

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

FIRST APPEAL NO.2107 OF 2014

New India Assurance Company
Ltd. Aurangabad Through its
Divisional Manager, Adalat Road
Aurangabad.

.. APPELLANT
[Orig. Respondent no.3]

Versus

- 1] Pallavi w/o Manoj Dhopade
- 2] Sanjay s/o Mohanlal Sharma
- 3] Smt.Kalyani w/o Jwalaprasad Dubey
Deleted as per Courts order
- 4] Ajay s/o Gandaram Pani Grahi
- 5] Pratapkishor Moharana s/o Tapi Maharana
- 6] The Oriental Indusurance Co.Ltd.
Auragnabad
- 7] Madhukar s/o Ramchanddra Dhopade
- 8] Pramila w/o Madhukar Dhopade

...
Shri S.G.Chapalgaonkar,Adv. For appellant
Shri N.L.Choudhari,Adv. For R.1
Shri R.F.Totla,Adv. For R.6
Shri B.S.Shinde,Adv. For R.7
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**CORAM : S.V.GANGAPURWALA,J.
DATED : 21ST SEPTEMBER, 2015**

ORAL ORDER :-

The application for compensation filed by claimants u/s 166 of

the Motor Vehicles Act is allowed. Aggrieved thereby, present appeal.

2] Mr.Chapalgaonkar, learned counsel submits that while deciding the claim petition, the Court has not considered the aspect of negligence in its proper perspective. It appears to be a case of head on collision. The drivers of both the vehicles are not examined. In that case, negligence ought to have been held 50% of each driver. The Court has cast a negative burden upon the driver of the Sumo vehicle. According to the learned counsel no eye witness has been examined even by the claimants. Only because FIR is lodged against driver of the Sumo vehicle that would not prove negligence of the driver of Sumo vehicle. The learned counsel further submits that the income of the deceased as per the income tax return is only Rs.1,13,998/- p.a., whereas the Court has considered the income of the deceased as Rs.1,90,000/-p.a. No such salary certificate is a part of the record. The learned counsel submits that multiplier has not been properly applied.

3] I have heard Mr.Shinde and Mr. Choudhari, learned counsel for respondents claimants and Mr. Totla, learned counsel for insurance company of the Commandar jeep.

4] I have also gone through the record and proceeding. The deceased was a passenger in a Commandar jeep. As far as deceased is concerned, it would be a case of a composite negligence and not contributory negligence. In such a case, the claimants can recover the whole amount from any one even if there is an apportionment of negligence. As such, aspect of negligence would lose its importance as far as the claimants are concerned.

5] The tribunal has discussed the evidence and the other documents such as the copy of FIR, spot panchanama. The criminal case and the charge sheet is filed against the driver of the Sumo vehicle. The claimants have also stepped into witness box and have narrated the facts. Upon investigation, the charge sheet is filed against driver of the Sumo vehicle. In such case, initial burden was on the driver of the vehicle. Driver of the vehicle did not step into witness box to discharge said burden. The Court applied the doctrine of *res-ipsa-loquitur* and thereby arrived at a right conclusion. As far as income is concerned, the Court has discussed about the salary certificate for the month of October issued by the company. Though initial appointment was for a period of one year, the same was continued and for the month of October, 2005, the salary certificate was considered. Be that as it may. The Court has not awarded any amount towards future prospects even if there is disparity in the consideration of the income as Rs.1,13,998/- instead of Rs.1,90,000/-. The same can be compensated while considering that no amount is awarded towards the future prospects. So also, the paltry sum awarded towards the loss of love and affection etc. In light of above, First Appeal is disposed of. No costs.

6] It is submitted that during the pendency of the proceeding, respondent no.8 has expired and the amount which was given to the share of respondent no.8 be given to the respondent no.7. The learned counsel for respondent no.1 Smt.Pallavi does not have any objection for the same. In light of that, the amount which was awarded to the share of respondent no.8 be allowed to be withdrawn by respondent no.7.

[S.V.GANGAPURWALA,J.]

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