

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

FIRST APPEAL NO. 68 OF 2002

Babuddin S/o Mohboob Mansuri,
Age 38 years,
Occu. : Agriculture and tractor owner,
R/o Shirur, Tq. Patoda,
District Beed.

.. Appellant

Versus

1. Smt. Chhaya w/o Avinash Lad,
Age : 29 years, Occ: Household,
R/o Chikhali Nath,
Taluka Patoda, District Beed.
2. Gagaprasad s/o Avinash Lad,
Age 11 years, minor,
Under guardianship of mother
Chhaya w/o Avinash Lad,
(respondent No. 1)
3. Vaibhav s/o Avinash Lad,
Age 09 years, minor,
Under guardianship of mother
- respondent No. 1.
4. Swati d/o Avinash lad,
Age 12 years, minor,
Under guardianship of mother
Respondent No. 1,
5. Shahadeo S/o Govind Paval,
Age years, occ: service,
Driver,

R/o Navgaon Rajuri,
Taluka and District Beed.

.. Respondents

Shri V. G. Sakolkar, Advocate for the Appellant.

Shri R. G. Hange, Advocate for Respondent Nos. 1 to 4.

CORAM : S. V. GANGAPURWALA, J.

DATE : 30TH SEPTEMBER, 2015.

ORAL JUDGMENT :-

. Mr. Sakolkar, the learned counsel for the appellant submits that, the Motor Accident Claims Tribunal while partly allowing the claim petition has not considered the aspect of negligence in its correct perspective. The deceased motorcyclist had dashed at the rear tyre of the tractor, which itself would show that the deceased was driving the motorcycle in negligent manner. The learned counsel further submits that, even the driver of the tractor has been examined. His deposition has not at all been considered. His deposition as witness could have been considered by the Tribunal. Non consideration of evidence is an error committed by the Tribunal. According to the learned counsel the evidence on record clearly establishes that the accident was result of rash and negligent driving of the deceased himself.

2. The learned counsel for respondent Nos. 1 to 4/claimants supports the judgment and submits that, even independent eye witness has been examined, who has deposed about rash and negligent driving of the offending vehicle.

3. I have considered the submissions. So also gone through the judgment, record and proceedings. No doubt, the evidence of the driver of the tractor can be considered as that of a witness. The Tribunal has considered the actual position of the vehicles. The Tribunal has applied the principle of *res ipsa loquitur*. So also considering the evidence of C.W. No. 2, who is independent eye witness and after considering the depositions, documents on record the Tribunal has arrived at plausible conclusion that, the driver of the tractor i. e. the respondent No. 5 herein was rash and negligent and the accident was result of his rash and negligent act. No error has been committed by the Tribunal in that regard. The Tribunal has also considered Exhibit 93 wherein present appellant has accepted his liability of compensation and amount of Rs. 1,50,000/- was paid by the present appellant. The Court has deducted the said amount. After deducting the said amount the Tribunal had directed original respondents to pay an amount of Rs. 2,92,040/- with interest at the rate of 9% per annum.

4. In the light of that, I do not see any error committed by the Tribunal. As such first appeal is dismissed. No costs.

Sd/-

[S. V. GANGAPURWALA, J.]