IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO. 71 OF 2024

Oriental Insurance Company Limited]
Office – 16, Chintamani Park, Gr. Gloor, Opp.]
Gango Temple, Mumbai-Goa Highway,]
Kankavali, Tal. Kankavali, District-Sindhudurg]
Branch Officer – 204-E, Kanchanjanga]
Opp. Panchshil Hotel, Station Road, S. T. Stand]
Kolhapur, Through Claims Hub M. R. O. 2, SBI]
Buildingj Annex, 3rd Floor, Bank Street, Fort,]
Mumbai – 400 023]

.... **Appellant**

Versus

1. Bhimrao Malhari Kamble]
   Aged 62 years, Occ:- Labourer]
   R/o. Balinga, Tal. Karveer, District: Kolhapur]

2. Anjana Bhimrao Kamble]
   Aged – 54 years, Occu- Housewife]
   R/o as above.]

3. Anita Bhimrao Kamble]
   Aged – 35 years, Occu-Education]
   R/o as above.]

4. Rajendra Shivaji Nale]
   Age- Major, Occ-Owner of the Maruti Omni]
   R/o. 112, Krantising Nana Patil Nagar,]
   Phulewadi Ring Road, Kolhapur.]

5. United India Insurance Company Limited]
   Maruti Omni No. MH-09-S-4161]
   Branch office – Matoshri Plaza, Office No.301]
   3rd floor, venus Corner Shahupuri, Kolhapur.]

6. Manohar Rangrao Patil	]
Age- 48 years, Occ- Driver of Omni	]
R/o., Padali Khurd, Tal. Karveer,	]
District:- Kolhapur.	]
7. Dilip Bhikaji Phondake	]
Age Major, Occ-Owner of the Tata Truck	]
R/0. Asalade, Tal. Kankavali,	]
District:- Sindhudurg	]
8. Deepak Babaji Ghugare	]
Age: Major, Occ:- Driver of Truck	]
R/o. Darum Bhogalewadi, Tal:- Kankavali,	]
Tal. Kankavali, District:- Sindhudurg	]

.... Respondents

Mr. S. S. Dwivedi, for the Appellant.
Mr. Pritesh K. Bohade, for Respondent Nos.1 to 3.
Mr. Amol Gatne, for Respondent No.5.

CORAM : SHIVKUMAR DIGE, J.

DATE : 6th DECEMBER, 2024.

ORAL JUDGMENT :

1. The issues involved in this appeal are accident occurred due to sole negligence of the deceased and deduction of amount for personal expenses.

2. It is contention of the learned counsel for the Appellant/Insurance Company that the accident occurred due to sole

negligence of the car driver, as he suddenly opened the car door at the same time the deceased was riding the motorcycle on same road. Due to sudden opening of the car door, the deceased dashed into it and fell down on the road, at relevant time. The offending truck was passing on the same road, as deceased was suddenly fell down on the road, the driver of offending truck could not control the speed of truck and ran over to the deceased. The accident occurred due to sole negligence of the car driver. However, the Tribunal erroneously fixed 50% contributory negligence on the truck driver and 50% contributory negligence on car driver.

Learned counsel further submitted that at the time of accident, the deceased was bachelor but the Tribunal has deducted 1/3 amount for personal expenses, it should be 1/2. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondents/Claimants that the offence was registered against the car driver and truck driver. The Tribunal has passed well reasoned order, no interference is required in it, and requested to dismiss the appeal.

4. I have heard both learned counsel. Perused the impugned

judgment and order passed by the Motor Accident Claims Tribunal, Kolhapur (for short “the Tribunal”).

5. While dealing with the issue of negligence, the Tribunal has observed that the accident occurred due to contributory negligence of the car driver and truck driver. The offence was registered against the driver of both vehicles.

6. Considering the evidence on record, the Tribunal has fixed 50% contributory negligence on both drivers. Moreover, the driver of offending truck did not enter into witness box to prove the negligence of the car driver hence, I do not find merit in the contention that accident occurred due to sole negligence of the car driver. While awarding compensation, the Tribunal has deducted 1/3 amount for personal expenses. At the time of accident, the deceased was bachelor, it should be 1/2 amount for personal expenses. In the connected matter bearing FA/25/2024 filed by Respondent No.5/United India Insurance Company, this Court has already taken a view by separate order that the Tribunal should have taken 1/2 amount towards personal deduction. Deducting 1/2 amount towards personal expenses total compensation would stand reduced to Rs.18,34,400/- therefore the award is on higher side by

Rs.5,62,000/- and to that extent it is reduced. Since, the finding of negligence given by the Tribunal has been upheld by this Court. The awarded amount will have to be paid jointly by both the Insurance Company to the extent of their respective liability of 50% each.

7. In view of above calculations, the Appellant/Insurance Company is entitled for excess amount.

Monthly income	Rs.10,400/-
Future Prospects	Rs.5,200/-
Total	Rs.15,600/-
Deduction (1/2) for personal expenses	Rs.7,800/-
Total monthly income	Rs.7,800/-
Annual income (Rs.7,800/- X 12)	Rs.93,600/-
Multiplier (Rs.93,600/- X 18)	Rs.16,84,800/-
Consortium (Rs.40,000/- X 3 Claimants)	Rs.1,20,000/-
Funeral Expenses	Rs.15,000/-
Loss of Estate	Rs.15,000/-
Total Compensation	**Rs.18,34,400/-**
Less awarded by the Tribunal	Rs.23,96,400/-
Excess amount	**Rs.5,62,000/-**

8. In view of above, I pass following order:

ORDER

i. Appeal is partly allowed.

ii. The Appellant/Insurance Company is permitted to withdraw excess amount Rs.2,81,000/- with the interest awarded by the Tribunal from excess amount of Rs.5,62,000/- i.e. its share of liability.

iii. The Respondent No.5 is permitted to withdraw remaining amount of Rs.2,81,000/- with interest awarded by the Tribunal from excess amount of Rs.5,62,000/- i.e. its share of liability.

iv. The Claimants are permitted to withdraw rest of the amount along with accrued interest thereon.

v. The statutory amount be transmitted to the Tribunal. The parties are at liberty to withdraw it, as per Rule.

vi. Record and Proceedings be sent back to the Tribunal.

9. All pending applications, if any, stands disposed of.

(SHIVKUMAR DIGE, J.)