

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

FIRST APPEAL NO. 2954 OF 2006

**1. Smt. Dilkumari Manbahadur
Khatri @ Thapa**

2. Rajesh Manbahadur Khatri @ Thapa

**3. Kum. Dilmaya Manbahadur Khatri @
Thapa**

**4. Kum. Pratibha Manbahadur Khatri @
Thapa**

5. Bharat Manbahadur Khatri @ Thapa

6. Smt. Devki Sherbahadur Khatri @ Thapa
All R/o. B-30, Jay Anand Dham C.H.S. Ltd.
Deen Dayal Road, Thakurwadi,
Dombivali (W), Dist. Thane

...Appellants

Vs.

**1. Shri Jamaluddin Agwan Najir
Mohd.**

R/o. Malwa Weding, Bus Stand Shamgarh,
Dist. Mandsaur, Madhya Pradesh.
(Owner of Truck No. MP-14/A-4532)

2. New India Assurance Co. Ltd.

Div. Thane, Gokhale Road, Thane.

...Respondent

Mr. T. J. Mendon	Advocate for the Appellants
Ms. Poonam Mittal	for the Respondent No. 2-Insurance Company.

CORAM : S. M. MODAK, J.

DATE : 18th AUGUST 2026

JUDGMENT :-

1. Heard learned Advocate Shri Mendon for the Appellants-Claimants and learned Advocate Ms. Mittal for the Respondent No. 2-Insurer.
2. In fact two vehicles were involved in the accident that took place on 04th January 2001 on the Manmad Shirdi Road on the junction of village Savli Vihir in District Ahmednagar. One was jeep in which deceased-Manbahadur Khatri was travelling i.e. Jeep bearing No. MH05/F-312. The jeep driver turned the jeep towards the Shirdi Road from the junction of village Savli Vihir. At that time offending Mal truck was coming from opposite side collided with the jeep.
3. The deceased sustained injuries and he died. Even wife of the deceased was travelling in the jeep. There was offence registered against the driver of the truck under Sections 304(A), 279, 337, 338 of the Indian Penal Code.
4. The claim was filed against the truck owner and insurer. The

negligence is denied. The Claimant No. 1 is widow. Whereas Claimant Nos. 2, 3, 4 and 5 are the children and Claimant No. 6 is mother of the deceased. The owner of the truck has not contested the proceedings. The only insurer has contested the proceedings. Out of claimants, son of the deceased has given evidence and relied upon the Police papers and salary slip. The deceased at the time of the accident was working with Progressive Co-operative Bank as Sub-staff. His gross-salary was Rs. 10,800/-. Whereas net salary was Rs. 8,300/-. He also received bonus in the month of October 2000 and November 2001.

5. The Tribunal held that the driver of the truck was rash and negligent. There was also issue framed about contributory Negligence on the point of jeep driver. It was also answered in Negative.

6. The Tribunal has come to conclusion that jeep driver was also equally contributed to the negligence. The Tribunal has considered the spot panchnama and the skid marks of the jeep at the middle of the road. It finds place in para no. 11. That is why, from the awarded amount of compensation of Rs. 8,05,000/-, the owner and the insurer of the truck was held responsible to the tune of Rs. 4,02,500/-.

7. The appeal is filed mainly on two grounds. They are as follows:

- (i) Deceased was travelling in a jeep and he has got choice to proceed against either owner or insurer of the vehicle.

Mr. Mendon relied upon the observations in case of ***Khenyei Vs. New India Assurance Co. Ltd. and others***¹.

- (ii) The claimants are asking for enhancement for the following reasons:-

- (A) Less monthly income considered.
- (B) Future prospect not considered.
- (C) Wrong multiplier is considered.
- (D) Consortium compensation was not considered.
- (E) Deduction was considered as 1/3rd, it ought to have been 1/5th.

8. I have gone through the observations in above mentioned judgment. The principles in case of composite negligence are laid down. It is for the Claimants to decide to whom he should sue whether both or any one of the joint tortfeasors. It is further held that the Tribunal can determine *inter-se* extent of composite negligence. However, it is only for the purpose of *inter-se* liability and one tortfeasor can recover the amount from the other after making whole of payment to the Claimant. When other joint tortfeasor is not impleaded as party, it may not be appropriate for the Tribunal to determine the

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extent of composite negligence.

9. In this case, admittedly the other tortfeasors i.e. the owner and driver and the Insurance company of the jeep were not impleaded as party.

10. In view of that, the Tribunal has committed error in deciding the decree of the negligence amongst two joint tortfeasors that has to be set aside. Hence, liberty is granted to the Respondent to file appropriate proceedings for the recovery of the amount from the Insurer of the jeep.

11. If it is so, then on the basis of the evidence it has to be held that the truck driver was entirely responsible on the point of quantum of income and compensation. My findings are as follows:-

- a) The Tribunal has considered the income to the extent of Rs. 9,000/-. It is true the deductions were considered and even bonus is not properly considered. Depending upon the evidence, I feel that Tribunal ought to have considered Rs. 10,800/- as monthly income of the deceased.
- b) The age of the deceased was 45 years. The Tribunal ought to have considered the multiplier of 14 instead of 11.

- c) Considering the age, Claimants are entitled to take future prospect @ 30%.
- d) There are in all six claimants, they are entitled to get Rs. 48,000/- each towards Consortium compensation.

12. In view of that recalculation of the compensation is as follows:-

Income of deceased	Rs. 10,800/-	(A)
Future prospect 30% (Rs. 10,800/- X 30%)	Rs. 3240/-	(B)
Total A + B	Rs. 14,040/-	(C)
Personal deduction 1/5 (Rs. 14,040 X 1/5)	Rs. 2808/-	(D)
Total C - D	Rs. 11,232/-	(E)
Multiplier 14 Rs. 11,232 X 12 X 14	Rs. 18,86,976/-	(F)
Consortium for 6 Claimants (Rs. 48,000X6)	Rs. 2,88,000/-	(G)
Loss of Estate	Rs. 18,000/-	(H)
Funeral Expenses	Rs. 18,000/-	(I)
Total (F+G+H+I)	Rs. 22,10,976/-	(J)
Tribunal granted	Rs. 4,02,500/-	(K)
Enhancement amount (Rs. 2210976-402500)	Rs. 18,08,476/-	(L)

13. In view of that following order is passed:-

ORDER

- (i) The First Appeal is allowed.
- (ii) The Respondents are directed to pay an amount of Rs. 18,08,476/- (Eighteen Lakhs Eight thousand Four Hundred and Seventy Six Rupees Only) [Rs. 22,10,976/- (minus) Rs. 4,02,500/- (tribunal granted)] jointly and severally to the Claimants within a period of eight weeks from passing of this order @ 8% from the date of filing of the petition till the realization.
- (iii) The Tribunal to decide the apportionment of the compensation after hearing the Claimants.
- (iv) Appellants are entitled to enhanced amount, subject to deposit of deficit Court fees.
- (v) The amount of the statutory deposit be refunded as per the Rules.

14. With the above observations, the First Appeal is disposed of.

[S. M. MODAK, J.]