

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

FIRST APPEAL NO. 1231 OF 2014

National Insurance Co. Ltd.,
Through its Divisional Manager,
Aurangabad Divisional Office,
Hazari Chambers, Station Road,
Aurangabad.

...APPELLANT

VERSUS

1. Smt. Latabai Pitambar Patil,
Age-42 years, Occu-Household,
2. Pramod Pitambar Patil,
Age-24 Years, Occu-Education,
3. Manisha Pitambar Patil,
Age-21 years, Occu-Education,

Respondent No.1 to 3
R/o. Bodarde (Mudi), Tq. Amalner,
Dist. Jalgaon.

4. M/s. Vyankatesh Nagari
Sahakari Patsanstha,
Talo Galli, Parole.

...RESPONDENTS

Mr.Atul B. Gatne, Advocate for the appellant.
Mrs.S.T.Kazi, Advocate for the respondent Nos. 1 to 3.

CORAM : A.V. NIRGUDE, J.

DATED : 03.08.2015

ORAL JUDGMENT :-

1. This is filed by insurance Company. I point out these two points for consideration, I narrate brief factual background of this case. Pitambar and his two friends were riding on a motor-cycle and the appellant's insured Ambulance van rammed into them head on. All of them died. The van turn turtled injuring at least two occupants. The driver of the Ambulance was prosecuted.

2. Pitambar's next of kin are the respondents. They demanded compensation from the owner of the Ambulance and the Insurance Company. They did not make motor cycle owner and insurance company of motor cycle as party to the petition.

3. The appellant insurance company of ambulance raised various defenses. One of them was that the accident occurred due to contributory negligence. So, the question that arises for my consideration.

4. First question that arises for my consideration is whether the accident took place due to contributory

negligence? the answer is in negative. The evidence that came on record clearly indicated that it was the negligence of driver of the Ambulance which had caused the accident. It is mentioned in the First Information Report that the driver of Ambulance tried to over take a vehicle and in the said attempt he collided on motor cycle which was coming from the opposite side. The speed of the Ambulance was so great, that all riders on the motor cycle, died. In addition to this, the Ambulance itself turn turtle. It is therefore clear from these circumstances that the Ambulance driver was driving the vehicle in great speed. He was probably in a hurry to reach hospital etc,.

5. In view of this state of evidence, in my view, the appellant insurance company ought to have discharged its burden that it was partly due to rider of the motor cycle, the accident had taken place. The evidence that they brought on record is meager. They even did not know as to who was riding the motor cycle amongst the three riders. They did not bring on record as to who was the owner of motor cycle. They did not lead any evidence of any witness which could have thrown light on the facts of the case. In absence of the owner of the vehicle they could have entered into the disputed facts. In any case they could have certainly examined the driver of the

Ambulance. In absence of this evidence, it cannot be said that this was a case of contributory negligence.

6. The next point which is of minor nature is whether the petition was bad for non-joinder of owner and insurer of the other vehicle namely a motor cycle? The answer is in negative. The respondents/ claimants took a calculated risk of dropping these two parties. And as said above succeeded in showing that it was a case of negligence on the part of only the driver of one vehicle.

7. Third point that is required to be decided in this case is, what was the income of the deceased? The respondent No.1 the widow of deceased came before the Court and deposed that her husband was an agriculturist and also a business man. He had a small piece of land and he was dealing with sugar cane supply to sugar cane juice centre. She asserted very clearly that income of the family was about Rs.10,000/- per month. She thereby trying to suggest that her husband was a skillful businessman and though his agriculture holding was small, he could get good income from other sources. The learned counsel for the appellant asserted that bare words of claimant No.1 is not sufficient evidence. In a case of this nature, documentary proof of income is difficult to get. Villagers do not keep record of their transactions.

The business was of small transactions. The learned Member was persuaded to hold that the income of the deceased was about Rs.1,00,000/- per year. I do not think that this is exaggeration. The appeal should therefore fail.

8. The first appeal stands dismissed accordingly.

[A.V. NIRGUDE, J.]