IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.856 OF 2024

United India Assurance Co. Ltd.
Union Co-operative Building,
5th Floor, P. M. Road, Fort,
Mumbai 400 001 ... Appellant

vs.

1. Smt. Sneha Arvind @ Sneha
Ashok Chanchlani
Aged 28 years, widow of the deceased ...

2. Mr. Balasubramanian Laxminarayanan
Aged 62 years, father of the deceased ...

3. Mrs.Vidhyunmala Balasubramanian
Aged 62 years, mother of the deceased ...

4. Ms. Vilasini Balasubramanian
Aged 24 years, sister of the deceased
All residing at 501, Rajesh Park, 60 feet,
Road, R. B. Mehta Marg, Ghatkopar (E)
Mumbai 400 077 ...

5. Mr. Ankush Suryabhan Kolpe
Residing at Kolpe Wadi,
Sinnar 422 102
Nashik, Maharashtra
(owner of the offending vehicle) ... Respondents

WITH
FIRST APPEAL NO.1570 OF 2024

1. Ms. Sneha Arvind @ Sneha
Ashok Chanchlani ...
Aged 28 years,

2. Mr. Balasubramanian Laxminarayanan
Aged 62 years, ...
3. Ms. Vidhyunmala Balasubramanian
Aged 62 years, ...

4. Ms. Vilasini Balasubramanian
Aged 24 years,
All residing at 501, Rajesh Park, 60 feet,
Road, R. B. Mehta Marg, Ghatkopar (E)
Mumbai 400 077 ... Appellants

vs.

1. United India Assurance Co. Ltd.
Union Co-operative Building,
5th Floor, P. M. Road, Fort,
Mumbai 400 001 ...

2. Mr. Ankush Suryabhan Kolpe
Residing at Kolpe Wadi,
Sinnar 422 102
Nashik, Maharashtra
(owner of the offending vehicle) ...Respondents

Ms. Varsha Chavan for the Appellant in FA/856/2024 and for Respondent No.1 in FA No.1570/2024.

Mr. Ashish Kamat, Senior Advocate with Aseem Naphade and Pratik Deshmukh i/b Adwait Bhonde for the Appellants in FA No.1570/2024 and Respondent Nos.1 to 4 in FA No.856/2024.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 2nd APRIL 2025

PRONOUNCED ON : 25th APRIL 2025

JUDGMENT :

. Present Appeals are filed under Section 173 of the Motor Vehicles Act, 1988 ("**the Act**") against the Judgment and Order dated 21/08/2023, in M.A.C.P. No.807 of 2019 ("**Claim**"), passed by the Motor Accident Claims Tribunal, Mumbai thereby the said claim under Section 166 of the Act was partly allowed and the Appellant and Respondent No.5 in First Appeal No.856 of 2024 were held liable to pay the Respondent Nos.1 to 4 in the said Appeal the compensation in the sum of Rs.1,36,53,444/- with an interest at the rate of 7% per annum from the date of the claim till realization of the said amount.

1.1) First Appeal No.856 of 2024 is filed mainly on the grounds of negligence and the compensation amount awarded is excessive. First Appeal No.1570/2024 is filed by the claimants on the ground that just compensation has not been awarded by the Tribunal. As such, both Appeals are disposed of by this common judgment. (*Hereinafter, the parties in both the Appeals are being referred to as per their status in the First Appeal No.856 of 2024, i.e., the Appellant as "**the Insurer**", Respondent Nos.1 to 4 as "**the Claimants**" and Respondent No.5 as"**the Insured**"*).

2) Heard, Ms. Chavan, the learned Counsel for the insurer and Mr. Kamat, the learned Senior Counsel for the claimants. Perused the record. Notice to Respondent No.5 is dispensed with vide order dated 06/09/2024.

3) Facts in brief are that, the claimants filed the said M.A.C.P No.807 of 2019, therein they averred that on 23/12/2018, at about 9.00 hours, late Arvind Balasubramanian was riding his motor cycle ("**M/cycle**") bearing MH-03-DB-2422 from Thane towards *Igatpuri*, on Mumbai-Agra Highway. When his M/cycle reached in front of Star hotel, at Shahpur, a motor jeep bearing MH-14-EM-9228 ("**jeep**") came from Nashik side, driven at a very high speed, rashly, and negligent manner and gave a dash to the M/cycle. The deceased fell down on the road due to the said dash and sustained serious injuries. Immediately, the deceased was removed to Igatpuri Government hospital but he was dead by then. On receiving this information, an FIR bearing No.282 of 2018, came to be registered with Kasara police station under sections 304-A, 279, 337, 338 of I.P.C 184 and 177 of the Act.

3.1) The claimants averred that the deceased was serving as a Consultant with M/s.Capgemini Technology Services India Ltd., thereby he was earning Rs.9,00,000/- per annum. All the claimants were depending upon the income of the deceased. Therefore, the claimants prayed to award total compensation in the sum of Rs.2,00,00,000/- with interest.

4) Despite notice of the claim, the insured did not file his appearance. Hence, he was marked *ex-parte*. The insurer resisted the claim by filing the written statement (Exh.13). The insurer contended that the jeep was not responsible to cause the accident. It was contended that the accident occurred due to circumstances beyond the control of the driver of the jeep. It was contended that the accident occurred only due to the rash and negligent riding of the M/cycle by the deceased. In the alternative, it was contended that this is a case of contributory negligence. Therefore, the insurer prayed to dismiss the claim with costs.

5) In the backdrop, the Tribunal framed the issues. To prove the claim, the claimants adduced evidence of claimant/Respondent No.1 (AW1/Exh.17) and examined Divesh M. Parmar (AW2/Exh.32), to prove the occupation and income of the deceased. Besides, the claimants relied on the following documents in evidence :- Insurance Policy (Exh.18), FIR (Exh.19), Wireless message (Exh.20), Report

(Exh.21), Spot Panchnama (Exh.22), Inquest Panchnama (Exh.23), P.M. Report (Exh.24), Driving license (Exh.27), Offer Letter of Appointment (Exh.35), Consent/offer acceptance letter (Exh.36), Salary Slips (Exh.37) and Income Tax Form No.16 (Exh.38).

6) Ms. Chavan, the learned Counsel for the insurer submitted that according to the claimants, there was head on collision between the two vehicles. The accident occurred in the middle of the road. As such, it is safe to infer that the deceased was riding his M/cycle in the wrong lane and he was more blamable for the accident.

6.1) Mr. Kamat, the learned Senior Counsel submitted that in her evidence, AW1 has clearly stated that the accident occurred due to the rash and negligent driving of the jeep. This evidence is supported with the police papers. There is no evidence in the rebuttal.

7) On the point of the accident, the evidence of AW1 is that at the relevant time and place, the jeep was driven at a very high speed, rashly and negligently. As a result, the jeep dashed the M/cycle of the deceased. However, AW1 has not witnessed the accident. The insured and the insurer have not examined the driver of the jeep. As such, it is necessary to depend upon the police papers relied by the claimants. Admittedly, the FIR (Exh.19) was registered on the basis of the

information given by Police Constable Mr.Baluram Chaudhari, Buckle No.3234. As stated in the FIR, on 23/12/2018, at about 9.00 hours, while Mr.Chaudhari and other police personnel were present on duty at *Chintan Wadi* check post, on the Mumbai – Agra highway, they received the information about the accident. Immediately, they went to the spot. There, they noticed that at the time of the accident, the M/cycle was driven by the deceased from Mumbai towards Nashik. At the same time, the driver of the jeep drove the jeep from Nashik side towards Mumbai in a reckless and negligent manner and dashed the M/cycle. As a result, the deceased sustained serious injuries and, consequently, he died. The Spot Panchnama recorded that the M/cycle was considerably damaged. Said fact indicated that the jeep was driven at a very high speed. The Spot Panchnama indicates that the road was wide enough. As such, the jeep could have easily crossed over the M/cycle. However, the jeep dashed the M/cycle. Therefore, it is safe to infer that the driver of the jeep did not keep a proper look out on the road and, consequently, the jeep dashed the M/cycle. Thus, the Spot Panchnama supported the FIR. Therefore, I am in agreement with the findings recorded by the Tribunal that the accident occurred due to rash and negligent driving of the jeep.

Despite opportunities, the insured and the insurer did not examine the driver of the jeep to establish their contention that the accident occurred due to rash and negligent riding of the M/cycle by the deceased himself. Therefore, adverse inference can be drawn against them.

8) The evidence of AW2 is that, since 2012, he has been serving as the Senior consultant-HR in M/s. Capgemini Technology Services India Ltd., Vikhroli (West). The evidence of AW1 and AW2 is that since 2017, the deceased was serving with the aforesaid company. This evidence is supported with an Offer Letter (Exh.35), Letter of Acceptance (Exh.35 and 36), Salary Slips for the month of September and October 2018 (Exh.37 colly.) and Form-16 of A.Y. 2019-2020 (Exh.38). Said oral and documentary evidence went unchallenged in the cross-examination so far as the occupation is concerned. Hence, I hold that at the time of the accident, the deceased was working as the Consultant, on a monthly salary basis, with the said Company.

9) The evidence of AW1 and AW2 is that, at the time of the accident the deceased was earning Rs.9,00,000/- per annum by way of said services. AW2 deposed that in the month of September 2018, the gross salary of the deceased was Rs.90,244/- and in October

2018, said salary was Rs.70,186/-. To strengthen this evidence, AW2 relied upon true copies of the Salary Slips for the month of September and October 2018 (Exh.37 colly.). AW2 deposed that as per the Form-16 (Exh.38) the total salary income of the deceased from January 2018 to December 2018 was Rs.6,55,466/-. Additionally, AW2 filed a separate Affidavit (Exh.31) as the Certificate under Section 65B of the Evidence Act to support the said Salary Slips and the Form-16. Considering the said oral and documentary evidence, the Tribunal in paragraph 20 of the impugned judgment held that the salary income of the deceased was Rs.70,186/-, as stated in the Salary Slip for the month of October 2018. The other monthly allowances of Rs.13,300/- were taxable. Accordingly, the Tribunal took the yearly income as Rs.8,42,232/-. Out of the said gross annual income, the Tribunal deducted Rs.50,000/- towards Income Tax and Rs.2,500/- towards Professional Tax. Thus, the net annual income was taken as Rs.7,89,732/-. The Tribunal held that the deceased was in permanent employment, and he was aged 29 years as per his date of birth, 26.09.1989, stated on his driving licence (Exh.27). Therefore, in accordance with the decision in ***National Insurance Co. Ltd. v/s. Pranay Sethi and Others***[1] and ***Sarla Verma and others v/s. Delhi***

1. *2017 ACJ 2700 (SC)*

Transport Corporation and another[2], the Tribunal added 50% of the established net annual income towards the future prospects of the deceased, deducted 1/3rd from the actual net yearly income towards the personal and living expenses of the deceased and took the multiplier of '17'. Accordingly, the Tribunal awarded Rs.1,34,25,444/- towards the loss of the dependency (Rs.70,186/- **x** 12 **=** Rs.8,42,232/- **–** Rs.52,500/- **=** Rs.7,89,732/- **+** Rs.3,94,866/- (50%) **–** Rs.3,94,866 (1/3rd) **=** Rs.7,89,732/- **x** 17).

10) Ms. Chavan submitted that the Claimants have not produced the Salary Slip for the month of November 2018. The employer of the deceased has been a multinational tech company. However, said company failed to produce the Salary Slips for three consecutive months. Therefore, an adverse inference should be drawn that either the said company has no information of the income or it suppressed some material information from the Court. She submitted that, before the Tribunal, the learned Advocate for the Claimants submitted that the income of the deceased be taken as Rs.69,511/- per month. However, the Tribunal took the said income as Rs.70,186/- per month. She submitted that the Tribunal deducted the income tax

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2. *2009 ACJ 1298 (SC)*

component of Rs.50,000/- but, the tax deducted towards the nine months' income was Rs.50,856/-. Thus, the income tax was deducted on the lower side, which is arbitrary. She, therefore, urged that the compensation awarded towards the loss of the dependency be reduced, accordingly.

11) In contrast, Mr. Kamat, the learned Senior Counsel submitted that the deceased was getting an income of Rs.9,00,000/- per annum. Accordingly, his monthly income/salary was Rs.75,000/-. His average monthly salary income was Rs.80,230/- for the months of September and October 2018. He submitted that in the financial year 2018-2019, the deceased worked only for 9 months and 23 days, i.e., from 01/04/2018 to 23/12/2018. During that period, his average monthly income was Rs.72,829/- (Rs.6,55,466/- ÷ 9 months). Yet, the Tribunal considered the monthly income as Rs.70,186/-, which is erroneous. Mr. Kamat, the learned Senior Counsel, therefore, urged that the monthly income be held as Rs.72,829/-, at least.

12) Considering the aforesaid controversy as to the monthly salary income, the Income Tax Form No.-16 for the Assessment Year 2019-2020 (Exh.38) is crucial. As stated in this form, the annual income of the deceased for the financial year 2018-2019 was

Rs.6,55,466/-, out of which total Rs.50,856/- was deducted towards the income tax and Rs.1,900/- was deducted as the employment tax. Accordingly, the net income was Rs.6,02,710/-.

12.1) In the said financial year, the deceased worked for 9 months and 23 days (total 266 days). As such, his average net monthly income was Rs.67,975/- (Rs.6,02,710/- ÷ 266 days **=** 2265.82 **x** 30 days). There is nothing to doubt the genuineness and correctness of the declarations in the said Form-16 nor there is any evidence in the rebuttal thereof. Hence, I hold that the net monthly income of the deceased was Rs.67,975/- which annually comes to Rs.8,15,700/-. The evidence of AW2 indicates that the deceased was in permanent employment, and as noted above, the deceased was aged 29 years. The insurer has not contradicted this fact by adducing any evidence. I, therefore, hold that 50% of the net annual income of Rs.8,15,700/- should be added towards the future prospects of the deceased. On such addition, the actual yearly income of the deceased comes to Rs.12,23,550/-.

13) Now the question is what amount should be deducted towards the personal and living expenses of the deceased, i.e., 1/3rd or 1/4th. The answer to this question depends upon the number of

dependents on the income of the deceased.

13.1) The evidence of AW1 indicates that all the claimants were dependant on the income of the deceased. Admittedly, AW1 is the widow of the deceased. The claimants/Respondent Nos.2 to 4 are his aged father, mother and sister, respectively.

14) Ms. Chavan, the learned counsel for the insurer submitted that, as admitted by AW1, the claimant/Respondent No.2 has been a retired person and the claimant/Respondent No.4 has been in service. She, therefore, emphatically submitted that said two claimants have income from pension and salary, respectively. Hence, they both were not dependant on the income of the deceased. She submitted that as held in the case of ***Sarla Verma*** (supra), in the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. As such, only two claimants/Respondent Nos.1 and 3 were dependant on the income of the deceased. Therefore, the 1/3rd deduction of the actual yearly income of the deceased towards his personal and living expenses was proper.

15) Mr. Kamat, the learned Senior Counsel for the claimants

strongly rebutted the said submissions contending that the claimant/Respondent No.2 being aged and claimant/Respondent No.4 being unmarried sister both were completely dependent on the income of the deceased. Withal, the Tribunal did not decide the question of the number of dependents nor recorded any specific findings in that regard nor give a reason for the 1/3rd deduction instead of the 1/4th. Hence, the said deduction should be substituted with 1/4th.

16) The claimants/Respondent Nos.1 and 3 were certainly dependent on the income of the deceased. This aspect of the case in not disputed by Ms. Chavan, the learned Counsel for the insurer. The claimant/Respondent No.2 was aged 62 years when the claim was filed. Generally, aged parents are dependents on their earning children for various reasons. The insurer has not adduced any evidence to show that the claimant/Respondent No.2 has been a pensioner and his pension income is adequate. That apart, even if it is presumed that the claimant/Respondent No.2 has some income from a pension, he must be shouldering the responsibility of claimant/Respondent No.3, who was then aged 57 years. There must be depletion of the pension income towards their age related ailments

and other needs. The claimants have been residing in Mumbai, which is a financial and commercial city. As such, the cost of their living is obviously high. So, the pension amount could be barely sufficient for the said claimant. I, therefore, hold that the claimant/Respondent No.2 was dependent on the deceased.

17) The insurer has not produced any evidence to show that the claimant/Respondent No.4 was in service at the time of the accident and since then, she has been earning sufficient to maintain herself, and she was not dependant on the deceased. It appears that the claimant/Respondent No.4 was unmarried at the time of the accident. Therefore, the evidence of AW1 is acceptable that the deceased used to extend some monetary help to the claimant/ Respondent No.4. Hence I hold that the claimant/Respondent No.4 was also dependant on the deceased.

17.1) There is one more angle to look at the controversy as to whether the claimant/Respondent No.4 was dependant on the deceased or not. In this context, it would be apposite to refer the decision in ***Future Generali India Insurance Co. Ltd v/s. Soumita Roy and another***[3]. In that case, the father had filed the claim on accidental death of his son. The father proceeded the claim with due diligence,

3. *2018 ACJ 1581 (Cal.)*

but it could not be disposed early due to certain delay attributable to the insurance company and other events. During the pendency of the claim, the father died. In the meanwhile, he had examined 8 witnesses. On father's death, his daughter *i.e.* non-dependent sister of deceased impleaded herself as the claimant. Thereafter, the claim was decided and an award of Rs.1,22,62,015/- was passed, which was under challenge.

18) In this background, the High Court held that if the father had died after the arguments were concluded but before the judgment, the sister would have got the compensation award. Since this has not happened, the sister would be entitled only for the compensation towards loss to estate and funeral charges. But no party to a judicial proceeding ought to be allowed to reap the benefit of the delay caused by it in conclusion of proceeding against his adversary. It is observed that, "It is true that compensation for loss of love, affection and guidance that could have been showered by an elder (who dies in a motor vehicular accident) on the members of his family is not expressly provided for in the 1988 Act; however, at the same time, it must be remembered that Section 168 of the Act speaks of just compensation on facts and the circumstances of a given case and not

a specified amount under different heads, as one would find in the Second Schedule of the Act. Although compensation for loss of estate, loss of consortium and funeral expenses have been standardized in ***Pranay Sethi*** (supra), just compensation must be "just" in the facts of the case before the Tribunal/Court and not any arbitrary or fanciful amount without having any nexus to the extent of loss suffered by the members of the deceased's family. To a sister, loss of her only brother is immeasurable. It is the brother who would always be there when the sister needs him, the brother would be the person who would pick her up if she were to trip and fall, it would be the brother's shoulder on which she could assuredly rest on faced with turmoil in her life and so on so forth. Since the 1988 Act does not specifically provide how compensation in such a case is to be assessed, is it for the Tribunals/Courts to fold hands and decline relief? We think not. Chapter XII of the 1988 Act is a beneficent legislation and Section 168 thereof has left the matter of assessment of compensation to the discretion of the Tribunal/Courts. Of course, care and caution have to be exercised while assessing compensation; but it would tantamount to frustrating the purpose of compensation if no amount were awarded under any particular head on the specious ground that the

1988 Act does not provide for it. If indeed such logic were to be accepted, no amount could also be awarded for future prospects, or under 'non-pecuniary' heads since the same is traceable only in the Second Schedule which is not applicable for applications under Section 166 of the 1988 Act. We, thus, hold that the issue has to be answered in the light of the peculiar facts noticed above". Having given the consideration thus, the High Court modified the award and awarded Rs.50,00,000/- to the sister.

18.1) In the case of ***Gujarat State Road Transport Corporation Ahmedabad v/s. Ramanbhai Prabhatbhai and another***[4], the Hon'ble Supreme Court considered the principles of justice, equity and good conscience having regard to the conditions of the Indian society, and in paragraph 11 observed and held as under :

> "**11.** ... Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of Torts that every injury must have a remedy. It is for the Motor Accidents Claims Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act

4. *1987 ACJ 561 (SC)*

> and to specify the person or persons to whom compensation shall be paid. ... We should remember that in an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread winner of the family and if bread winner is killed on account of the accident, there is no justification to deny the compensation relying upon the provision of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to the cases arising out of motor vehicles accidents. ... ".

18.2) In the instant case in hand, as noted above, the claimant/Respondent No.2 is aged. By now, the claimant/Respondent No.3 is also aged. So, they may be facing their age related different problems. As such, besides the aged parents, only the deceased was there to provide consistent monetary and family support to the claimant/Respondent No.4. It is obvious that due to the death of deceased, the claimant/Respondent No.4 has lost his love, guidance and support which is most needed during certain rough times and turmoil in one's Life. The deceased was just 29 years. Presently, the claimant/Respondent No.4 is aged about 30 years. To such a sister, loss of the young brother is immeasurable. Claims and legal liabilities crystallise at the time of accident itself. So, if no compensation is conceived in this case, it would amount to holding that no loss at all is suffered by the sister on account of the death of the brother notwithstanding he was of huge help throughout her long life. Undoubtedly, such rigid thinking is against the intention of the Act. Thus, the aforesaid background adds to my conclusion above that the claimant/Respondent No.4 was dependant on the deceased.

18.3) In view of the above discussion, my findings as to the number of dependents and to meet the concept of 'just compensation', 1/4th of the actual yearly income of Rs.12,23,550/- should be deducted towards the personal and living expenses of the deceased. On such deduction, the yearly loss of the dependency comes to Rs.9,17,662.50. The applicable multiplier is '17'. As a result, the claimants are entitled to receive Rs.1,56,00,263/- towards the loss of dependency (Rs.12,23,550/- **–** Rs.3,05,887.50 (1/4th) **=** Rs.9,17,662.50 **x** 17). In view of the decision in ***Magma General Insurance Co. Ltd. v/s. Nanu Ram Alias Chuhru Ram & Ors.***[5], the claimant/Respondent No.1 is entitled to receive Rs.44,000/- as 'spousal' consortium and the claimants/Respondent Nos.2 and 3 are

5. *2018 ACJ 2782 (SC)*

entitled to receive Rs.44,000/- **each** as ‘filial’ consortium. Additionally, the claimants are entitled to get Rs.16,500/- under the head ‘funeral expenses’ and Rs.16,500/- under the head ‘loss to estate’. Thus, the claimants are entitled to get a sum of Rs.1,57,65,263/- as the compensation. Considering the peculiar facts and circumstances of the case, the claimants are entitled to get an interest at the rate of 7 % per annum on the enhanced compensation amount.

19) Upshot of the above discussion is that, the Tribunal erred in ascertaining the correct monthly income of the deceased and the number of dependents on him, which error resulted in quantifying the compensation amount on the lower side. Said infirmity, therefore, called for an interference in the impugned Judgment and Order to modify the award. As a result, the F.A. No.856 of 2024 is liable to be dismissed and the F.A. No.1570 of 2024 deserves to be partly allowed.

20) Hence, following Order is passed :-

(i) First Appeal No.856 of 2024 is dismissed with proportionate costs.

(ii) First Appeal 1570 of 2024 is partly allowed with proportionate costs.

(iii) The impugned Judgment and Order dated 21/08/2023, in M.A.C.P. No.807 of 2019, passed by the Motor Accident Claims Tribunal, Mumbai is modified.

(iv) The Appellant- Insurance Company shall pay the compensation of **Rs.1,57,65,263/-** (inclusive of NFL amount) together with interest thereon at the rate of 7 % per annum from the date of the claim petition till realisation of the amount.

(v) The entire amount of the compensation alongwith the interest shall be disbursed among the claimants/ Respondent Nos.1 to 4 in First Appeal No.856 of 2024 and invested in their name as directed by the Tribunal, subject to payment of deficit Court fee, if any.

The Appellant/Insurer will be entitled to an adjustment of the amount proportionate to the already paid amount, if any, under the impugned Award.

(vi) Statutory deposit, if any, shall be transferred to the Tribunal and it be disbursed in accordance with the law.

(vii) The Appeals stand disposed of in above terms.

(SHYAM C. CHANDAK, J.)