

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 142 OF 2000

1. Smt. Dropadabai w/o. Sarangdhar
Rokade, Age 38 years,
Occu. Household working.
2. Shri. Dattatraya s/o. Sarangdhar
Rokade, Age 22 years,
Occu. Agriculturist.

Both R/o. Rajuri, Tal. Shrirampur,
Tal. Shrirampur, Dist. Ahmednagar.

**....Appellant.
(Ori. Appellants)**

Versus

1. The State of Maharashtra
(Notice be served on the
Collector, Ahmednagar.)
2. The Executive Engineer,
Public Works Department,
Ahmednagar - 414 001.
3. Public Works Department
Shrirampur, Tal. Shrirampur,
Dist. Ahmednagar.
4. Public Works Department
Sangamner, Tal. Sangamner,
Dist. Ahmednagar.
5. Shri. Namdeo Sadashiv Gaikwad,
Age Major, Occu. Service,
R/o. At & Post Wadgaonpan,
Tal. Sangamner, Dist. Ahmednagar.
6. Smt. Shalan Raknath Raut,
Age 25 years, Occu. Household,
working,

7. Smt. Shobha d/o. Rangnath
Rokade, Age Major,
Occu. - Household working.
8. Smt. Sunita d/o. Sarangdhar
Rokade, Age Major,
Occu. Household working.
9. Smt. Anita d/o. Sarangdhar
Rokade, Age Major,
Occu. Household working.

Respondent Nos. 6 R/o. Undirgaon,
Tal. Shrirampur, Dist. Ahmednagar.

Respondent Nos. 7 to 9 are
R/o. Rajuri, Tal. Shrirampur,
Dist. Ahmednagar.

....Respondents.

Mr. K.G.Gawali, Advocate for appellants.

Mr. S.N. Morampalle, AGP for respondent Nos. 1 to 4.

Mr. R.N. Dhorde, Senior Counsel for respondent No. 5.

Mr. L.S. Shaikh h/f. D.R. Jaybhar, Advocate for respondent Nos. 6
to 9.

CORAM : T.V. NALAWADE, J.

DATED : 8th December, 2015.

JUDGMENT :

1) The appeal is filed by original claimants from Claim
Petition No. 181/1986, which was pending before the Claims
Tribunal, Ahmednagar. The petition filed in respect of death of
Sarangdhar, husband of original claimant No. 1 is dismissed by
the Tribunal by holding that the deceased himself was rash and
negligent and he caused the accident. Heard both the sides.

2) The accident took place on 15.4.1986 on Rajuri - Babhleshwar Road and the spot is situated within the local jurisdiction of Loni Police Station. The deceased was proceeding from Rajuri to Babhleshwar on his motorcycle. It is contended that truck bearing No. MWA/3718, belonging to Public Works Department of the State Government gave dash to the motorcycle from backside and Sarangdhar died in the accident. It is contended that accident took place due to fault of respondent No. 4, truck driver. The accident took place at about 10.15 a.m.

3) It is the case of claimants, who are widow and issues of the deceased that age of the deceased was 40 years and by cultivating the agricultural land, he was earning Rs. 3500/- per month. It is their case that they were totally depending on the deceased for their livelihood. On various grounds, they had claimed compensation of Rs. 2.52 lakh.

4) The driver filed written statement at Exh. 22. He contended that his truck did not give dash to the motorcycle from the backside of deceased. He contended that motorcycle dashed to his truck from backside and so, the accident took

place due to rash and negligent driving of the motorcycle by the deceased. The owner filed written statement at Exh. 24 and similar defence was taken.

5) Before Tribunal, one issue of the deceased gave evidence. He has no personal knowledge regarding the accident and so, the claimants examined one Maroti Gore, witness to the accident. Maruti Gore's evidence shows that he was on his motorcycle and some bullock carts were proceeding ahead of him and motorcycle of deceased Sarangdhar was also following the bullock carts. He has deposed that the truck was also proceeding in the same direction and this truck gave dash to the motorcycle of deceased from backside of the motorcycle. In the cross examination, he admitted that he had not given statement to anybody to inform about the accident and this circumstance is considered by the trial Court against him and this witness is not believed.

6) Respondent No. 4 - Gaikwad, the driver of the truck has given evidence. He has deposed that his truck was following bullock carts first and when he was overtaking the two bullock carts, he stopped the truck after hearing the sound from backside. He has deposed that he went there and saw as to what

had happened and he noticed that one person was lying with the motorcycle on the wrong side of the road. He denied that accident took place due to his fault.

7) In the cross examination, Gaikwad has admitted that the width of the tar road at this point is 18 fts. and on either side there were side patts of 5 fts. width. His evidence shows that there were two persons sitting in the cabin of the truck. These persons are not examined. He has tried to say that he went to police station, but the report which was expected from him under section 158 of Motor Vehicle Act is not produced on the record. It is admitted that the criminal case was filed against him though he is acquitted in the case.

8) Copy of spot panchanama is not produced by other side, but copy of judgment delivered by Judicial Magistrate, First Class in criminal case filed against Gaikwad is produced on the record. It is not disputed that the motorcycle of the deceased came under the rear wheel of the truck. If dash was given by the motorcycle to the backside of the truck, it is not probable that after giving dash to truck from backside, the motorcycle had gone ahead and it had come under rear wheel of the truck. Admittedly, the truck was overtaking two bullock carts. Accident

took place in a broad day light and both the vehicles were proceeding in the same direction. There is clear probability that it is the case of error of judgment and when the motorcycle was attempting to overtake bullock carts, similar attempt was made by the truck and due to that, the motorcycle came under the rear wheel of the truck. The Tribunal has not considered this probability and aforesaid circumstances. This Court has no hesitation to hold that the Tribunal has committed error in holding that there was no fault on the part of truck driver and the accident took place due to fault of the deceased.

9) On the point of quantum, there is not much dispute. The bills of sugar factory and 7/12 extracts are produced on the record and they shows that in the year 1983-84 and 1984-85 sugarcane was sold by the deceased to Pravara Sugar Factory and he was taking sugarcane in land Gat No. 256 of Mamdapur, Tahsil Shrirampur. School leaving certificate is produced to show that he was born on 22.4.1942. The accident took place in the year 1986 and so, the deceased was aged about 40 years. Even if it is presumed that the monthly income of deceased was Rs. 1500/-, 1/3 amount, amount of Rs. 500/- can be deducted towards personal expenses and it can be presumed that there is loss of dependency of Rs. 1000/- per month. In view of the age

of the age, 15 can be adopted as multiplier. The amount of Rs. 15,000/- can be given under the head of loss of consortium and Rs. 5,000/- can be given under the other head like funeral expenses. Thus, the total amount of Rs. 2,00,000/- can be given as compensation. In the result, following order is made.

O R D E R

(I) The appeal is allowed. The judgment and award of the Claims Tribunal is hereby set aside.

(II) The claim petition of the present appellants and the respondents, who were original claimants, is allowed in following terms.

(i) The respondent, owner and driver do jointly and severally pay amount of Rs. 2,00,000/- (Rupees Two Lakh) as compensation under the principle of fault. If amount under the principle of 'NFL' is paid then the interest will be payable on the remaining amount. The interest will be at the rate of 9% per annum on the entire amount, if nothing is paid by the respondents, owner and driver.

(ii) It appears that the driver is dead, so, the entire amount will be recoverable from the owner of the vehicle. If the amount is deposited with the tribunal,

50% amount is to be given to the widow and remaining 50% amount is to be equally disbursed amongst the issues of the deceased.

(III) Award is to be prepared accordingly.

[T.V. NALAWADE, J.]

SSC/