

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

FIRST APPEAL NO. 800 OF 2014

Ravindra Sitaram Eshi	.. Appellant
Versus	
Damjibhai Jivarambhai Mange	
and another	.. Respondents

Ms. Sabahat T. Kazi, Advocate for the Appellant.

The Respondent No. 1 is served.

Shri S. G. Chapalgaonkar, Advocate for the Respondent No. 2.

CORAM : S. V. GANGAPURWALA, J.

DATE : 25TH AUGUST, 2015.

PER COURT :

1. Ms. Kazi, the learned counsel for the appellant submits that, the Tribunal while awarding the compensation on account of death of six months old child of the present appellant has deducted 20% of the amount on the ground that the driver of the car in which the child was traveling was negligent to the extent of 20%. The learned counsel submits that, it is a case of composite negligence and not of contributory negligence, as such no deductions could have been made. The learned counsel submits that, on account of loss of estate also a paltry sum of Rs. 5,000/- is awarded. So also funeral expenses at least Rs. 25,000/- could have been awarded.

2. Mr. Chapalgaonkar, the learned counsel for the respondent

No. 2/Insurance Company submits that, it has not come on record as to who was the owner of the car. The same would also be relevant and material. The learned counsel further submits that, the Tribunal has rightly applied the principles and awarded the compensation.

3. I have considered the submissions. Even if it is assumed that the driver of the car was negligent, it would be a case of composite negligence. In the light of that, there was no need to deduct 20% of the amount from the compensation amount worked out by the Tribunal. The amount of Rs. 5,000/- is awarded on account of loss of estate. I would make the same to Rs. 10,000/-. As such the appellant would be entitled for compensation of Rs. 2,05,500/-.

4. In the light of the above I pass the following order.

5. The award passed by the Tribunal is modified. The respondent Nos. 1 and 2 are jointly and severally liable to pay compensation of Rs. 2,05,500/- to the appellant along with interest at the rate of Rs. 8% per annum from the date of petition till its realization, however with no order as to costs. The amount already received shall be adjusted. The first appeal accordingly is partly allowed.

[S. V. GANGAPURWALA, J.]