



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1876 OF 2024

The New India Assurance Co. Ltd.
Through It's Div. Manager,
Aurangabad Divisional Office, DOI,
Above Mahesh Auto, Ajay Engineering Compound,
Near Kranti Chowk, Adalat Road,
Aurangabad.

Appellant/
Orig. opp. no.2.

VERSUS

1. Anita Rajendra Sonwane,
age-37 years, Occ. Nil.
2. Kum. Neha Rajendra Sonawane,
age 15 years, Occ. Education.
3. Kumar Kush Rajendra Sonawane,
age 10 years, Occ. Education.
Resp No.2 and 3 Minor, through
Guardian mother resp. no.1.
4. Smt. Anjanabai Manikrao Sonawane,
age 75 yrs, Occ. Nil.
Res. no.1 to 4 r/o Pimpalner, Tq. Sakri,
District Dhule.
5. Devireddy Venkateshwar Rao Jalait,
Age major, Occ. Business,
R/o. D.No.10-139, Gottumukala Road,
Kanchikacherla, Dist. Kanchikacherla,
Andhra Pradesh.
6. G. Kothi Reddy Pulla Reddy, **...Deleted...**
age adult, Occ. Driver.
R/o 485, Paritta, Kanchikacherla Mandal
Krushna District Kanchikacherla (A.P.)
Resp.No.1 orig claimant.
Resp No.2 & 3 Orig
Opp. Nos.1 and 2.

Advocate for Appellant : Mr. A.B Gatne
Advocate for Respondents 1-4 : Mrs. S T Kazi
R/6 Deleted.

...

WITH

CIVIL APPLICATION NO. 7793 OF 2024 IN FA/1876/2024

CORAM : S. G. CHAPALGAONKAR, J.

Reserved on : March 26, 2025

Pronounced on : April 03, 2025.

JUDGMENT :-

1. The appellant/original respondent no.2-insurer impugns the judgment and award dated 9.6.2015 passed by the Motor Accident Claims tribunal at Dhule in MACP No.928 of 2010, by which a compensation of Rs.44,95,000/- has been awarded to the Respondents/claimants. (Parties hereinafter are referred to as per their original status).

2. Respondent nos.1 to 4 instituted MACP No.928 of 2010 before the MACT, at Dhule raising claim for compensation under section 166 of the Motor Vehicles Act towards accidental death of late Rajendra Sonawane. It is the contention of the claimants that on 26.10.2010 Rajendra was driving Maruti Car bearing registration No.MH-12/AX-7498 from Dhule towards Sakri. While he reached near Tamaswadi Fata on Nagpur-Surat Highway, offending truck bearing registration no.AP-16/TY-3229 came from Sakri side and gave forceful dash to the Maruti Car. Late Rajendra suffered multiple injuries in the said accident and lost his life. According to claimants, late Rajendra was 39 years of age and employed as teacher. He was holding agricultural land and

generating income from its cultivation. Claimants were dependent on him. They lost bread earner of the family.

3. Respondent no.2/insurer contested the claim by filing written statement firstly on the ground that it is a case of contributory negligence and claim as raised is excessive and exorbitant. The Tribunal, after evaluation of the evidence allowed the claim petition, directed respondent nos.1 to 3 to jointly and severally pay the compensation of Rs.44,95,000/- to the claimants alongwith interest @ 8% p.a from the date of filing of the claim petition.

4. Mr. Gatne, learned advocate appearing on behalf of the appellant submits that evidence on record clearly depicts that accident occurred in the center of road. There was head on collision between two vehicles. As such, Tribunal ought to have recorded finding of contributory negligence of the deceased Rajendra/driver of the car. He would further submit that, as per salary bill for September, 2010, Rajendra received Rs.21,610/-. Tribunal erroneously considered his earning at Rs.24,777/- p.m. without statutory deductions towards Professional Tax, Income Tax, etc. He submits that amount of Rs.1.00 Lakh each towards loss of consortium and loss of love and affection is contrary to the law espoused by the Supreme Court of India.

5. Per contra Smt. S.T Kazi, learned advocate appearing for respondents supports the judgment and award as passed by the Tribunal.

6. I have gone through the pleadings and evidence recorded before the Tribunal. Apparently, incident was reported to the police immediately after accident on the complaint given by Venkat Devrao Pawar, who himself is a police officer. He records that accident occurred in the center of road between car and the truck and vehicles were removed to clear flow of traffic. Spot panchnama also records that accident occurred in the center of road at the center strip. Aforesaid documents are admitted in the evidence and placed at Exhibit-16 and 17 respectively, claimants relied upon the aforesaid documents to prove the accident. In this background, Mr.Gatne, learned advocate appearing for the appellant/insurance company submitted that head on collision of the vehicles raises presumption of contributory negligence of both drivers. He places reliance on observations of the Supreme Court of India in case of **Oriental Insurance Co. Ltd vs Premlata Shukla & Ors. reported in 2007 AIR SCW 3591**. According to him, Tribunal ought to have recorded finding of contributory negligence and proportionately deducted the compensation amount.

7. Per contra Smt. Kazi, learned advocate appearing for respondent relying upon the exposition of law in case of **Jiju Kuruvila and others Vs. Kunjujamma Mohan and others reported in AIR 2013 SC 2293** and **Mangal Ram Vs. Oriental Insurance Company Ltd and others reported in AIR 2018 SC 1900** and submits that no such presumption can be drawn on the basis of contents of FIR and panchnama. Claimants are not required to prove the case beyond doubt.

8. It is true that FIR and panchnama are relied upon by the claimants to bring home their case as to the accident. However, contents of FIR itself shows that it has been lodged by the P.C. after making inquiry with witnesses who were present on the spot, who deposed about rash and negligent driving of the truck. Eventually, offence was registered against truck driver on the basis of preliminary opinion formed as per inquiry on the spot. It is true that, it is the accident between two vehicles approaching each other from opposite directions and spot of the accident is shown in the center of road, however, merely on the basis of aforesaid fact, conclusion drawn by the Investigating Officer cannot be brushed aside. The Supreme Court of India, in case of **Jiju Kuruvila and others Vs. Kunjujamma Mohan and others** (supra) observed in paragraph no.24, which reads thus :-

“24. The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.”

9. Similarly, in case of **Mangal Ram Vs. Oriental Insurance Company Ltd** (supra), supreme court observed in paragraph no.23 thus :-

“23. Be that as it may, the next question is whether the Tribunal was justified in concluding that the appellant was also negligent and had contributed equally, which finding rests only on the site map (Exh. 2) indicating the spot where the motorcycle was lying after the accident? We find substance in the criticism of the appellant that the spot where the motor vehicle was found lying after the accident cannot be the basis to assume that it was driven in or around that spot at the relevant time. It can be safely inferred that after the accident of this nature in which the appellant suffered severe injuries necessitating amputation of his right leg above the knee level, the motorcycle would be pushed forward after the collision and being hit by a high speeding jeep. Neither the Tribunal nor the High Court has found that the spot noted in the site map, one foot wrong side on the middle of the road was the spot where the accident actually occurred. However, the finding is that as per the site map, the motorcycle was found lying at that spot. That cannot be the basis to assume that the appellant was driving the motorcycle on the wrong side of the road at the relevant time. Further, the respondents did not produce any contra evidence to indicate that the motorcycle was being driven on the wrong side of the road at the time when the offending vehicle dashed it. In this view of the matter, the finding of the Tribunal that the appellant contributed to the occurrence of the accident by driving the motorcycle on the wrong side of the road, is manifestly wrong and cannot be sustained.”

10. In light of the aforesaid exposition of law and particularly in absence of direct evidence, it is difficult to draw presumption of contributory negligence on the part of the deceased. Best witness available to prove the manner of accident was driver of the truck. However, he did not enter in the witness box. Appellant/insurer also made no attempt to bring him before the Court. Hence, adverse inference needs to be drawn against respondents for withholding best evidence.

In this background, finding as recorded by the Tribunal on the point of negligence needs no interference.

11. So far as assessment of compensation is concerned, claimants relied upon the evidence of CW-2 Raosaheb Patil, Head Master of Sant Thakursingh Dnyanpith, where late Rajendra was employed as teacher. He deposed that in October 2010 gross salary of Rajendra was Rs.24,477/- He issued certified at Exhibit 33. He states that in September, 2010 salary of Rajendra was Rs.21,610/-, but, in October, 2010, on completion of twelve years as per time bound promotion, his salary was Rs.24,477/-. Evidently, no document is tendered in service to show that salary of the deceased was actually fixed at Rs.24,477/-. The last salary bill for September 2010 also shows gross salary of the deceased @ Rs.21,620/-. Therefore, there is substance in contention of Mr. Gatne, that salary of the deceased could not have been assessed to Rs.24,477/- in absence of documentary evidence to support the same.

12. At this stage, Mr. Gatne, learned advocate appearing for the appellant submits that claimants are entitled for compensation on the basis of take-home salary of the deceased. Once salary of the deceased was in the taxable range of income-tax, appropriate deductions needs to be made while calculating net income of the deceased. He would submit that, apart from the income tax, deductions towards P.T. will have to be applied. In support of his submissions, he relies upon observations of the Supreme Court in case of **Shyamwati Sharma and others Vs. Karam Singh and others** reported in

(2010) 12 SCC 378. No doubt, that take-home salary shall be the basis for calculation of the compensation and liability towards taxes shall be taken into consideration while working out the compensation. However, for that purpose it is necessary to bring on record material to indicate that salaried income of the deceased was in taxable range and even by applying various rebates available under tax regime, income of the deceased was taxable. In the present case, salary bill of the deceased which is on record nowhere shows that income tax was deductible from Salary of the deceased. The salary grant bill for last month nowhere depicts that anything was deducted towards income tax. However, certainly, there is deductions of Rs.200/- towards the professional tax. Therefore, contention of Mr. Gatne can be accepted only to the extent of deductions of professional tax of Rs.200/- from the salary of the deceased.

13. Similarly, reference can be given to the observations of the Supreme Court of India in case of **Vimal Kanwar and others Vs. Kishore Dan and others reported in 2010 (3) RCR (civil) 741**, in paragraph no.21 observed thus :-

“21. The third issue is "whether the income tax is liable to be deducted for determination of compensation under the [Motor Vehicles Act](#)" In the case of [Sarla Verma & Anr.](#) (Supra), this Court held "generally the actual income of the deceased less income tax should be the starting point for calculating the compensation." This Court further observed that "where the annual income is in taxable range, the word "actual salary" should be read as "actual salary less tax". Therefore, it is clear that if the annual income comes within the taxable range income tax is required to be deducted for determination of the

actual salary. But while deducting income-tax from salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income chargeable under the head "salaries" one should keep in mind that under [Section 192 \(1\)](#) of the Income-tax Act, 1961 any person responsible for paying any income chargeable under the head "salaries" shall at the time of payment, deduct income-tax on estimated income of the employee from "salaries" for that financial year. Such deduction is commonly known as tax deducted at source ('TDS' for short). When the employer fails in default to deduct the TDS from employee salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed under [Section 201\(1A\)](#) of the Income-tax Act, 1961. Therefore, in case the income of the victim is only from "salary", the presumption would be that the employer under Section 192 (1) of the Income- tax Act, 1961 has deducted the tax at source from the Page no.8 out of 14 pages 8 of 14 FAO-28-2019 (O&M) employee's salary. In case if an objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee.”

In the present case, respondents failed to show deduction towards TDS or bring material showing default on part of employer of deceased.

14. So far as compensation towards non-pecuniary heads is concerned, Tribunal granted amount of Rs.1.00 Lakh towards loss of consortium, Rs.1 Lakh towards loss of love and affection and Rs.25,000/- for funeral exegeses. In fact, there were four dependents of the deceased. All of them were entitled for Rs.40,000/- towards loss of consortium as per the law laid down by the Supreme Court of India in case of **Magma**

General Insurance Company Limited Versus Nanu Ram Alias Chuhru Ram & Ors. reported in (2008)18 SCC 130. In addition to that claimants are entitled for Rs.15,000/- each towards funeral expense and loss of Estate. There cannot be double compensation towards loss of consortium and loss of love and affection. Therefore, compensation granted towards loss of love and affection independently cannot be countenanced. In the result, appeal needs to be partly allowed and compensation needs to be re-assessed in tabular form as follows :-

Sr. No.	Heads	Amount
1.	Monthly income of the deceased Rs.21,410 x 12 (annual income) (after deducting PT)	Rs.2,56,920/-
2.	Addition of 50% towards future prospects 2,56,920 + 1,28,460.	Rs.3,85,380/-
3.	Deduction of 1/4th towards personal and living expenses Rs.3,85,380/4 = 96,345/-	Rs.2,89,035/-
4.	Multiplier of '14' - 2,89,035 x 14	Rs.40,46,490/-
5.	Loss of consortium Rs.40,000/- x 4	Rs.1,60,000/-
6.	Funeral expenses + loss of estate (Rs.15,000 + Rs.15,000)	Rs.30,000/-
	Total : -	Rs.42,36,490/-

(Rs. Forty Two Lakh thirty six thousand four hundred and ninety only). In the result, following order is passed

ORDER

- i. First Appeal is partly **allowed**.

- ii. The judgment and award dated 9.6.2015 passed by the Motor Accident Claims Tribunal at Dhule in MACP No.928 of 2010 is modified.
- iii. The claimants are held entitled for total compensation of **Rs.42,36,490/-** (Rs. Forty Two Lakh thirty six thousand four hundred and ninety only) from respondent nos.1 to 3 jointly severally alongwith interest @ 8% p.a. including the amount towards NFL.
- iv. The compensation amount paid/deposited as per the award passed by the Tribunal be appropriated.
- v. In case the appellant/insurer has deposited excessive amount, balance be refunded to them after releasing compensation amount in favour of the claimants as per modified award.
- vi. First appeal stands **disposed of**. Pending civil application, if any, also stands disposed of.
- vii. Apportionment made by the Tribunal shall *mutatis mutandis* apply to the modified award.

(S. G. CHAPALGAONKAR)
JUDGE

...

aaa/-