IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO. 96 OF 2024

1. Gopinath Abhimanyu Goverdhankar]
   Age: 34 years, Occ: Services]

2. Viraj Gopinath Goverdhankar]
   Age-4 Years, Occ:- Education]
   (Through Appellant No.1 father)]
   Both R/o. Kurul, Tal: Mohol,]
   District: Solapur.]

…. Appellants (Orig. Applicants)

Versus

1. Prakash Jagannath Lonkar]
   Age: 44 years, Occ: Service,]
   R/o. Karmala, Tal: Karmala,]
   Dist: Solapur.]

2. Reliance General Insurance Co. Ltd.]
   Branch at Lucky Chowk, Solapur.]

…. Respondents (Original Opponents)

Mr. R. S. Alange, for the Appellant.
Ms. Seema S. Dighe i/b Priyal G. Sarda, for Respondent No.1.
Ms. Shalini Shankar, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st JANUARY, 2025.

ORAL JUDGMENT. :

1. This appeal is preferred against the dismissal of claim petition.

2. It is contention of learned counsel for the Appellants-Claimants that the accident occurred due to sole negligence of the driver of the offending Car, who dashed the motorcycle on which the deceased was travelling as a pillion rider. An offence was registered against the driver of Car, who was a high-ranking Government Officer. However, while filing charge sheet, it was filed against the Claimant No.1, due to pressure exerted by the driver of offending car i.e. Respondent No.1. Since, the charge sheet was filed against the Claimant No.1, the Tribunal has held that accident occurred due to sole negligence of Claimant No.1 and has dismissed the claim petition, which is erroneous.

2.1. Learned counsel further submitted that the deceased was doing tailoring & embroidery work and she was earning Rs.20,000/- per month but this fact is not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondent 2/Insurance Company that accident occurred due to negligence of

the Claimant No.1, who was driving the motorcycle and dashed to the offending car.

3.1. Learned counsel further submitted that no evidence is produced on record to prove the income of the deceased. The Tribunal has considered all the facts and has passed a well-reasoned order, and no interference is required in it. Hence, requested to dismiss the appeal.

4. Learned counsel for the Respondent No.1 adopted the submissions made by the learned counsel for Respondent No.2.

5. I have heard all learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Solapur (for short "the Tribunal").

6. It is Claimant's case that on 6th April, 2018, in the evening, the Claimant No.1 was proceeding from Karmala to Korti on his motorcycle, the deceased was pillion rider. The speed of the motorcycle was moderate speed. At around 5:30 p.m., when Claimant No.1 and deceased were near in the limits of village Veet, at that time, a car bearing registration No. MH-28-V-8315 came in high speed from the opposite direction. The driver of the car lost his control and suddenly came towards wrong side of the road, and gave

dash to the motorcycle of the Claimant No.1. Due to dash, the deceased sustained injuries and succumbed to it. Initially, an offence was registered against the driver of Car, but later on, the charge sheet for the said offence was filed against the Claimant No.1. To prove the negligence of the driver of offending Car, the Claimant No.1 has examined himself, at Exhibit-21. He has stated that when he was proceeding on road with deceased on motorcycle, the car driver/Respondent No.1, who was driving it high and excessive speed and lost his control and came on wrong side of the road and gave dash to the motorcycle. The accident occurred due to sole negligence of the Respondent No.1.

7. In cross-examination, he admitted that police had filed a case against him. He voluntarily stated that there was an officer in the car, and due to his pressure, he was made an accused. He further stated that deceased was doing tailoring job and she was trained in it, and she was earning Rs.20,000/- to Rs.25,000/- per month from tailoring work.

8. To prove its defense, the Respondent No.1 has examined himself at Exhibit-29. He deposed that accident occurred due to negligence of the Claimant No.1. He also mentioned that the police

had filed report under Section 169 of Cr.P.C., about offence registered against him, stating that there is no evidence against him.

9. In cross-examination, he admitted that he is the Chief Conservative of Forest at Chandrapur. He further admitted that FIR in respect of accident was initially registered against him, which caused the death of Priyanka Goverdhankar wife of the Claimant No.1. However, he was not aware that the FIR had been registered against him. He further admitted that police has seized the car in connection with said offence. He stated that he had not filed a complaint with the police after the incident and had not taken steps to quash the FIR.

10. While dealing with the issue of negligence, the Tribunal has observed that a report under section 169 of the Cr.P.C. was filed against the Respondent No.1. It was burden on the Claimants to prove that the accident occurred due to rash and negligent driving of the Respondent No.1. The Appellants/Claimants failed to prove the negligence of Respondent No.1. Hence, the Tribunal has observed that the accident occurred due to negligence of the Claimant No.1 and accordingly dismissed the claim petition.

11. I am unable to understand that the observations of the

Tribunal, as admittedly, FIR was lodged against the Respondent No.1 for the said accident. The spot panchanama, at Exhibit-4 shows that there were brake marks extending 15 feet behind the car, and right-side tyre of the car was burst. It also mentions that the car driver gave dash by coming on the wrong side of the road. It shows that the offending car was in high and excessive speed and the Respondent No.1 could not control the car's speed and gave dash to the motorcycle of the Claimant No.1 by coming on other side of the road. Resulting in the death of the deceased. The speed of car was excessive that burst its tyre but this fact is not considered by the Tribunal. The contents in the spot panchanama supports the Claimant's case, but this fact was not considered by the Tribunal.

12. Considering the evidence on record, I hold that the accident occurred due to sole negligence of Respondent No.1, and I set aside the observations of the Tribunal that accident occurred due to sole negligence of the Claimant No.1.

13. It has come in the evidence of Claimant No.1 that the deceased was doing tailoring work and she was earning Rs.20,000/- to Rs.25,000/- per month. However, no evidence has been produced on record to support the claim regarding the deceased's income but

she had taken training of tailoring. She was skilled worker, therefore, I am considering Rs.10,000/- as monthly income of the deceased. At the time of accident, the deceased was 24 years old, and therefore, the proper multiplier is 18. As per view Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. V/s. Pranay Sethi***[1], the claimants are entitled for 40% future prospects. As per Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram***[2], each Claimant is entitled for Rs.48,000/- for consortium amount, Rs.18,000/- for future expenses and Rs.18,000/- loss of estate.

14. Considering the above calculations, the claimants are entitled for following compensation.

Monthly Income	Rs.10,000/-
Annual Income	Rs.1,20,000/-
Total	Rs.1,20,000/-
Add: 40% future prospects	Rs.1,68,000/-
1/3rd deduction for personal expenses	Rs.56,000/-
Total amount	Rs.1,12,000/-
Multiplier 18 (Rs.1,12,000/- X 18)	Rs.20,16,000/-
Consortium amount (Rs.48,000/-) X 2 Claimants	Rs.96,000/-
Funeral Expenses	Rs.18,000/-
Loss of Estate	Rs.18,000/-
Total Compensation	**Rs.21,48,000/-**

15. In view of above, I pass following order:-

1 2017 ACJ 2700 (SC)
2 2018 ACJ 2782 (SC)

ORDER

i. Appeal is allowed.

ii. The Claimants are entitled for compensation of Rs.**21,48,000/-** @ 7.5.% interest per annum from the date of filing claim petition till realization of the amount.

iii. The Respondent No.2/Insurance shall deposit the compensation amount along with accrued interest thereon, within six weeks after receipt of the order.

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

v. The Claimant shall pay the deficit Court's fee, if any.

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

16. All pending application, if any, stand also disposed of.

(SHIVKUMAR DIGE, J.)