



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

9 FIRST APPEAL NO.825 OF 2011

- 1 Sulochana w/o Brijlal Totla,
Age 40 yrs., Occ. Household,
R/o Khandoba Galli, Parli (Vaijnath),
Tq. Parli (Vaijnath), Dist. Beed.
- 2 Yogesh Brijlal Totla,
Age 7 yrs., Occ. Student,
Minor, U/G of mother i.e. appellant No.1
Sulochanaw/o Brijlal Totla,
R/o as above.

... Appellants

... **Versus** ...

- 1 Khan Kitabulla s/o Chhotu,
Age Major, Occ. Transport,
R/o Municipal Patra Shed No.4,
Room No.32, Sewaree Cross Road,
Mumbai – 400 015.
(Dismissed vide Registrar (J) order dated 31.07.2012.)
- 2 The New India Assurance Co. Ltd.,
Through it's Divisional Manager,
Office at Mahesh Auto Compound,
Adalat Road, Aurangabad.

... Respondents

...

Mr. S.S. Dargad, Advocate for appellants

Mr. P.P. Mandlik, Advocate for respondent No.2

...

CORAM : ROHIT W. JOSHI, J.

DATE : 05th OCTOBER, 2026

JUDGMENT :

. The original claimants in Motor Accident Claim Petition No.47/2007 decided by the learned Member, Motor Accident Claims Tribunal, Ambajogai vide judgment and order dated 29.06.2009 have filed the present appeal seeking enhancement in the compensation awarded. The appellants / original claimants are widow and sons of deceased Brijlal Totla, who died in road accident on 04.01.2007. The date of birth of deceased is 17.09.1960 and as such he was 47 years old at the time of his demise. Learned Tribunal has considered income of the deceased as Rs.60,000/- per annum and after making 1/3rd deduction computed the compensation by treating annual loss of dependency as Rs.40,000/-. There is no dispute with respect to the multiplier of 13 adopted by the learned Tribunal and 1/3rd deduction made towards personal expenses. The appellants are seeking enhancement on the amount of compensation on the ground that awarding compensation under the head 'loss of future prospects' is not considered. Apart from this, a contention is raised that the learned Tribunal has erroneously made 50% deduction in the amount of compensation payable on the ground of contributory negligence. The contention is that the owner of the vehicle did

not contest the claim petition and the insurance company also did not lead any evidence to discharge its burden of proving contributory negligence. Likewise, the contention is also raised that having regard to the evidence of the accountant and the business partner, the income of the deceased should have been considered at Rs.10,000/- to 12,000/- per month as against Rs.5,000/- per month considered by the learned Tribunal.

2 Per contra, learned Advocate for respondent No.2 justifies the findings on account of contributory negligence by making reference to the spot panchnama report. It indicates that the accident had occurred due to head on collision in the midst of the road which is around 40 feet wide with approximately 5 feet rough patch on both sides. It is, therefore, contended that the deceased could have avoided the accident by exercising due caution.

3 Following points arise for my consideration.

- i) Is the finding with respect to contributory negligence is correct ?
- ii) What should be the amount of compensation awarded ?

REASONS

4 **As to Point No.1 :**

It is well settled that burden of proving contributory negligence

is on the owner of the vehicle or on the insurance company. In the present case the owner did not contest the claim petition. The insurance company has also not led any evidence on the aspect of contributory negligence. The only material on which inference of contributory negligence is drawn by the learned Tribunal is the spot panchnama record. Learned Advocate for the appellants places reliance on the Judgment of Hon'ble Supreme Court in the case of **Reena vs. Managing Director, Karnataka State Road Transport Corporation and others** [2026 INSC 889] to contend that it is unsafe to place reliance on the spot panchnama in order to draw inference of contributory negligence.

5 The Hon'ble Supreme Court in the aforesaid case categorically held that findings on point of contributory negligence based solely on the site sketch and spot panchnama is not permissible. In the present case the partner of the deceased has stated in the evidence that he was travelling along with the deceased on another motorcycle when deceased met with an accident. He has stated that he was at a distance of around 50 feet behind the deceased when the accident occurred. He has further stated that the deceased was travelling with a moderate speed by the left side of the road and the offending vehicle / truck was responsible for the accident since it was being driven in a high speed from the right side. The presence of this

witness is corroborated by the fact that the First Information Report is lodged by him and he had taken the deceased to the hospital. Having regard to the aforesaid evidence as also to the fact that the respondents have not led any evidence to prove the contributory negligence, the findings by the learned Tribunal with respect to contributory negligence which are based solely on the spot panchnama and sketch map prepared during spot inspection cannot be accepted. The findings deserve interference. It must be held that the respondent No.2 has failed to prove the case of contributory negligence. Deduction of 50% made towards contributory negligence, therefore, cannot be sustained.

6 **As to point No.2 :**

Learned Advocate for appellants argues that in view of the evidence of accountant and the business partner, the monthly income of the deceased should have been taken as Rs.10,000/- per month. It is contended that in adjudication of the claim petition under Section 166 of the Motor Vehicles Act some guess work is permissible and, therefore, the learned Tribunal should have accepted the evidence brought on record to hold that the deceased was earning at least Rs.10,000/- per month. Attention is drawn to the evidence of accountant and the business partner of the deceased in support of this contention. The said contention cannot be accepted. The

appellants have not filed Income Tax Returns or Books of Accounts of the business of the deceased. Examination of accountant implies that accounts were written, yet the books are not filed. Likewise documentary evidence regarding ownership of vehicles is also not placed on record. If documentary evidence with respect to income was available and the same was not filed on record, adverse inference can be drawn in this regard against the appellants. In the absence of any clear evidence with respect to the income of the deceased, in the considered opinion of this Court, the finding regarding income does not warrant any interference.

7 The deceased was survived by two dependents and as such $1/3^{\text{rd}}$ deduction is rightly made towards his personal expenses. Having regard to the age of the deceased, who was 47 years old at the time of his demise, the multiplier of 13 was rightly applied. However, learned Tribunal has erred in not adding 25% amount towards loss of future prospects since the deceased was self employed person aged 47 years old at the time of his demise. Apart from this, the learned Tribunal has erred in not awarding 40000 each to the appellants who are widow and son of the deceased towards loss of consortium. Apart from this, erroneously amount of Rs.2,000/- has been awarded towards funeral expenses as against amount of Rs.15,000/-. The learned Tribunal has also erred in not awarding amount towards loss of

estate. Amount of Rs.15,000/- needs to be awarded towards loss of estate. Apart from this, it must also be stated that a sum of Rs.20,000/- is awarded towards pain and sufferings, which is required to be deducted. The total amount of compensation payable is therefore worked out as under :

Sr. No.	Particulars	Amount
01	Total compensation payable towards loss of dependency (40,000 x 13)	Rs.5,20,000/-
02	Loss of future prospects	Rs.1,30,000/-
03	Loss of consortium (Rs.40,000/- x 2)	Rs.80,000/-
04	Funeral expenses	Rs.15,000/-
05	Loss of Estate	Rs.15,000/-
06	Medical expenses	Rs.5,06,613
	Total compensation payable :	Rs.12,66,613/-

Thus, the total amount of compensation payable works out to Rs.12,66,613/-. As against this, the learned Tribunal has awarded Rs.5,31,360/-. The amount of compensation will have to be enhanced by an amount of Rs.7,35,253/-.

8 It will be pertinent to state that respondent No.1 / owner of the vehicle has expired. His legal representatives are not brought on record. The appeal is ordered to be dismissed against respondent No.1 vide order dated 31.07.2012 passed by learned Registrar (Judicial). In this regard it must be noted that respondent No.1 / owner did not contest the proceedings before

learned Tribunal. In a similar situation, this Court has, in the case of **Bismilla Abidulla Ansari and another vs. Kishorkumar N. Shah and another** [2008 (4) Mh.L.J. 792] held that although owner of an offending vehicle is necessary party to appeal, in cases where he does not contest the matter before the Tribunal and the learned Tribunal holds the owner and insurance company both jointly and severally liable and the insurance company does not challenge the judgment and award by the Tribunal, the appeal for enhancement of compensation filed by the original claimants should not be dismissed in its entirety on account of dismissal of appeal against the owner. In view of the aforesaid dismissal of the appeal against the owner will not result in the dismissal of the appeal in its entirety.

9 In the result, following order is passed.

ORDER

First Appeal is partly allowed in following terms :

- i) The amount of compensation awarded by the learned Member, Motor Accident Claim Tribunal, Ambajogai in Motor Accident Claim Petition No.47/2007 is enhanced by further amount of Rs.7,35,253/-, over and above the amount of compensation awarded by the learned Tribunal.

ii) The respondent No.2 / insurance company will be liable to pay the additional amount of compensation as computed by this Court, with interest @ 7.5% per annum from 03.05.2007 i.e. date of filing claim petition till the date of realisation.

iii) Parties to bear their own costs.

(ROHIT W. JOSHI, J.)

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