IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 535 OF 2020
WITH
CROSS OBJECTION STAMP NO.16876 OF 2023

	Bajaj Allianz General Insurance Co. Ltd., Thr. Its Thane Divisional Manager Having their Office at Sun Magnetica, 6th Floor, Service Road, Louswadi, Thane (Insurer of vehicle bearing No.MH-43-AH-5794		….Appellant
	Versus		
1.	Bhima Dnyanoba Gaikwad, Age-51 years, Occ : Agriculture, (Father of the deceased)		
2.	Renuka Bhima Gaikwad Age-41 years, Occ : Housewife (Mother of the deceased) Both are R/o. Room No.198, Gaondevi Vadi, Ghansoli, Navi Mumbai.		
3.	Devendra Sharma Age-Adult, Occ : Business, R/at House No.1543, Ghansoli Goan, Ghansoli, Navi Mumbai-400 709, (Owner of vehicle bearing No.MH-43-AH-5794)		….Respondents

Ms. Yogita Deshmukh-Chitnis, Advocate for the Appellant.
Ms. Rina Kundu, Advocate for Respondent Nos.1 and 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th APRIL, 2024.

Oral Judgment:

1. This appeal is preferred by the appellant-Insurance Company

against the judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short "the Tribunal"). The claimants have also filed cross-objection for enhancement of compensation. As the appeal and cross-objection are against the same judgment and order, I am deciding it by this common judgment.

2. It is contention of learned counsel for the appellant-Insurance Company that it is claimants' case that the deceased was carpenter and he was earning Rs.12,000/- per month but to prove the said fact, no evidence was produced on record. Learned counsel further submitted that it has not come on record that the deceased was working as carpenter but the Tribunal has considered his monthly income at Rs.5,000/-, which is on higher side. Learned counsel further submitted that the accident occurred due to negligence of the rider of the motorcycle, on which, deceased was a pillion rider but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has awarded consortium amount on higher side. Hence, requested to allow the appeal.

She relied on ***Manusha Sreekumar and ors. versus The United India Insurance Co. Ltd. AIR 2022 SC 5161*** and ***Kunta Devi and ors. Versus Bhura Ram and anr. 2023 (4)T.A.C.20 (S.C.).***

3. It is contention of learned counsel for respondent Nos.1 and 2/claimants that deceased was doing work of carpenter and he was earning Rs.12,000/- per month. To prove the income of the deceased,

the claimants have examined the father of the deceased. He has stated that deceased was working as carpenter but his evidence is not considered by the Tribunal and has considered monthly income of the deceased at Rs.5,000/-, which is on lower side. Learned counsel further submitted that the deceased was a pillion rider on the motorcycle, so no question of his contributory negligence arises. Learned counsel further submitted that the Tribunal has not awarded future prospects, it be awarded and consortium amount is awarded on lower side, it be awarded.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. It is the claimants' case that on 8th December 2013 at about 11.30 p.m., the deceased was pillion rider on motorcycle of his friend. His friend was riding the motorcycle in high speed and in rash and negligent manner. When the said motorcycle reached on Sion-Panvel Road, Near Hiranandani Bridge, Kharghar, the rider of the motorcycle lost control over his vehicle and dashed to one unknown vehicle resulting in serious injuries to the deceased. The deceased died while taking treatment. It is the contention of learned counsel for the appellant – Insurance Company that there was negligence of the rider of the motorcycle and unknown vehicle had dashed the motorcycle, on which, the deceased was pillion rider. In my view, the deceased was pillion rider, so no question of contributory negligence of the deceased arises and the motorcycle was insured with the appellant-insurance company, hence, the appellant-

Insurance Company is liable to pay compensation for negligence of the rider of the motorcycle. I do not find merit in the contention that there was contributory negligence of the deceased in the said accident.

5.1. To prove the income of the deceased, the claimants have examined PW1-Bhima Gaikwad, father of the deceased at Exhibit-22. He has stated that at the time of the accident, the deceased was 22 year old and he was working as carpenter and, out of the said work, he was earning Rs.12,000/- per month. He has further stated that the deceased was supporting his family and his family was dependent on the income of the deceased. In cross-examination, he has admitted that he has no document or certificate to show that the deceased had done course or diploma in carpentry. He further admitted that he has not filed on record any document in support of the income of the deceased. Considering evidence on record, the Tribunal has considered notional monthly income of the deceased at Rs.5,000/- per month. In my view, it is on lower side. It has come on record that at the time of the accident, the deceased was 22 year old and he was maintaining his family. It is contention of learned counsel for the appellant-Insurance Company that no documents were produced on record to show that the deceased was doing work of carpentery and his father has stated in his evidence that he was maintaining family and he was doing the job of carpenter. In my view, the father of the deceased was doing carpentry job and he has stated that his son was also doing carpentry job. There is not reason to disbelieve the evidence of PW1. In cross-examination, no suggestion was given to the witness that deceased was not doing carpentry work. As the father of the deceased was carpenter, the deceased must have learnt carpentry work from his father, so no question of production of document or doing diploma in carpentry work arises. Considering the evidence on record, I am considering Rs.7,000/- as monthly income of the deceased.

5.2. The Tribunal has not awarded future prospects. As per the view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC),*** the claimants are entitled for 40% future prospects.

5.3. The Tribunal has awarded consortium amount on lower side. 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.

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

Particulars	Rs.	Amount
Monthly Income of the deceased	Rs.	7,000.00
40% future prospects	Rs.	2,800.00
TOTAL	Rs.	9,800.00
1/2th deductions towards personal expenses	Rs.	4,900.00
TOTAL	Rs.	4,900.00
Dependency Rs.4900/- x 12months x 18(multiplier)	Rs.	10,58,400.00

Consortium (Rs.48000/- x 2 claimants)	Rs.	96,000.00
Loss of Estate	Rs.	18,000.00
Funeral Expenses	Rs.	18,000.00
Medical Expenses	Rs.	2,63,565.00
Total Compensation.		14,53,965.00

The Tribunal has awarded Rs.8,53,565/-, if this amount is deducted from the amount of Rs.14,53,965/- considered by this Court, it comes to Rs.6,00,400/-. The claimants are entitled for this amount.

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

O R D E R

1. First Appeal No.535 of 2020 is dismissed. No order as to cost.
2. Cross Objection Stamp No.16876 of 2023 is allowed.
3. The claimants are entitled for enhanced compensation of Rs. 6,00,400/-@ 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.
4. The appellant-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.

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

6. The claimants shall pay court fees on enhanced amount as per Rule.

7. The statutory amount in First Appeal No.535 of 2020 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.)