IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 559 OF 2023

The Divisional Officer)
United India Insurance Co. Ltd.)
Add. Saubhagya Chambers, Bytco Point)
Nashik Road, Nashik-422 101 through)
Claims Hub M.R.O.1, 5th floor, Union)
Co. Op Building, Sir. P.M. Road, Fort,)
Mumbai-400001) ….Appellant

Versus

1. Snehal Vishal Chaudhari)
Age: 31 years, Occ. Household)
2. Pranjal Vishal Chaudhari)
Age: 10 years, Occ. - Student)
3. Jignesh Vishal Chaudhari)
Age: 7 years, Occ. - Student)
4. Devkabai Pralhad Chaudhari)
Age : 62 years, Occ.- Household)
(claimant no.1 for herself and for)
claimant no. 2 & 3 as their Natural)
Guardian Mother))

All R/o. House no. 35/1, Jyoti Nagar,)
Sangameshwar, Malegaon,)
Tal. Malegaon, Dist. Nashik)
5. Sufiyan Ahemad Haji Jahir Ahemad)
Age: major, Occ. - Vehicle Owner)
R/o. Jagtap Gaill, Malegaon,)
Tal. Malegaon, Dist. Nashik) ….Respondents

Ms. S. S. Dwivedi, Advocate for the Appellant.
Mr. R. S. Pawar, Advocate for the Respondent Nos. 1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 2nd JANUARY, 2024.

Oral Judgment :

1. The issues involved in this appeal are contributory negligence of deceased and compensation awarded on higher side.

2. It is contention of learned counsel for the appellant-Insurance Company that the accident occurred due to sole negligence of the deceased but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has awarded Rs.2,70,000/- under conventional heads, which is on higher side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos.1 to 4/claimants that deceased was driving his Tata Magic vehicle towards Malegaon to Dhule. At that time, one Tavera Car bearing registration No.MH-04/CD-2865 came from their backside and gave sudden cut to their vehicle from backside, due to which, deceased lost his control over his vehicle and dashed against one truck which was running on the road in front of his vehicle. Learned counsel further submitted that to prove the negligence of deceased, no witness was examined by the appellant. Hence, requested to dismiss the appeal.

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

5. It is the claimants' case that on 2nd November 2019 at about 1.00 a.m., deceased Vishal was driving his Tata Magic vehicle towards Malegaon to Dhule. At that time, the offending Tavera Car came from their backside and gave sudden cut to their vehicle from backside, due to which, the deceased lost his control over his vehicle and dashed against one truck which was running on the road in front of his vehicle. An offence was registered against the driver of Tavera car. To prove the negligence of the deceased, the appellant – Insurance Company has not examined any witness. Without evidence produced on record, it cannot be accepted that the accident occurred due to negligence of the deceased. To prove the negligence of the driver of the offending Tavera Car, the claimants have examined eye-witness who was traveling with the deceased, he has stated that the accident occurred due to negligence of the driver of the offending Tavera car. From the evidence produced on record, it proves that the accident occurred due to the negligence of the driver of the offending Tavera Car. Hence, I do not find merit in the contention of learned counsel for the appellant-Insurance Company that the accident occurred due to the negligence of the deceased.

While awarding compensation, the Tribunal has awarded Rs.2,70,000/- for loss of consortium, loss of love and affection, loss of estate and funeral expenses. 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.44000/- as consortium amount, Rs.16,500/- for loss of estate and Rs.16,500/- for funeral expenses. There are four claimants, the total comes to Rs.2,09,000/-, if this amount is deducted from the amount of Rs.2,70,000/- considered by the Tribunal, it comes to Rs.61,000/-. This is an excess amount, the appellant-Insurance Company is entitled for it.

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.61,000/- along with proportionate interest thereon out of the deposited amount.
3. Respondent Nos.1 to 4/claimants are permitted to withdraw the balance amount along with proportionate interest thereon out of the deposited amount..
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.

   The first appeal stands disposed of.

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

(SHIVKUMAR DIGE, J.)