

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

FIRST APPEAL NO. 1252 OF 2015

The Reliance General Insurance Co. .. Appellant

Versus

1. Panjabrao Babarao Shinde and others .. Respondents

Shri S. G. Chapalgaonkar, Advocate for the Appellant.

Shri Ganesh P. Shinde, Advocate for Respondent No. 1 and 2.

CORAM : S. V. GANGAPURWALA, J.

DATE : 30TH SEPTEMBER, 2015.

PER COURT :-

. Mr. Chapalgaonkar, the learned counsel for the appellant submits that, the present appeal is filed on the ground that, the Tribunal has awarded excess amount of compensation, so also the aspect of negligence is not considered. According to the learned counsel, there were two vehicles involved in the accident. The aspect of negligence is required to be considered threadbare on appreciation of evidence. However, the Tribunal failed to consider the said aspect in its correct perspective. The deceased was riding the motorcycle. Only on the basis of the gravity of injury and the registration of F. I. R. the Tribunal has come to the conclusion that, the driver of the offending vehicle was totally negligent. Independent evidence is required to be scanned by the

Tribunal. The Tribunal ought to have considered 50% negligence of the driver of each vehicle. According to the learned counsel the deceased being a bachelor deductions towards personal expenses should have been half. The Tribunal deducted only 1/3rd amount towards personal deductions.

2. Mr. Shinde, the learned counsel for respondent Nos. 1 and 2 submits that, the Tribunal has rightly considered the aspect of negligence. The principle of *res ipsa loquitur* is properly applied. The investigation papers, F. I. R., nature of injury sustained and the position of the vehicle has been rightly considered by the Court while arriving at a conclusion that, the driver of offending vehicle was solely responsible for the accident. As far as quantum is concerned, the Tribunal has rightly deducted 1/3rd amount towards the personal expenses. Even the Tribunal has not awarded compensation towards loss of love and affection and consortium as per the judgment of the Apex Court in a case of **Asha Verman and others Vs. Maharaj Singh and others** reported in **2015 All SLR 1476**.

3. With the assistance of the learned counsel I have gone through the judgment and I have also considered the submissions. As far as aspect of negligence is concerned the Tribunal has appreciated the evidence on record. The driver of the offending vehicle is not examined. He could have been the

best witness to prove about the negligence. Withholding the best witness gives rise to an adverse inference coupled with that other investigation papers, F. I. R., the nature of injuries sustained and the position of the vehicle has been considered by the Tribunal in arriving at a conclusion that, the driver of the offending vehicle was solely responsible for the accident.

4. As far as quantum of compensation is concerned the Tribunal has rightly considered the the notional income. However, the deceased being a bachelor half of the amount should have been deducted towards the personal expenses. The income is considered as Rs. 4,000/- per month. If the deduction is made as half towards the personal expenses, the loss of dependency would be Rs. 24,000/- per year. The multiplier of 18 would be applicable, as such the claimants would be entitled for an amount of Rs. 4,32,000/-. As per the judgment of the apex court in a case of **Asha Verman and others Vs. Maharaj Singh and others** referred to supra for loss of love and affection Rs. 50,000/- to each parent is permissible, I would award the same. Towards the funeral expenses Rs. 25,000/- can be awarded. In the light of the above, the claimants would be entitled for compensation of Rs. 5,57,000/- instead of Rs. 6,00,000/- as awarded by the Tribunal.

5. In the result the award passed by the Tribunal is modified

and I pass the following order.

6. The original respondent Nos. 1 and 2/opponent are jointly and severally liable to pay an amount of Rs. 5,57,000/- to the claimants inclusive of the no fault liability amount along with interest at the rate of Rs. 10% per annum from the date of filing of claim petition till realization. First appeal is accordingly disposed of.

7. The claimants are allowed to withdraw the amount as per the aforesaid order. If any excess amount is deposited by the appellant, the appellant is entitled to withdraw the same.

[S. V. GANGAPURWALA, J.]