

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

FIRST APPEAL NO.570 OF 2005

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1. **Shantaram Bapu Jadhav,**]
Age : 54 Years, Occupation : Farmer.]
2. **Malati Shantaram Jadhav,**]
Age : 48 Years, Occupation : Household.]
3. **Harshada Shantaram Jadhav,**]
Age : 20 Years, Occupation : Student.]
4. **Vaishali Shankar Jadhav,**]
Age : 18 Years, Occupation : Student.]

All Residing at : Bhatam (Thalyan's Pada)]

Post : Bhatane, Taluka : Vasai,]

District : Thane.]

...Appellants

] (Original Applicants)

Versus

1. **Nashibali Khar Hukumali, Adult**]
(Deleted as per order dated 07/01/2020)]
Occupation : Service, Residing at :-]
Narishewa Sadan Road, Narayan Nagar,]
Near Hawa Chawl, Ghatkopar, Bombay.]

2. **Mr.Naser Ali Khan,**]
Plot No.109, Section 23, CIDCO Colony,]]
Thurbhe, Vashi, New Bombay.]

3. **New India Assurance Company,**]
New India Assurance Building,]
87, M. G. Road, Fort, Mumbai-400023.]

...Respondents

] (Original Opponents)

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Mr.T.J.Mendon:-	Advocate for Appellants.
Ms.Swati Sinha:-	Advocate for Respondent No.3– Insurance Company.

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CORAM : S. M. MODAK, J.
DATE : 1st SEPTEMBER 2026

ORAL JUDGMENT :-

1. Heard learned Advocate for the Appellants / Claimants and learned Advocate for Respondent No.3 – Insurance Company.
2. Two issues are involved in this Appeal. One is, “*whether the Motor Accident Claims Tribunal – Palghar (“**Tribunal**”) was correct in arriving at a conclusion about the contributory negligence, that is to say, the deceased car driver was responsible for 50% and the tempo driver responsible for remaining 50%*”. The second issue is “*about considering the income and calculating the compensation*”.
3. The deceased Ajay Shantaram Jadhav was driving a car on 29th August 1990. It was at 9.00 p.m. He was proceeding towards Ahmadabad side on Mumbai Ahmadabad highway. At the same time, the motor tempo MCY/5937 owned by original Respondent No.2 and driven by original Respondent No.1 came from opposite direction. It was insured with the original Respondent No.3. There was dash, the deceased sustained injuries and died on the spot.

4. There is FIR registered with Virar Police Station at the instance of the Police Head Constable Mr.S.B.Kumawat on 31st August 1990 against the driver of the tempo and on this background, the parents of the deceased and his brother and sister have filed a Claim Petition before the Tribunal at Palghar. It was contested only by the Insurance Company. There is general defense of denial.

5. The Claimants examined Shantaram Jadhav. He is father of the deceased. He is not the eye-witness. So also, they have examined one Chandrakant Madhavi who is the eye witness. The Witness No.3 Dharamsi Patil who is the Sarpanch is examined on the point of owning a house and carrying on brickkiln business. Whereas, the Insurance Company has not adduced independent evidence.

6. On the basis of above evidence, the Tribunal held the car driver and tempo driver responsible equally. According to Mr.Mendon, this finding is erroneous. In paragraph No.9, the Tribunal held thus:-

“In the given circumstances, I hold that both the drivers of the vehicles involved in the accident were guilty of negligence to the extent of 50:50 percent for the said accident”.

7. According to Mr.Mendon, when there is oral evidence in the form of eye-witness, the Tribunal was wrong in concluding about the contributory negligence only on the basis of spot panchnama.

According to him, the spot panchnama only records the situation prevailing at the spot after the accident. It cannot throw any light about manner of the accident. The Tribunal in paragraph No.9 has considered the width of the road as 22 feet and kaccha road as 5 feet. The Tribunal considered that the accident took place at the center of the road as mentioned in the spot panchnama. The Tribunal concluded that both these car drivers have dashed each other at the center and it indicates that they have not driven their vehicles on the extreme left or extreme right side of their respective road.

8. Whereas, according to learned Advocate for the Insurance Company, these findings are perfect and no interference is warranted. Mr.Mendon relied upon the observations in case of *Jiju Kuruvila and others V/s. Kunjujamma Mohan and others*¹ and more specifically, the observations in paragraph Nos.22 to 24.

9. I have gone through the evidence of the eye-witness Chandrakant Madhavi. On the date of incident, at about 8.30 p.m., he had gone to Virar phata. He seems to be a natural witness. He has seen the Maruti car which has crossed him and proceeded further for 100 to 150 feet. He had also seen the tempo coming from opposite side and

¹ 2013 ACJ 2141

on coming wrong side gave dash to the car. He has seen, due to dash, the car changed its side and turned as if it is going towards Mumbai. The deceased was going to Ahmadabad side.

10. If we read the cross-examination, I do not find that his evidence is shaken during the course of cross-examination so as to make him unbelievable. In fact, he was asked about contents of his Police statement. He stated before the Police that accident occurred at the center, but he denied it. But his Police statement is not shown to him during cross-examination. On this background, I have seen the spot panchanama carried on 30th August 1990. It is true, there is mention that the Maruti car has changed its direction and it is parked as if it is going towards Mumbai side. There is damage to car to the extent of Rs.50,000/- and there is damage to the tempo to the extent of Rs.12,000/-. Admittedly, this was done after the accident has taken place. There is damage to front portion and driver side. It indicates there is dash by the tempo on right side of car. Damage caused to the tempo is also on driver side.

11. It is true from the spot panchnama, we can infer about the damage to the vehicles involved, the marks on the road, and the situation prevailing at the site. The Tribunal has correctly observed

about the width of the road and the width of kaccha road. However, while appreciating the evidence, the Tribunal has not considered one fact and it is the fact that direction of the car has changed. It was proceeding towards Ahmadabad side, however, due to impact, it has changed as if it is going towards Mumbai side. This itself suggests that there was a forceful impact by the driver of the tempo. No doubt, the car is a lighter vehicle as compared to the tempo. But it is important to note that the car driver has sustained injuries and he died on the spot. There is more damage of car than tempo. Furthermore, the fact stated by eye-witness that tempo driver came on wrong side is overlooked by the Tribunal. This Court feels that these factors are not considered by the Tribunal.

12. The Hon'ble Supreme Court in case of ***Jiju Kuruvila*** (supra), had an occasion to consider the accident involving a bus which is the offending vehicle and a car. There was eye-witness examined on behalf of the Claimants. In paragraph No.24, the Supreme Court observed:-

“24. The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles

and their directions, etc. depends on a number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident occurred, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the court cannot give any specific finding about negligence on the part of any individual”.

13. The emphasis of Supreme Court is *merely on the basis of spot panchnama*, we cannot infer about the negligence aspect unless there is *direct or corroborative evidence*. In the case at hand, the Tribunal has given more weightage to the spot panchnama by overlooking the evidence given by the eye-witness. So, the findings given by the Tribunal are not on the basis of correct appreciation of evidence. It requires interference. **I conclude that it is the tempo driver who is fully responsible for this accident and he was rash and negligent.** There is also FIR registered against him.

14. On the point of income, learned Advocate Mr.Mendon submitted that there was sufficient evidence in the form of father of the deceased and the Sarpanch. There are two sources of income. One is

agricultural income and **second is brickkiln business**. It is true that the Sarpanch has produced the certificate showing that he was the owner of the house at village Bhatane. There is also a certificate issued by Thane Zillha Sahakari Krushi Gramin Bahu-Udeshiya Vikas Bank Limited dated 6th November 2003. The deceased had taken a loan of Rs.20,000/- on 5th March 1988 and it was repaid on 16th May 1988. That is how, the Appellants contend that his monthly income was Rs.10,000/- (Rupees Ten Thousand).

15. Learned Advocate for the Insurance Company made following submissions:-

- (a) There is no finding about monthly income.
- (b) The computation arrived at of Rs.4,32,000/- (Rs.2,000/- X12X18) is wrong. She supported that the brother and sister were rightly not considered as dependents.
- (c) Whereas, according to Mr.Mendon, the deceased was a bachelor and brother and sister are the legal representatives.

16. It is true, the brother and sister are the legal representatives. The Tribunal observed that *the sister must have married up till that time*. I could have considered the brother and sister as dependents provided there ought to have been clear evidence. I do not find such evidence in the deposition of Shantaram, being father of the deceased. So, I

consider only the parents as dependents. If it is so, there has to be 50% towards the personal expenses and 50% towards the dependency.

17. Learned Advocate for Respondent Insurance Company relied upon the judgment in case of *Preetha Krishnan V/s. The United India Insurance Co. Ltd.*² to submit that income at the date of incident has to be considered. There cannot be dispute about this proposition. The Appellants can be granted compensation on all heads as observed in case of *National Insurance Company Limited V/s. Pranay Sethi*³ and *Magma General Insurance Co. Ltd. V/s. Nanu Ram Alias Chuhru Ram and Ors.*⁴

18. After considering the evidence adduced, I consider the monthly income of the deceased as Rs.7,000/- (Rupees Seven Thousand) per month. Admittedly, no 7X12 extracts are produced. But, I presume that he was doing some brickkiln business because it is deposed by father of the deceased. Except asking about production of documents, this theory is not seriously challenged. But, I am not considering to the fullest extent. I could have considered the repayment of loan certificate provided the father could have referred it in his evidence. So, on the basis of this computation, the compensation is calculated as below:-

² 2025 INSC 1293

³ AIR 2017 Supreme Court 5157

⁴ Civil Appeal No.9581 of 2018 : Supreme Court of India : 18th September 2018

<u>Sr.No.</u>	<u>Heads</u>	<u>Compensation Awarded/Stepped up</u>
(i)	Monthly Income:-	Rs.7,000/-
(ii)	Future Prospects:-	Rs.2,800/- (40% of the monthly Income)
(iii)	Deduction towards Personal Expenditure and Dependency:-	Rs.4,900/- (50% of Rs.9,800/-).
(iv)	Multiplier:-	Rs.10,58,400/- (Rs.4,900/-X12X18).
(v)	Funeral Expenses:-	Rs.18,000/-
(vi)	Loss of Estate:-	Rs.18,000/-
(vii)	Loss of Consortium:-	Rs.1,92,000/- (Rs.48,000/- per head)
(a)	Total Compensation Awarded:-	Rs.12,86,400/-
(b)	Compensation awarded by the Tribunal:-	Rs.2,18,000/- + 6% per annum simple interest
	Amount to be paid now:-	Rs.10,68,400/- + <u>6% per annum interest.</u>

19. In view of that, following order is passed:-

-: **ORDER** :-

- (a) **The Appeal is allowed.**
- (b) The Award dated 4th November 2004 passed by the Motor Accident Claims Tribunal–Palghar is modified as follows:-
- (i) The Respondent No.2–Mr.Naser Ali Khan and the Respondent No.3–New India Assurance Company are directed to pay jointly and severally Rs.10,68,400/- (Rupees Ten Lakh Sixty Eight Thousand Four Hundred) to the Original Claimant No.1–Shantaram

Bapu Jadhav and Original Claimant No.2–Malati Shantaram Jadhav being father and mother of the deceased along with the interest at the rate of 6% per annum from the date of Claim Petition till the date of payment.

- (ii) The Claimants are directed to pay additional Court Fee.
- (iii) The Tribunal at Palghar is directed to pay the amount to the Original Claimant No.1–Shantaram Bapu Jadhav and Original Claimant No.2–Malati Shantaram Jadhav being father and mother of the deceased in equal proportion as per the Rules.
- (iv) The Record and Proceeding be sent back to the Tribunal on priority basis.

20. In the light of the above observations, **the Appeal is disposed of.**

21. **Pending Applications, if any, also stand disposed of.**

[S. M. MODAK, J.]