

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

First Appeal No. 64 of 2001

* The National Insurance Co. Ltd.
Naginaghat Road, Nanded,
District Nanded. **.. Appellant.**

Versus

- 1) Namratabai w/o Prabhakar Raut
Age 33 years,
Occupation : Household,
R/o. Nanded Housing Society,
Vijaynagar, Nanded.
- 2) Swapnali d/o Prabhakar Raut,
Minor, under guardianship of
her real mother,
Namrata w/o Prabhakar Rao Raut,
Respondent No.1.
- 3) Daryabai w/o Wamanrao Raut,
Age 53 years,
Occupation : Household,
R/o Nanded.
- 4) Sukhbirsingh Harchanrarsingh Gill,
Age major,
Occupation: Owner of Truck
No. AP-25/T-5175,
r/op Gill Road Carriers, Nanded. **.. Respondents.**

Shri. S.P. Chapalgaonkar, Advocate, for appellant.

Smt. S.D. Shelke, Advocate, holding for Shri. D.R. Shelke,
Advocate, for respondent Nos.1 to 3.

CORAM: T.V. NALAWADE, J.

DATE : 8th DECEMBER 2015

JUDGMENT:

1) The appeal is filed by the insurance company against the judgment and award of Claim Petition No.202 of 1997 which was pending before Motor Accident Claims Tribunal, Nanded. The insurance company has challenged the judgment and award on the ground that there is no convincing evidence to show involvement of the truck and also on the ground that the compensation awarded is on higher side. Heard both the sides.

2) The accident took place on 28-12-1996 at about 2.15 p.m. on Ardhapur-Nanded road. Deceased Prabhakar was riding the motor cycle. It is the case of the claimants that deceased was proceeding on motor cycle with his wife Namratabai (claimant No.1) and minor issue and the truck bearing No. AP-25/T-5175 of Tata company gave dash to the motor cycle from opposite direction and the accident took place. Prabhakar died in the incident. It is the case of the claimants that the accident took place due to rash and negligent driving of the driver of the truck.

3) It is the case of the claimants that deceased had done his graduation in the year 1982 and he had completed B.Ed. course. He was working as Lecturer in Junior College, Narsing Vidya Mandir, Nanded and his monthly salary was Rs.6448/-. It is the case of the claimants - the widow, minor issue and widowed mother of the deceased that they were dependent for their livelihood on the income of the deceased. Age of the deceased was 38 years and the compensation of Rs.9,00,000/- was claimed.

4) The insurance company contested the matter by filing written statement. Everything was disputed by the insurance company including involvement of the vehicle.

5) Only claimants gave evidence. Claimant No.1 Namratabai was eye witness to the incident and she has given evidence that it was fault of the truck driver. She gave number of the truck which was involved in the accident. It appears that one Laxman had given report after the accident and he had informed that unknown

truck had given dash to the motor cycle. Report shows that Prabhakar died on the spot and other two pillion riders like minor issue and widow of Prabhakar were shifted to hospital. It appears that subsequently widow gave statement to police. She gave number of the vehicle and then the truck was traced and case was filed against the truck driver. When the accident took place on 28-12-1996, statement came to be recorded on 29-12-1996. Considering circumstance of tracing of truck by police and as there is nothing in rebuttal, this Court holds that it is not probable that the widow of the deceased had not noted the number of the truck and she had falsely given number of this truck. Thus, there is no force in the defence of non involvement of the truck taken by the insurance company.

6) On point of income of the deceased claimant Namratabai has given evidence that the deceased was working as lecturer in a junior college and his monthly salary was Rs.6,448/-. It appears that certificate of salary issued by the employer in respect of income of Prabhakar was exhibited by the Tribunal at Exhibit 31. As this

document was exhibited there was no need for the claimants to examine the employer. All the particulars of the salary with deductions are mentioned in the certificate. The judgment delivered by the Tribunal shows that gross salary was Rs.6,448/ and the Tribunal has considered other deductions towards provident fund, society and insurance policy premiums also. The Tribunal presumed that net income was Rs.5,200/- per month and accordingly compensation is awarded. It can be said that more than Rs.6,300/- could have been considered as income of the deceased and then 1/3rd amount could have been deduced for personal expenses of the deceased. Total compensation of Rs.6.6 lakh is given by the Tribunal which is certainly less than the entitlement. Thus there is no case in respect of quantum also in the appeal. It is not possible to interfere in the decision of the Tribunal.

7) In the result, the appeal stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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