

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD**

FIRST APPEAL NO. 606 OF 2001

SAVITA @ SOJARBAI W/O FULCHAND MATE
& ORS.

... APPLICANTS

VERSUS

BIBHISHAN NARAYAN GAJGHATE & ORS

...RESPONDENTS

.....
Mr T. B. Bhosale, Advocate for the applicants
Mr K. S. Bhore, Advocate for respondents No. 1 and 2
Mr D. R. Korde, AGP for respondent/State
.....

CORAM : **S. V. GANGAPURWALA, J.**
DATE : **16TH SEPTEMBER, 2015.**

PER COURT:

. The present applicants had filed an application u/s 166 of the Motor Vehicles Act, seeking compensation on account of the death of Fulchand, in an accident. The Tribunal dismissed the claim petition. Aggrieved thereby the present appeal.

2. Mr Bhosale, ld. Counsel for the appellants submits that, the deceased was driving the motorcycle, the accident took place with the Tipper in the night time on the center of the road. The said Tipper was parked without any indicator and it was dark, the same could not be noticed and consequently accident took place. It cannot be said that the deceased was negligent. The negligence was of the driver of the Tipper, who parked the vehicle on the center of the road without any indicator. According to ld. Counsel, the deceased was serving

with the Industries Dept., and his salary was Rs. 4230/- and the multiplier of 17 would be applicable. The compensation is required to be awarded considering the said salary. Ld. Counsel submits that, even the appellants should be entitled for non-pecuniary damages, which is not awarded.

3. Mr Bhore, ld. Counsel for the owner of the tipper submits that as the tipper was standing on the left side of the road, there is no question of any negligence on the part of the driver of the Tipper. It was a stationery vehicle. The deceased was driving the motorcycle in an excessive high speed and ramped into the said tipper. The deceased himself was responsible for the said accident because of his rash and negligent driving.

4. Mr Upadhye, ld. Counsel for the Insurance Company also submits that the Criminal Case was filed against the deceased. After the investigation, it was found that the deceased was driving vehicle in a rash and negligent manner. The road was of 7 ft width and the Tipper was standing at extreme left side of the road. Considering the damage caused to the motorcycle, it can be inferred that the motorcyclist was driving the vehicle in an excessive high speed, no error has been committed by the Tribunal while dismissing the claim petition.

5. I have gone through the judgment and have also considered the evidence on record.

6. It is a fact that the deceased, who was driving the motorcycle, ramped into the tipper. It is also an undisputed fact that

the accident took place at the night time. Even if I assumed that the tipper was parked on the left side of the 7 ft. wide road, there is nothing on record to suggest that the indicators of the tipper were lit, naturally there was dark, in the night time tipper could not be noticed and the deceased ramped into the said tipper. No doubt, the deceased was also negligent as he ramped into the stationery vehicle, however the driver of the tipper also parked the vehicle on the center of the road without taking any precautions and without putting any indicators. I would attribute 60% negligence to the deceased-motorcyclist and 40% negligence to the driver of the tipper.

7. The income of the deceased as per the salary certificate was Rs. 4230/-, deducting the professional tax I would consider his salary as Rs.4,000/- per month. Considering the claimants, 1/4th amount is required to be deducted towards the personal expenses. The loss of dependency would be Rs. 3,000/- per month. The deceased was 43 years old, the multiplier of 17 would be applicable. As such, the amount towards the loss of dependency would be Rs. 6,12,000/-. I have held that the deceased was negligent to the extent of 60%, the said amount will have to be deducted, which would come to Rs. 2,44,800/-.

8. The claimants also would be entitled for non-pecuniary damages on account of loss of love and affection, consortium, I would award Rs. 50,000/- each to claimants No. 1, 2 and 3 and Rs. 25,000/- each to claimants No. 4 and 5 i.e. total Rs. 2,00,000/-. As such, the claimants would be entitled for total compensation of Rs. 4,44,800/-.

9. Considering the above, I pass the following order.

ORDER

The opponents No. 1, 2 and 3 shall jointly and severally liable to pay Rs. 4,44,800/- (inclusive of no fault liability) to the claimants with interest at the rate of 6% p.a. from the date of petition till realization.

10. First Appeal is partly allowed. No costs.

[S. V. GANGAPURWALA, J.]

sgp