the deceased.

While dealing with the issue of negligence, the Tribunal has observed that the FIR was lodged against the deceased. The charge-sheet in respect of the said offence is filed against the deceased. The accident occurred due to sole negligence of the deceased. Hence, the Tribunal has dismissed the claim petition. I am unable to understand the observations of the Tribunal as the claim petition is filed under Section 163 of the Motor Vehicles Act, so no question of considering negligence part arises. Moreover the offence was registered on the basis of report of police constable – Navnath More. In the said report, PW2- eye witness has stated that deceased was trying to overtake the lorry ahead of their motor-cycle and when he came to know that he cannot overtake that lorry, he stopped his motor-cycle on the side of the road, at that time, the offending truck gave dash to their motor-cycle. It supports the case of the claimants. Moreover, the driver of the offending truck did not step into the witness box to prove the negligence of the deceased. The Hon'ble Apex Court in the case of ***National Insurance Co. Versus Chamundeshwari and ors. reported in 2021 (8) SCR 611*** has held that the Court has to give weightage to the evidence given before the Court than the one mentioned in FIR. In the present case, PW2, who is the eye-witness to the incident has stated that the accident occurred due to sole negligence of the truck driver. Hence, I am setting aside the observations of the Tribunal that the accident occurred due to negligence of the deceased.

It has come on record that the deceased was a gents' tailor and he was earning Rs.40,000/- per annum. Hence, I am considering Rs.40,000/- as notional yearly income of the deceased.

As per the view of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for Rs.48000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18000/- for funeral expenses.

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 future prospects.

At the time of the accident, the deceased was 24 year old, hence, proper multiplier is 18.

Considering the above calculations, the claimants are entitled for following compensation :

Particulars		Amount
Annual Income	Rs.	40000.00
40% future prospects	Rs.	16000.00
Total	**Rs.**	**56000.00**
1/2th deduction towards personal expenses	Rs.	28000.00
Dependency (Rs.28000/- x18 (multiplier)	Rs.	504000.00
Consortium (Rs.48000/- x 2 (claimants)	Rs.	96000.00
Funeral Expenses	Rs.	18000.00
Loss of Estate	Rs.	18000.00
Total Compensation	**Rs.**	**636000.00**

The claimants are entitled for compensation of Rs.6,36,000/-

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 enhanced compensation of Rs. 6,36,000/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.1,32,000/- 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. Respondent No.2-Insurance Company shall deposit the compensation amount of Rs.6,36,000/- 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.)