IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.1033 OF 2023

APPELLANT : ICICI Lombard General Insurance Co. Ltd., Through Branch Manager, 6th Floor, Landmark Building, Ramdaspeth Ward Road, Nagpur.
(Ori. Respondent No.2)
(On R. A.)

..VERSUS..

RESPONDENTS :

1 Sujata Wd/o Prakash Patra,
Aged – 52 Years, Occ. Household.
(Original Petitioner No.1) (On R. A.)

2 Shepali D/o Prakash Patra,
Aged – 25 Years, Occ. Student.
(Original Petitioner No.2) (On R.A.)

3 Satyabhama W/o Rukman Patra,
Aged-75 Years, Occ. Nil.
(Original Petitioner No.3) (On R. A.)

4 Versha Wd/o Prakash Patra,
Aged-50 Years, Occ. Household.
(Original Petitioner No.4) (On R.A.)

5 Manthan S/o Prakash Patra,
Aged -22 Years, Occ. Household.
(Original Petitioner No.5) (On R.A.)

All R/o. 166, South Bridge Road, Taj Nagar, Near Tukdoji Square, Nagpur.

6 Kamaljit S/o Dipak Rai,
Aged – Major, Occ.: Not Known, R/o – Khapa, Near Ram Mandir Road, Tah-Saoner, District – Nagpur.
(Original Respondent No.1) (On R.A.)

Mr R. D. Bhuibhar, Advocate for Appellant.
Mrs U. A. Bhattad, Advocate for Respondent Nos.1 to 5.
Mr K. P. Mirache, Advocate for Respondent No.6.

CORAM : M. W. CHANDWANI, J.
DATE : 24th FEBRUARY, 2025.

ORAL JUDGMENT

1. Heard.

2. **Admit**.

3. The appeal challenges the award passed by the Motor Accident Claims Tribunal, Nagpur, in Claim Petition No.1036 of 2013, thereby granting a compensation of Rs.79,70,239/- to the appellants/original petitioners on account of death of Prakash Rukman Patra in a vehicular accident that occurred on 16.08.2013.

4. On 16.08.2013 at about 14.10 hrs., deceased Prakash was riding his motorcycle bearing No.MH-30-DP-3284 and when he reached near Deshmukh Dhaba, the offending tractor bearing No.MH-40-L-5061 alongwith trolley came at a high speed from Talegaon towards Kamptee Shivar and gave a dash to the motorcycle of the deceased, wherein the deceased sustained

injuries and died on the spot. The first information report came to be lodged against the driver of the offending tractor. The respondent Nos.1 to 5 filed a claim petition before the Tribunal which came to be allowed. Hence, the present appeal.

5. Mr. Bhuibhar, learned counsel appearing on behalf of the insurer/appellant raised three points in the appeal. Firstly, there was negligence on the part of the deceased and at least to some extent, he also contributed to the negligence that resulted in the accident. According to him, the deceased was attempting to overtake the offending tractor. When his motorcycle skidded, he came under the offending tractor. Therefore, it appears that there was no negligence on the part of the driver of the tractor. He submitted that as per the settled facts, the deceased was at least partially responsible for contributory negligence which the Tribunal failed to consider. Next, it is submitted that the compensation awarded is excessive in proportion to the income. According to him, the income tax return of one year of the deceased has been filed on record, which was believed by the Tribunal. He submitted that no document was produced on

record to substantiate his income. No licence of plumbing contractor has been placed on record. Therefore, the Tribunal ought not to have granted compensation to the tune of Rs.79,70,239/- which according to him is excessive. Lastly, the learned counsel for appellant submitted that since the deceased was not wearing a helmet, he was also liable for contributory negligence to the extent of 30%, as held in the case of ***New India Assurance Co. Ltd. and Ors. vs. Julius T. J. Freitas and Ors***. decided on 19.12.2019.

6. The sum and substance of the argument of the learned counsel for the appellant is that the Tribunal's finding should be set aside and the compensation awarded should be reduced on the grounds that the deceased was not entirely at fault.

7. Per contra, the learned counsel for respondent Nos.1 to 5 submitted that the Tribunal has very well considered all the aspects of the case and granted just compensation. She submitted that it is palpable from record that the accident occurred due to the fault of the driver of the offending tractor; the deceased was wearing a helmet; he was earning to the tune of Rs.7 lac per year.

Therefore, there is no merit in the appeal and seeks dismissal of the appeal.

8. Having heard the learned counsels appearing on behalf of the respective parties and having gone through the impugned award, depositions and material documents, it transpires that the deceased died in a vehicular accident on 16.08.2013 on the spot. Perusal of the cross examination of claimant Sujata Prakash Patra goes to show that the deceased's motorcycle got entangled with the hook of the trolley of the offending tractor. Therefore, the claim that the vehicle slipped and the deceased was run over by the tractor is unbelievable, especially since the insurer failed to examine the tractor's driver, who could have countered the allegations made in the petition during his deposition. Therefore, I do not find any force in this point. So far as the ground of not wearing a helmet is concerned, the cross examination of this very witness i.e. Sujata goes to show that she collected the helmet from the police after the accident. Therefore, it cannot be said that the deceased was not wearing a helmet at the time of accident.

9. Turning to the income of the deceased assessed by the Tribunal, it appears that the Tribunal relied on the income tax return of the assessment year 2012-13 which shows annual income of the deceased as Rs.7,04,951/-. It is to be noted here that the said income tax return is filed much prior to the alleged accident i.e. on 30.07.2012. Even, the deceased paid income tax exceeding Rs.60,000/-. There is no reason to doubt the figure shown in the income tax return. Therefore, the Tribunal has rightly calculated the annual income of the deceased on the basis of income tax return at the rate of Rs.6,40,430/-.

10. However, it appears that the Tribunal awarded spousal, parental and filial consortium at the rate of Rs.40,000/- each with 10% increase. Notably, in the landmark case of ***National Insurance Co. Ltd. vs. Pranay Shethi and Ors.*** *(2017) 4 T.A.C. 673 (SC)*, the Supreme Court crystallized the principle of 10% increase every three years. The Supreme Court fixed the amount of Rs.40,000/- towards consortium and other component in the current scenario of 2017. Therefore, 10% increase will be applicable only to the accidents which occurred after the year

2017 and not prior to that. Therefore, to that extent, the judgment of the Tribunal is required to be corrected. Resultantly, following order.

11. The appeal is partly allowed.

12. The appellant and respondent No.6 shall jointly and severally pay a sum of Rs.79,55,239/- to the respondent Nos.1 to 5 alongwith interest at the rate of 7.5% per annum from the date of petition till its realization.

13. Rest of the impugned award of the Tribunal shall remain intact.

(M. W. CHANDWANI, J.)

Tambe