

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

**FIRST APPEAL NO. 558 OF 2012
WITH
CIVIL APPLICATION NO. 14304 OF 2012
IN
FIRST APPEAL NO. 558 OF 2012**

United India Insurance Co. Ltd.,
Branch Manager, Dhule Branch,
Through it's Divisional Manager,
Jalgaon, Divisional Office II,
28, Hareshwar Nagar,
Ring Road, At & Dist. Jalgaon-425002

...Appellant

versus

1. Smt. Lilabai w/o Dattatray Chaudhari
Age: 40 years, Occ: Household work,
2. Kum. Madhuri d/o Dattatray Chaudhari,
Age: 17 years, Occ: Education,
3. Gaurao s/o d/o Dattatray Chaudhari,
Age: 14 years, Occ: Education,
4. Punam d/o Dattatray Chaudhari,
Age: 12 years, Occ: Education,
5. Bhagwan Nimba Chaudhari,
Age: 70 years, Occ: Nil,
6. Sau. Khatabai w/o Bhagwan Chaudhari,
Age: 65 years, Occ: Nil,

Nos. 1 to 6 R/o. Nilu Apartment, Dadawadi,
Behind Gujrat Petrol Pump,
At & Post Jalgaon, Tq. & Dist. Jalgaon.

7. Krishnakumar Jagdish Maniyar,
Age: Adult, Occ: Business,
R/o. Plot No. 6, City Survey No. 446,
Mahbal Colony, near B.P.C. Jalgaon,
Tq.& Dist. Jalgaon.
8. Vimlesh Kumar s/o Late Mata Charan,
Age: Adult, Occ: Transport
R/o. Maina Wali Gali, Lashkar,

At & Post- Gwalior (M.P.)

9. The New India Assurance Co. Ltd., ...Respondents

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Mr. A.B. Gatne, Advocate for appellant
Mr. N.L. Choudhari, Advocate for respondent Nos. 1 to 6 in
first appeal and for claimants in C.A. No. 14304 of 2012
Mr. A.G. Kanade, Advocate for respondent No.1
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CORAM : N.W. SAMBRE, J.

DATE : 15th JULY, 2015

ORAL ORDER :

Heard.

The substantial discrepancies as are noticed in the judgment delivered by the Motor Accident Claims Tribunal, Dhule in Motor Accident Claim Petition No. 820 of 2007 on 01/11/2011 are non consideration of spot panchnama so as to infer negligence of drivers of both the vehicles involved in the accident and liability of the insurance company pursuant thereto. Apart from above, sole testimony of claimant is taken into account to establish the income of the deceased.

2. In view of above and in the back ground of scheme of Section 147 read with Section 167 of Motor Vehicles Act and interpretation thereof, learned Counsel for the parties consents for remanding the matter back to learned Motor Accident Claims

Tribunal, Dhule for deciding the same afresh, particularly having regard to the fact that drivers of both the vehicles were prosecuted and in the back ground of spot panchnama of the accident and findings of negligence of the drivers of vehicles.

3. As such, the judgment delivered by the Motor Accident Claims Tribunal, Dhule in Motor Accident Claim Petition No. 820 of 2007 on 01/11/2011 is hereby set aside. Motor Accident Claim Petition No. 820 of 2007 stands restored to the file of Motor Accident Claims Tribunal, Dhule. Parties hereto agree that they shall appear before the said Tribunal on 03/08/2015.

4. The Motor Accident Claims Tribunal, Dhule is directed to decide the said claim petition afresh from the stage of final hearing, as expeditiously as possible and in any case, within period of three months from date of appearance.

5. The Motor Accident Claims Tribunal, Dhule may issue fresh notice to all respondents indicating that upon remand, the matter will be heard fresh so as to fix liability.

6. The appeal stands disposed of in above terms.

7. In view of final disposal of first appeal, pending civil application for stay stands disposed of.

8. This Court has already passed order of remand. The entire amount is deposited before this Court.

9. In view of remand order passed by this Court, for the time being, it will be appropriate, in my opinion, to permit the claimants to withdraw 25% amount of the deposited amount in this Court. The balance amount be remitted back alongwith Record and Proceedings to the Claims Tribunal.

10. Civil Application No.14304 of 2012 for withdrawal of the amount stands disposed of.

[N.W. SAMBRE, J.]