



Presented on : 27/02/2020
Registered on : 11/06/2020
Decided on : 02/04/2024
Duration : Ys Ms Ds
03 09 20

BEFORE THE MEMBER, MOTOR ACCIDENT CLAIM TRIBUNAL, PUNE
AT - PUNE.

(Presided over by Shri. S.B. Hedao)

Motor Accident Claim Petition No. 181/2020

CNR NO : MHPU01-006321-2020

Exh. No. 44

- 1] **Smt. Annapurna Ganesh More**
Age : 40 years, Occ. Nil
- 2] **Umesh Ganesh More**
Age : 28 years, Occ. Labour
- 3] **Sagar Ganesh More**
Age : 21 years, Occ. Education
- 4] **Ashwini Ganesh More**
Age : 22 years, Occ. Education
- 5] **Smt. Shantabai Laxman More**
Age : 70 years, Occ. Nil
All R/o In front of Pardi Tak,
Taluka and District - Washim

.... Applicants

Vs.

- 1] **Pranav Vijendra Patki**
Age : 25 years, Occ. Service
R/o 63, Yashada Nagar,
Pipeline road, Savedi,
Tal. & Dist. - Ahmednagar
- 2] **Manager,**
ICICI Lombard General Insurance Co. Ltd.
401, 402, 4th floor,
Interface – 11, New Linking Road,
Malad (West), Mumbai – 400 063

....Opponents

Claim of Rs. 10,00,000/-

Appearances :-

Adv. Shri. B. S. Sinalkar for claimants
Adv. Shri. H. B. Bhand for Opponent No. 1
Adv. Shri. P. P. Mehata for opponent No. 2

JUDGMENT

(Delivered on 02/04/2024)

On account of the death of Ganesh Laxman More in road traffic accident dated 06/01/2020, his legal heirs applied for compensation under Section 166 of Motor Vehicles Act. The facts of the matter are as follows -

1] On 06/01/2020 at about 11.00 a.m. the deceased was crossing road at Kadachi Wadi on foot. At that time, a motorcycle bearing registration No. MH-16-BK-6334 violently dashed him due to which the deceased sustained various injuries on his head, forehead, stomach and knees. He immediately was admitted in Criti Care Hospital at Chakan. After two days treatment, he was shifted to D. Y. Patil Hospital, Pimpri. However, during treatment deceased succumbed to these accidental injuries on 15/01/2020. Mishap occurred due to rash and negligent riding of said motorcycle.

2] The motorcycle is owned by the opposite party No. 1 and he himself was riding it at the relevant time and it was insured with opposite party No. 2. Therefore, claimants prayed for compensation of Rs. 10,00,000/- from the opposite party, jointly and severally, including NFL and interest.

3] The opposite party No. 1 opposed the application by filing

written statement at Exh.13. The opposite party admitted his ownership over the said two wheeler and also the insurance of this vehicle with the insurance company on record as asserted by the claimants. However, this opposite party dispute the entire stand of the claimants about the negligence of the motorcycle rider. He also disputed the income and age of the deceased. The opposite party No. 1 comes with the case that the deceased suddenly came in front of the vehicle of opposite party No. 1 and thus he was negligent. With all such averments, the opposite party No. 1 submitted to dismiss the claim.

4] The opposite party No. 2 – Insurance Company opposed the application by filing written statement at Exh.20. The Company disputed the age and income of the deceased as well as the entire incident of this accident and involvement of this motorcycle in said mishap. The company admitted the contract of insurance between it and opposite party No. 1 covering the date of accident. The company raised the plea that the driver of said two wheeler had no valid and effective driving license and hence there was breach of the terms and conditions of the Insurance Company in this regard. The company put blame against deceased as an alternate plea that while crossing the road, deceased was careless and suddenly came in front of insured vehicle. With all such averments, the insurance company submitted to dismiss the claim.

5] The rival pleadings of the parties gave rise to the framing of issues at Exh.21 which are reproduced as below and I record my findings against each of them with the reasons, therefor, as follows :-

Sr. No.	ISSUES	FINDINGS
[1]	Whether the applicants prove that on 06/01/2020, on Chakan – Shikrapur road, Kadachi Wadi, in front of Ganesh Temple, Pune the deceased died due to rash and negligent riding of motorcycle bearing registration No. MH-16-BK-6334 ?	Yes
[2]	What was the age and income of deceased on the date of accident ?	Age 49 years : Income Rs. 10,000/- per month.
[3]	Whether the insurance company proves terms and conditions of the Insurance policy regarding driving license ?	No
[4]	Whether the applicants are entitled for compensation ? If yes, at what quantum, at what rate of interest and from whom ?	Yes. As per final order.
[5]	What Order ?	Application is allowed.

REASONS

AS TO ISSUE NO. 1 :-

6] The wife of the deceased namely Annapurna examined at Exh. 22 disclosed in her version that on 06/01/2020 when her husband was crossing the road near Chakan, he was hit by the offending motorcycle bearing registration No. MH-16-BK-6334. Her evidence further discloses that deceased was critically injured and 2 days after this accident, he passed away in D. Y. Patil Hospital, Pimpri. Her version

gets support from complaint (Exh. 28) which appears to have been lodged by one Somnath. He appears to be an ambulance driver and he happened to be at said spot on Chakan – Shikrapur road in front of Ganesh Temple on receiving a call of this accident. The complaint discloses that this deceased was lying by the side of road in injured condition and he got knowledge from the people gathered there that this insured vehicle hit the deceased. The name of the rider also finds place in FIR. It is alleged in the complaint that said motorcycle rider fled away from said spot without providing medical aid to deceased. The report is lodged promptly. The registration number of the insured vehicle finds place in FIR. The inquest panchanama and cause of death certificate discloses the death of the deceased in this road traffic accident. Offence is registered against the rider of said motorcycle as per FIR. The opposite party admitted the involvement of this vehicle in this accident. Nothing could be extracted during cross-examination of this claimant to falsify her version. For all these reasons, I hold that deceased died due to rash and negligent riding of said motorcycle.

AS TO ISSUE NO. 2 :-

7] There is no age proof of the deceased on record. So, the age mentioned in cause of death certificate and body inspection form regarding this deceased will have to be relied upon. In these papers, the age of the deceased is quoted as 49 years. Hence, I conclude his age as 49 years, on the day of his death.

8] The claimants came with the case that deceased was earning Rs. 10000/- per month by doing labour work on construction

site. The mishap occurred recently in 2020. The deceased left behind him his wife, mother and three issues. He was residing in a district place at Washim. Therefore, considering the price index as was prevailing in 2020, I hold that an income of Rs. 10,000/- per month is reasonable and I conclude the income of the deceased as Rs. 10,000/- per month.

AS TO ISSUE NO. 3

9] The insurance company did not enter into witness box to prove the breach of the terms and conditions of the insurance policy and hence, I answer this issue in negative.

AS TO ISSUE NO. 4

10] In view of affirmative finding on issue no. 1, I hold that claimants are entitled for compensation. So far as the liability of the compensation is concerned, the insurance policy clearly shows the period of insurance from 08/09/2019 to 07/09/2020 which covers the date of accident. Therefore, I hold that both the insurer and insured are jointly and severally are liable to pay the compensation.

11] Now, we come to calculation. The income of the deceased is found to be Rs. 10,000/- per month. The deceased was self-employed with age of 49 years on the day of his demise. So, there would be 25% future prospects in his income as per the judgment of **Pranay Sethi Vs National Insurance Company, 2017 (Vol. 2) ILR – CUT – 998 (SC)**,. So 25% of 10,000/- is Rs. 2500/-. With future prospects the income of the

deceased rises to Rs. 12,500/-. The deceased left behind him almost 5 persons, so there would be 1/4th deduction towards his personal expenses which comes to Rs. 3,125/-. With this deduction, the income remains to the tune of Rs. 9,375/- per month. The yearly income comes to Rs. 1,12,500/-. Since the deceased was 49 years old, the relevant multiplier as per Hon'ble Supreme Court Sarla Verma .vs.. Delhi Transport Corporation 2009 ACK 1298 (SC) is '13'. Thus, the net future loss of income comes to Rs. 14,62,500/-. (Rs. 1,12,500/- x 13). This is a net future loss of income.

12] So far as the conventional heads are concerned, the fixed amount of consortium to the tune of Rs. 40,000/- each to both the claimants as per their relations with deceased deserves to be given to them. Similarly, Rs. 15,000/- each for funeral expenses and loss of estate would be there. As such conventional head comes to Rs. 2,30,000/-. As per the judgment of Hon'ble Supreme Court in case of Pranay Sethi Vs National Insurance Company, 2017 (Vol. 2) ILR – CUT – 998 (SC), there would be 10% increase in the conventional head after every three years from the date of said judgment. We are in the second phase after three years from the date of said judgment. So 20% of Rs. 2,30,000/- is Rs. 46,000/-. So the amount of conventional heads comes to Rs. 2,76,000/-.

There are hospital and medicine bills commonly at Exh. 38. All these bills are in original and co-relate with the period of accident. Therefore, the amount under these bills is probable, more so when, deceased appears to have died almost 6 days after the incident while undergoing treatment in D. Y. Patil hospital. The total bill comes to Rs.

61,409/- which appears to be reasonable and probable. Therefore, this amount is payable to the applicants.

13] As such the claim rests to **Rs. 17,99,909/-**.

14] So far as the rate of interest is concerned, after 2015 the rate of interest on long term bank deposits declined drastically. Therefore, an interest @ 7 % p.a. would meet the ends of justice. The learned counsel for the insurance company relied upon the recent Judgment of **Hon'ble High Court of Bombay rendered in First Appeal No. 1579/2006 dated 21/09/2023 – Smt. Kalpana Madhu Gawali and two others Vs. MSRTC**, Pune to contend that interest on future prospects amount cannot be awarded. On going through said Judgment, I did find such ratio therein with the observation that since future increased income yet not earned by deceased, and the award amount by considering such increased income is given to the claimant, no interest on future prospects can be awarded. So, in view of this Judgment, I will have to bifurcate the award amount in two compartments – the first one, the amount with future prospects and second the amount without future prospects and interest will have be awarded on the amount which is calculated without future prospects.

15] So, the award amount without future prospects comes to Rs. 11,70,000/-. The amount with future prospects has come to Rs. 14,62,500/-. Thus, the amount of Rs. 2,92,500/- (14,62,500 – 11,70,000) will not carry any interest.

16] From the record it appears that applicant No. 4 – Ashwini is married as told by her mother during cross-examination. Similarly, the applicant No.s 2 and 3 are the major sons of applicant No. 1, now in the

age between 25 to 32. The mother of the deceased – applicant No. 5 is almost 70 years old. The family appears to have very weak financial background and so to protect the interest of the widow, maximum share needs to be given to her and there would be reasonable investment of her share. Hence, the following order :

ORDER

- 1] The application is allowed with proportionate costs.
- 2] The opposite party No. 1 and Insurance Company, jointly and severally, do pay **Rs. 17,99,909/- (Rs. Seventeen lakhs ninty nine thousand nine hundred and nine only)** including NFL to the applicants.
- 3] Out of the abovesaid Award amount, amount of Rs. 14,46,000/- (original award amount without future prospects Rs. 11,70,000 + conventional heads Rs. 2,76,000/-) shall carry interest @ 7% p.a. from the date of application till its realization.
- 3] Opposite party is directed to deposit entire amount in the office of this Tribunal in following account -

Account Name	-	Member, Motor Accident Claim Tribunal, Pune.
Account Number	-	41365622240
Name of Bank	-	State Bank of India, Shivaji Nagar Court Branch, Pune
IFSC Code	-	SBIN0061579

- 4] If the amount is deposited, out of the same, Rs. 1,00,000/- each be given to claimant Nos. 2 to 5 through cross cheques on their

due identity.

5] Rs. 8,00,000/- be given to the claimant No. 1 – Annapurna through cross cheque on her due identity.

6] Rest of the amount be invested in the name of applicant No. 1 Annapurna in FDR in any nationalized bank of her choice for 5 years with liberty to collect quarterly interest.

Pune.

Date : - 2nd April 2024

Member MACT, Pune.

CERTIFICATE

I affirm that the contents of the PDF file Judgment are same word for word as per original Judgment.

Name of Steno	Smt. S. S. Phadke Stenographer Grade I
Name of Court	Shri. S.B. Hedao, Member, MACT, Pune
Date of Order	02.04.2024
Order signed by PO on	02.04.2024
Order uploaded on	03.04.2024