

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1180 OF 2017

The New India Assurance Co. Ltd.)
 (Legal Cell))
 Nehru Memorial Hall,)
 4th floor, Jawaharlal Nehru Road.)
 Pune 411001)...Appellant
 (Org. Opp. No.2)

Versus

1. Smt. Mrunal Makarand Patwardhan)
 Age- 34 years, Occ. Private Service)
2. Kumari Mugdha Makarand Patwardhan)
 Age- 07 year, Occ. Student Being minor)
 represented by natural guardian applicant)
 no. 1(mohter))
3. Jayant Govind Patwardhan)
 Age-70 years, Occu - Nil)
4. Mrs. Sarala Jayant Patwardhan)
 Age- 65 years, Occ. Housewife)
 All the applicants R/at - Flat No. 45,)
 Building No. C-4, Prasad Park)
 Co-operative Housing Society,)
 Survey No. 24/4/1A/1)
 Hingane Khurd, Pune)
 (Org. Applicants)
5. Shri Balbir Singh Batra)
 Son of Shri Gurumukh Singh Batra)
 Age-51 years, Occ. Service)
 R/at - M-20/2086, Maharashtra)
 Housing Board, Yerwada,)

Pune - 411006)

And

H/16/2799, Maharashtra)
Housing Board, Yerwada,)
Pune, 411 006)...Respondents

(Org. Applicants & Opp. No. 1.)

Mr. D. R. Mahadik for the Appellant

Mr. Rohan Mahadik i/b Juris Parthners for the Respondent Nos. 1 to 4.

Mr. Veerdhaval Kakade for the Respondent No. 5.

CORAM : S. G. DIGE, J.

DATE : 17th FEBRUARY 2023.

JUDGMENT:

1. The issues involved in this appeal are there was no negligence of driver of offending vehicle and income of deceased is considered on higher side.

2. It is contention of learned counsel for the appellant that accident occurred due to burst of tyre of the offending vehicle, so there was no negligence of the driver of offending vehicle in the accident, it was an act of God. The driver of offending vehicle cannot be considered liable for it but Tribunal has not considered this fact.

The learned counsel for the Appellant has relied on *Minu B Mehta & Anr. vs Balkrishna Ramchandra Nayan and Anr. 1977 SCJ 118*.

3. The learned counsel for the appellant further submits that the salary of deceased is considered on higher side, it includes various bhattas which cannot be considered as part of salary. The learned counsel further submits that the consortium amount and amount under other heads is awarded on higher side. The tribunal has awarded exorbitant and excessive compensation. Hence, requested to allow the appeal.

4. It is the contention of learned counsel for the Respondents/ Claimants that no witness was examined to prove the defense taken by the appellant. The tribunal has considered all aspects while awarding compensation. The judgment and order passed by the tribunal is legal and valid.

5. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal, Pune (for short '**the Tribunal**').

6. It is contention of learned counsel for the appellant that burst of tyre is an act of God and it was not negligence of driver of the offending vehicle. The Dictionary meaning of "act of god" is "an

instance of uncontrollable natural forces in operation". It refers to a severe, unanticipated natural event for which no human is responsible. In my view, The bursting of tyre cannot be termed as an act of God. It is an act of human negligence. There are various reasons of bursting of tyre, i.e. High speed, under inflated or over inflated tyres, second hand tyres, temperature etc. The driver or owner of the vehicle has to check the condition of tyre before travelling, burst of tyre cannot be termed as natural Act, it is human negligence.

7. Admittedly, the incident had happened when deceased was travelling in the offending car with his friend, due to burst of tyre, the said car toppled. It is significant to note that the appellant has not examined the driver of offending car to prove, the reason of bursting of tyre. So mere stating that burst of tyre is "act of god" cannot be a ground to exonerate the appellant/insurance company from paying compensation. I do not find merit in the contention of the learned counsel for the appellant that there was no negligence of the driver of the car in the said accident. I have gone through, the case law cited by the learned counsel for the appellant. The facts of cited case are in respect of mechanical defects in the car, which are not applicable to the present case.

8. It is contention of learned counsel for the appellant that the income of deceased is considered on higher side. The allowances given under various heads are considered as income of the deceased which should not have been considered. To prove the income of the deceased, the claimants have examined Shri. Prashant Ghalge, the HR manager of Company of deceased at Exhibit- '42'. This witness has stated that deceased was working in their company and his monthly salary for August & September - 2010 was Rs. 66,571/- for October-2010 was Rs. 66,071/- and for November & December was Rs.66,571/-. In cross-examination, the suggestion was given to this witness by learned counsel for the appellant that medical allowances conveyance allowances, education allowances & LTR allowances were not part of salary. This witness denied this suggestion. It shows that all these allowances mentioned in salary were part of the salary of deceased.

9. It is settled law that while calculating the salary of deceased, income tax, professional tax has to be deducted and rest of the salary can be considered as salary of deceased. Hence, I do not find merit in the contention of learned counsel for the appellant that salary of deceased is considered on higher side.

10. The tribunal has awarded amount of Rs.1,00,000/- to applicant no.1 for loss of consortium and Rs. 25,000/- for funeral expenses, Rs. 1,00,000/- towards loss of love and affection, so total of it comes to Rs.2,25,000/-. As per the view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, each Claimant is entitled for Rs.40,000/- as consortium amount, Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of the estate. There are four claimants, so the consortium amount comes to Rs. 1,60,000 and for funeral expenses and loss of estate comes to Rs. 30,000/-, so total amount comes to Rs. 1,90,000. The amount awarded by the Tribunal is Rs. 2,25,000/-, if this amount is deducted from Rs.1,90,000/-, it comes to Rs. 35,000/- this is excess amount.

11. In view of above, I pass following order. .

ORDER

- i. Appeal is partly allowed.
- ii. The claimants are entitled for the amount of Rs. 1,24,60,960/- at the rate of interest 7.5% per annum from the date of filing application till realization.

- iii. The appellants are permitted to withdraw the amount of Rs. 35,000/- along with accrued interest thereon.
 - iv. The statutory amount along with accrued interest be transmitted to the tribunal. The parties are at liberty to withdraw it as per Rule.
 - v. Appeal stands disposed of.
12. All pending application stands disposed of.

(S. G. DIGE, J.)