

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

FIRST APPEAL NO. 1284 OF 2013
WITH CA/6077/2013 IN FA/1284/2013

THE ORIENTAL INSURANCE CO. LTD.

VERSUS

- 1]BEENA ANANDAN UNNITHAN
- 2]Subbaryuddu M. S/o M.Subbanna
- 3]Nagendrudu M. Kondaiah
- 4]Dnyanoba Narsappa Autade
- 5]Unnithan s/o Mahadevan Anandan

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Advocate for Appellant : Deshpande Avinash S.
Advocate for Respondents : Mayure Pramod C For R/5
Adv. Mr.Chapalgaonkar S.G. For R/1

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CORAM : S.V.GANGAPURWALA,J.

DATED : 12TH OCTOBER, 2015

ORDER :-

1. The present respondents / claimants had filed application under Section 166 of the Motor Vehicles Act, on account of the death of Akhil Unnithan in an accident. The Tribunal partly allowed the claim application granting compensation of Rs. 9,05,000/-. Aggrieved thereby the insurance company has assailed the said judgment and award in the present appeal.

2. Mr. Deshpande, the learned counsel for the appellant strenuously contends that, the deceased was travelling in a private car owned by his father i.e. present respondent No. 5. According to the learned counsel the car hit the stationery truck. The Tribunal wrongly held that, driver of the truck was negligent

only on the ground that the driver of the truck was not examined and further that, the truck was wrongly parked without following the traffic rules. The learned counsel submits that, though the present insurance company is an insurer of the truck and the jeep the aspect of negligence has not been properly considered. According to the learned counsel the liability of the insurance company qua negligence of the driver of the car would be limited to the extent of Rs. 1,00,000/- for the passenger in the said car. The learned counsel submits that, even offence was registered against the driver of the car. By no stretch of imagination it can be said that, the driver of the truck was negligent and was responsible for the accident. The evidence has been perversely appreciated. Only because the parking indicators were not on of the said truck and even assuming that, the said truck was parked wrongly, the negligence of the driver of the car can not be ruled out and the driver of the car has to be held negligent at least to a major extent. The learned counsel submits that, the deceased was a student. Even if notional income could have been considered such amount of compensation could not have been awarded. The Tribunal has awarded lumpsum compensation of Rs. 8,00,000/- and Rs. 1,00,000/- under the other heads. The said compensation awarded is exorbitant.

3. Mr. Chapalgaonkar, the learned counsel submits that, the professor of the institute where the deceased was taking his education of B.Tech. is examined to show the placements given to the students of the said college every year wherein even

package of Rs. 6,00,000/- per annum in the start is given to those students. The learned counsel submits that, even the Apex Court in the case of **Radhakrishna V. Gokul and others reported in 2014 A. I. R. SCW 548**, in a case of death of 19 years old engineering student had awarded lumpsum compensation of Rs. 7,00,000/-. The learned counsel submits that, by awarding the said compensation the Apex Court took stock of the earlier judgments. The learned counsel submits that, in the present case the deceased was 24 years old, about to pass his B. Tech. Course and could have got placement with a package of Rs. 6,00,000/- per annum. The Court has awarded reasonable compensation of Rs. 8,00,000/- and Rs. 1,00,000/- under the non pecuniary heads which is in tune with the judgment of Apex Court in a case of Asha Varman reported in 2015 A. I. R. SCW 3254.

4. The learned counsel further submits that, even if the driver of the car is held to be negligent to some extent it would be a case of composite negligence and not a contributory negligence. As far as the claim petition is concerned the deceased was a passenger in the car. In such circumstances, apportionment of liability is not required to be undertaken. The learned counsel relies on the judgment of the Apex Court in the case of **Pawan Kumar and another V/s Harkishan Dass Mohan Lal and others reported in 2014 (4) MLJ 548**.

5. I have considered submissions canvassed by the learned counsel for respective parties. As far as finding of negligence is

concerned the Tribunal has observed that, the driver of the truck has not been examined and considered the spot panchanama and other documents and held that, the truck was wrongly parked. It was parked without following the traffic rules. There were no indicators put on, of the said truck and held driver of the truck to be solely negligent. The said finding certainly does not stand to reason. The truck was stationery truck. The driver of the car could have seen the truck and if would have been sufficiently careful and not negligent, could have avoided the accident. Even if the observation of the Tribunal is accepted that, the truck was parked without parking lights, against traffic rules and in the wrong manner still it can not be said that, the driver of the car was not negligent. In fact even if the said observations is accepted the driver of the car will have to be held negligent to a greater extent. I would hold the driver of the car to be negligent to the extent of 75% and the driver of the truck to the extent of 25% only as against the finding of the tribunal holding the driver of the truck solely negligent.

6. However, it is submitted that, the insurance policy of the car is a package policy. If the policy is a package policy then the liability of the insurance company of the car would not be limited as it is a package policy.

7. As far as the claimant is concerned it would be case of composite negligence wherein claimant can recover the whole amount from any one. The present appellant is the insurer of

both the vehicles.

8. In light of that, holding the negligence of the driver of either of the vehicle, the insurance company in the present case can not escape its total liability. As such, the exercise of apportionment would be futile.

9. As far as the quantum of compensation is concerned the Tribunal has considered the age of the deceased and the course he was undergoing so also the evidence of professor of the institute and has awarded Rs.8 lakh as lumpsum compensation. The Apex Court in the case of Radhakrishna referred supra had considered the earlier judgments of the Apex Court and had awarded lumpsum compensation of Rs. 7,00,000/- to the claimants whose son aged 19 years taking education in engineering had died.

10. Here the age of the deceased was 24 years. Considering the above the amount of Rs. 8,00,000/- as lumpsum compensation towards the pecuniary damages appears to be reasonable. Even considering the judgment of Asha Verman towards non pecuniary damages also the amount of compensation is awarded which appears to be reasonable and proper.

11. In light of that, first appeal is dismissed. No costs. Civil application also stands disposed of.

[S.V.GANGAPURWALA,J.]

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