

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

**FIRST APPEAL NO. 289 OF 2001  
WITH  
CIVIL APPLICATION NO. 3072 OF 2004**

Narayan Harishchandra Rathod

... Appellant

**VERSUS**

Rajubai w/o Uttam Chavan and Ors.

... Respondents

.....  
Mr H. V. Patil, Advocate for the appellant  
Mr Bade Patil, Advocate for respondents No. 1 and 2  
.....

CORAM : **S. V. GANGAPURWALA, J.**  
DATE : **3<sup>RD</sup> SEPTEMBER, 2015.**

**PER COURT:**

. Mr H. V. Patil, the learned Counsel for appellant submits that the present respondents No. 1 and 2 had filed the petition for compensation under Section 166 of the Motor Vehicles Act. The said petition is partly allowed. The owner has filed the appeal before this Court. The learned Counsel submits that, the Tribunal did not afford proper opportunity to the appellant to contest the matter. The matter proceeded without written statement of the appellant. Even the appellant could not cross-examine the witnesses examined. The aspect of negligence has not been proved. All these aspects have not

considered by the Tribunal. Only because there is no written statement on record, the same would not absolve the Tribunal of its responsibility to scan the evidence and arrive at appropriate conclusion. The learned Counsel submits that, even the quantum of compensation has been awarded on the higher side. The father cannot be the claimant. He is not the heir.

2. Mr Bade Patil, the learned Counsel for the claimants supports the judgment and submits that, the modest amount of compensation has been awarded by the reference Court. The deceased was crossing the road and the driver, who was not possessing the valid driving license, was allowed to drive the vehicle by the present appellant. The accident is on account of sole negligence of the driver of the vehicle.

3. I have considered the submissions. The Insurance Company has been exonerated from liability to pay the amount of compensation on the ground of breach of policy so also the driver was not possessing the license. The said fact reveals from the record. The appellant has not led the evidence nor he has filed the written statement, I am not inclined to consider the request of the learned Counsel for the appellant to remit the matter back and to afford the opportunity to the

appellant after a long slumber of 20 years. The accident is of the year 1994. The evidence has been considered, the deceased was crossing the road and the driver of the Tractor and Trolley hit the deceased. The evidence has been properly scanned in this regard.

4. As far as quantum is concerned, the Tribunal has considered the loss of dependency and also the income of the deceased. The agricultural work was being done by the deceased. The contribution of the deceased Ramesh has been considered only Rs. 7,200/- p.a. while calculating the compensation amount, which is a meager amount.

5. Considering the above, no case for interference is made out. The appeal as such is dismissed with no order as to costs.

6. In view of disposal of main appeal, nothing survives for consideration in the connected civil application and same stands disposed of.

**[ S. V. GANGAPURWALA, J. ]**

sgp