IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1149 OF 2016

National Insurance Co. Ltd., having their Mumbai Regional Office at Sterling Cinema Bldg., 5th floor, Murzban Road, Fort, Mumbai 400 001.	…	Appellant (Orig. Opp. No.2)
versus		
1. Mohan Dnyaneshwar Paramane Age: 47 years, Occ: Agriculture, 2. Nirmala Mohan Paramane Age: 42 years, Occ: Household, R/o. Somardi, Tal- Javali Dist: Satara 3. Sandip Baban Nimbalkar, Age: 23 years, Occ: Vehicle Owner, R/o. Belmachi, Post – Kikali, Tal. Wai, Dist: Satara. 4. Sanjay Pandurang Chavan, Age. Major, Occ: Business, R/o. Bhuinj (Chahur) Tal: Wai, Dist: Satara.	….	Respondents

Mrs. Urmila K. Sanil, Advocate for the Appellant.
Mr. Vaibhav R. Gaikwad a/w Mr. Atharva R. Bhingardeve, Advocate for the Respondent Nos.1 & 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th MARCH, 2024.

Oral Judgment. :

1. The issues involved in this appeal are accident occurred due

to sole negligence of the deceased, deduction of the amount for personal expenses and the Tribunal has awarded compensation on higher side under non-pecuniary heads.

2. It is contention of learned counsel for the appellant- Insurance Company that the accident occurred due to sole negligence of the deceased. At the most, the Tribunal should have considered contributory negligence of the deceased but this fact is not considered by the Tribunal. Learned counsel further submitted that, at the time of the accident, the deceased was a bachelor but the Tribunal has deducted 1/3rd amount for personal expenses, it should be ½. Learned counsel further submitted that the Tribunal has awarded Rs.50,000/- for loss of love and affection and Rs.25,000/- for funeral expenses, which are on higher side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos.1 and 2/claimants that the accident occurred due to sole negligence of the driver of the offending car. An FIR was registered against the driver of the offending car. To prove the negligence of the deceased, the driver of the offending car did not step into witness box. Learned counsel further submitted that 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, Satara (for short “the Tribunal”).

5. It is claimants' case that on 5th January 2011, deceased Sandip was travelling on motorcycle by Humgaon-Kudal Road. At that time, one Maruti Omni Car bearing No.MH-11-AK-4277 came from opposite side and dashed against his motorcycle. Due to said dash, the deceased sustained injuries and succumbed to injuries. An offence was registered against the driver of the Maruti car.

5.1. To prove the negligence, the claimants have relied on police papers i.e. FIR at Exhibit-43 and spot-panchanama at Exhibit-44. To prove the negligence of the deceased, the appellant-Insurance Company has not examined any witness. While dealing with the issue of negligence, the Tribunal has observed that from the contents of FIR at Exhibit-43 and spot-panchanama at Exhibit-44, it reveals that right side body of the car was damaged. It shows that the car had given dash to the motorcycle of the deceased. The Tribunal has also observed that the offending car had gone on the other side of the road and gave dash to the motorcycle of deceased. I do not find infirmity in it. In my view, the FIR was registered against the driver of the offending car after making enquiry. The spot-panchanama at Exhibit-44 shows that the offending car went on the other side of the road, gave dash to the motorcycle of the deceased. Moreover, to prove the negligence of the deceased, the driver of the offending car did not step into witness box. Hence, I do not see merit in the contention that the accident occurred due to negligence of the deceased.

5.2. At the time of the accident, deceased was a bachelor. While awarding compensation, the Tribunal has deducted 1/3rd amount for personal expenses, it should be ½.

5.3. The Tribunal has awarded Rs.50,000/- for loss of love and affection and Rs.25,000/- for funeral expenses. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram, 2018 ACJ 2782 (SC)***, 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.

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

Particulars	Rs.	Amount
Annual Income of the deceased (Rs.6000/- pm x 12)	Rs.	72000.00
50% future prospects	Rs.	36000.00
Total	Rs.	108000.00
1/2th deductions towards personal expenses	Rs.	54000.00
Total	Rs.	54000.00
Rs.54000/- x 18(multiplier)	**Rs.**	**972000.00**
Consortium (Rs.48000/- x 2 claimants)	Rs.	96000.00
Loss of Estate	Rs.	18000.00
Funeral Expenses	Rs.	18000.00
Total Compensation.	**Rs.**	**1104000.00**

The Tribunal has awarded Rs.13,21,000/-, if the amount of Rs.11,04,000/- considered by this Court is deducted from this amount, excess amount comes to Rs.2,17,000/-. The appellant-Insurance Company is entitled for this amount.

6. In view of above, I pass the following order :

O R D E R

1. The appeal is partly allowed.
2. The appellant/Insurance Company is permitted to withdraw Rs.2,17,000/-, out of the deposited amount, along with proportionate interest thereon,
3. Respondent Nos.1 to 2/claimants are permitted to withdraw the balance amount along with proportionate interest thereon.
4. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

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

(SHIVKUMAR DIGE, J.)