



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1067 OF 2018**

WITH

CROSS OBJECTION STAMP NO.12952 OF 2023

National Insurance Co. Ltd.
Mumbai Regional Office 3,
1st Floor, 12, Jamshedji Tata Road,
Churchgate,
Mumbai : 400 001.

Appellant
(Original
Opp.No.2)

Versus

- 1 Lauretta Shashi Mogale,
Age 35 years, Occ: Housewife
- 2 Neil Shashin Mogale,
Age:-11, Occ:-Education,
Being minor through his natural guardian,
Mother i.e. Respondent No.1.
- 3 Nilambari Chandrakant Mogale,
Age:- 59, Occ: Nil
All R/o.: Sidhi Homes, A-13, Sector -13,
Plot No.144/A, Opposite CNG Pump,
Chikahli, Pradhikaran,
Pune-19.
4. R. Sekhar S/o. K. Ramaswamy,
Age:- major, Occ.: Business.
R/o.:- R.C.C. 206-261, S. G. Mutt Road,
Chamrajpet, Bangalore- 5600018.

.....Respondents

Mr. Amol Gatne, Advocate for the Appellant.

Mr. Vaibhav Ramchandra Gaikwad, Advocate for Respondent Nos.1 to 3/claimants.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th DECEMBER, 2023.

Oral Judgment :

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1. This appeal is preferred by the appellant-Insurance Company against the judgment and award passed by Motor Accident Claims Tribunal, Pune, (for short “the Tribunal”).

2. The claimants have filed cross-objection for enhancement of compensation. Hence, I am deciding the appeal and cross-objection by this common judgment.

3. It is the contention of learned counsel for the appellant that while calculating compensation, the Tribunal has considered arrears of salary of the deceased and, on that basis, compensation is awarded, which is not proper. Learned counsel further submitted that the accident occurred due to contributory negligence of the deceased. In the post-mortem report, it is mentioned that there was smell of alcohol. It shows that deceased was under the influence of liquor but this fact is not considered by the Tribunal. After the order of the Tribunal, respondents/claimants have produced the Chemical Analysis Report before this Court which states about non-presence of poison and it does not mention about alcohol. It shows that at the time of accident, deceased was under influence of alcohol. Learned counsel further submitted that the Tribunal has observed that Chemical Analysis Report is not on record, hence, it was burden on the Insurance Company to prove that deceased was under the influence of liquor. Hence, requested to allow the appeal. He relied :

1. Asha and ors. Versus United India Insurance Co. Ltd. and anr. (2008) 2 SCC 774.
2. Iffco Tokio General Insurance Company Limited versus Pearl Beverages Limited (2021) 7 SCC 704.
3. Pradeep D versus S/o. Jayadevan and ors. 2014 SCC OnLine Ker 330.
4. Nikhil Wagle and ors. Versus State of Maharashtra and ors. 2016 (2) Bomb.C.R.114.
5. National Insurance Co. Ltd. versus Vaishali Harish Devare and Ors. 2013(4) Bom.C.R.782.

4. It is the contention of learned counsel for respondent Nos.1 to 3/claimants that the Tribunal has deducted 30% future prospects as income tax, which is not proper. Learned counsel further submitted that consortium amount is not properly awarded, it be awarded. He relied on **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**,

Learned counsel further submitted that offence was registered against the driver of the offending truck. The spot-panchanama shows that the driver came on the wrong side of the road and gave dash to the vehicle of the deceased. The Chemical Analysis Report is received after the conclusion of the trial. It is produced on record, it does not show that at the time of accident deceased was under the influence of liquor. Hence, requested to allow the cross-objection and dismiss the appeal.

5. I have heard both learned counsel, perused the judgment and award passed by the Tribunal.

6. It is the claimants' case that on 26th July 2011, deceased Shashin Mogale was proceeding in his car bearing No. MH-14-CK-7387, he was on the way to his house. At that time, at about 1.55 am., a tanker bearing registration No.KA-01-C/2284 came from the opposite direction in rash and negligent manner and gave dash to the car of the deceased. Respondent No.4 was driving the said tanker. The deceased was admitted in the hospital but he succumbed to injuries.

6.1. It is claimants' case that the deceased was working as Manager (Service) in NTC Company and he was earning Rs.98,700/- per month with bonus of Rs.3,00,000/- per annum. To prove the income of deceased, Mr. Abhay Nibhande, Service, Deputy General Manager of NTC Company was examined at Exhibit-32. He has stated that deceased – Shashin was working in their company and received salary of Rs.98700/- for the month of June 2011. The salary slip is at Exhibit-39, this witness further stated that deceased was a Senior Manager and if he would have been promoted as Assistant General Manager he would have received an increment of 14% to 15% per year and would have received salary of Rs.1,50,000/- to 1,75,000/- per month. Nothing elicited in the cross-examination of this witness. On the basis of evidence on record, the Tribunal has considered the salary of deceased at Rs.98700/- per month including arrears.

6.2. It is the contention of learned counsel for the appellant-Insurance Company that while considering the monthly income of the deceased, the Tribunal has not deducted arrears of Rs.8,900/-. The bifurcation of salary is at page 34 of the compilation. Salary slip is at 'Exhibit-40'. This salary slip shows the arrears of Rs.8,900/- but Tribunal has considered this amount as salary of the deceased. In my view, arrears cannot be considered as salary. Hence, I am deducting this amount from the salary of deceased. After deduction of the said amount, the monthly salary of deceased would come to Rs.89,800/-. From the salary slip, it appears that conveyance allowance of Rs.800/-, washing allowance of Rs.1000/-, income tax of Rs.11988/- and professional tax of Rs.200/- was given to deceased. As per the view of the Hon'ble Apex Court in the case of **National Insurance Company Ltd. versus Vaishali Devare and ors.(supra)**, it cannot be considered as a part of salary, it should be deducted. After deducting this amount, net salary of the deceased comes to Rs.75812/- per month. I am considering this amount as monthly income of the deceased.

6.3. The Tribunal has awarded amount of Rs.50,000/- towards consortium. As per the view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. (supra)**, each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- towards funeral expenses.

6.4. It is the contention of learned counsel for respondents/claimants that Tribunal has not awarded future prospects and has deducted 30% amount as income-tax amount. As per the view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)**, the claimants are entitled for future prospects. Hence, I am considering it.

6.5. It is the contention of learned counsel for the appellant that the accident occurred due to contributory negligence of deceased. Admittedly, offence was registered against the driver of the offending truck. The spot-panchanama of the accident spot is at 'Exhibit-26'. The sketch of the accident spot shows that the offending truck had come on wrong side of the dividing line and gave dash to the vehicle of the deceased. I do not find merit in the contention of learned counsel for the appellant that there was contributory negligence of the deceased in the said accident.

6.6. It is contention of learned counsel for the appellant that at the time of the accident, deceased was under the influence of liquor. The post-mortem report of the dead body of the deceased is at 'Exhibit-29'. It mentions that there was smell of alcohol. The blood of the deceased was sent for chemical analysis. Learned counsel for respondents/claimants produced the chemical analysis report dated 20th September 2011. This report shows that there was "general and chemical testing, it does not reveal any poison". This report does not mention that deceased was

under the influence of alcohol. Moreover from the post-mortem report, it does not show that alcohol was found in stomach along with food, it only states that there was smell of alcohol. Appellant has not examined the doctor who conducted post-mortem in support of their case nor the investigating officer of the said crime, without any evidence on record, it cannot be said that deceased was under influence of alcohol.

6.7. Considering the above, the claimants are entitled for following compensation :

Gross Salary	Rs. 89800.00
Deduction (Income Tax, Profession Tax, washing allowance and conveyance allowed)	Rs. 13988.00
Salary (after deduction)	Rs. 75812.00
Annual Salary (Rs.75812.00 x 12 months)	Rs. 909744.00
Add : 30% future prospects	Rs. 272923.00
Total Amount	Rs. 1182667.00
Rs.1182667 x 14 (multiplier)	Rs.16557340.00
1/3 rd Deduction towards personal expenses	Rs. 5519113.00
Total	Rs.11038227.00
Less Amount granted by Labour Court	Rs. 725000.00
Total Amount	Rs.10313227.00
Consortium (48,000/- x 3 (claimants))	Rs. 144000.00
Funeral Expenses	Rs. 18000.00
Loss of Estate	Rs. 18000.00

Total Amount of Compensation	Rs.10493227.00
less- Compensation Awarded by Tribunal	Rs. 8822000.00
Enhanced Compensation	Rs. 1671227.00

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

ORDER

1. First Appeal No.1067 of 2018 is partly allowed as this Court has deducted arrears amount from salary of deceased as well as some allowance amount from the salary.
2. The cross-objection is partly allowed. The claimants are entitled for enhanced amount of Rs. 1671227/- @ 7.5% interest per annum from the date of filing of claim petition till realisation of the amount. Out of this amount, Rs.1,80,000/- is consortium amount, the claimants are entitled for interest on this amount at 7.5% from 1st November 2017 till realisation of the same.
3. The appellant-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within 8 weeks after the receipt of this order.
4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

5. The statutory amount deposited in the First Appeal No.1067 of 2018 be transmitted to the Tribunal along with the interest accrued thereon. The parties are at liberty to withdraw it as per Rule.
8. Pending applications, if any, stands disposed of.
9. Learned counsel for the appellant-Insurance Company requested to stay the order. The accident date is of the year 2011, hence, I am not inclined to stay the order.

(SHIVKUMAR DIGE, J.)