

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

**FIRST APPEAL NO.2542 OF 2013
WITH
CIVIL APPLICATION NO.7410 OF 2013**

The Oriental Insurance Co. Ltd.
Divisional Office, Aurangabad
Through its Divisional Manager,
Aurangabad

..APPELLANT

VERSUS

1. Shashikalabai W/o. Pralhad Raut,
Age-49 years, Occu-Household,

2. Vidya D/o. Pralhad Raut,
Age-23 years, Occu- Education,

Both R/o. Urma, Tq. Aundha,
District Hingoli

3. Sachin S/o. Shyamsundar Birla,
Age-35 yeas, Occu-Business,
R/o. Shrikrishna Automobiles,
Main Road, Manwat, Tq. Manwat
District Parbhani

..RESPONDENTS

Mr.Arun G. Kanade, Advocate for the appellant
Mrs.A.N.Ansari, Advocate for the respondent Nos.1 & 2
Mr.R.R.Chandak, Advocate for the respondent No.3

**CORAM : A.M. BADAR,J.
DATED : 05.12.2015**

P.C. :-

1. This is an appeal under section 173 of the Motor Vehicles Act, 1988 by the Insurance Company/original

respondent No.2. Respondent Nos.1 & 2 herein were claimants before the Motor Accident Claims Tribunal, Parbhani. Respondent No.3 herein/owner of Indica car was respondent No.3 before the Tribunal. For the sake of convenience, parties shall be referred to in their original capacity.

2. Facts in nutshell leading to institution of present proceedings are thus :-

. Claimants filed petition under section 166 of the Motor Vehicles Act, 1988 alleging that they are legal representatives of deceased Pralhad Shankar Raut. It is their case that on 02.08.2009 deceased Pralhad was traveling in auto-rickshaw from Parbhani to his native place Umra. At about 5.00 p.m. Indica Car bearing Registration no. Mh-22-H-2223 came in high speed from the opposite direction and gave dash to the said Auto-Rikshaw which resulted in death of Pralhad. It is case of claimants that deceased Pralhad was running a Fair Price Shop at village Umra and was also holding license for retail distribution of Kerosene Oil. Apart from this, he was also cultivating his agricultural land at Umra. According to claimants deceased was earning monthly income of Rs.12,000/- per month. Because of his untimely death, they have lost the amount of their dependency. According to claimants the Indica Car involved in the

accident is owned by respondent No.1 and was insured with respondent No.2 at the time of accident in question.

3. Respondent No.1- owner failed to participate in the proceedings. Respondent No. 2 opposed the claim by filing written statement at Exhibit-14 and denied each and every adverse averments. It was contended by the insurance company that the deceased was 60 years' old and he was non-earning member of the family. Insurance Company further denied the fact that deceased was earning Rs.12,000/- per month. Insurance Company also contended that driver of the Indica car was not holding valid and effective license.

4. After hearing the parties the learned Tribunal concluded that the accident happened because of rash and negligent driving of the Indica Car in which Pralhad succumbed to injuries. It is further held that the claimants failed to prove that the deceased was earning Rs.12,000/- per month. However, the Tribunal held that as deceased was running Fair Price Shop and was maintaining his family, his monthly income must be at Rs.6,000/- per month. Accordingly, compensation amount was assessed and respondents are directed to pay the same to claimants alongwith interest at the rate of 6% p.a.

5. Heard Mr. Kanade, the learned Counsel appearing for the appellant insurance company. According to him the learned Tribunal erred in holding that deceased must be earning Rs.6,000/- per month as he was running Ration Shop and was maintaining his family. This opinion of the learned Tribunal, in submission of Mr.Kanade, learned Counsel appearing for the appellant, is without iota of evidence on record and as such needs to be set aside. According to Mr. Kanade, learned Counsel, notional income of deceased ought to have been considered by the tribunal while awarding compensation to the claimants.

6. As against this, Mrs. Ansari, learned Counsel for the claimants submitted that the learned Tribunal has rightly concluded that the deceased was earning Rs.6,000/- per month and this finding cannot be said to be a perverse one.

7. As this appeal is limited to the quantum of compensation assessed by the learned Tribunal, other facts in respect of rash and negligent driving and consequential death of Pralhad in the vehicular accident need not be traversed.

8. According to claimants, deceased Pralhad was running a Fair Price Shop. He was also holding license of

retail distribution of kerosene oil. In addition, he was an agriculturist by occupation. On this aspect, claimants have adduced evidence of claimant No.1 Shashikala-widow. It is her evidence that her deceased husband was running Ration Shop and kerosene license holder. She further deposed that deceased Pralhad was an agriculturist owing agricultural land situated at Umra, Tq. Aundha and he himself was cultivating the same. Witness-Shashikala deposed that her deceased husband was earning Rs.12,000/- per month. Her cross-examination reveals that she was not having any idea about commission which the deceased used to receive from the Government. She denied the suggestion that her deceased husband was not earning Rs.12,000/- per month.

9. At this juncture it needs to be noted that proceedings before the learned Tribunal are summary in nature and strict rules of evidence and pleadings are not applicable to such proceedings. Perusal of record and proceedings shows that claimants have placed on record license issued under clause-4 of the Maharashtra Scheduled Commodities Retail Dealers' Licensing Order, 1979. This license is for carrying out business as Retail Dealer in Scheduled Commodities. It is seen from this license that quantity of 50 qntl. of food grain, 8 qntl. of oil seeds, 200 ltrs. of Kerosene, 8 qntl. Of Pulses

and 10 qntl. of sugar per month was allotted to the Fair Price Shop in the name of deceased Pralhad. Claimants have also placed on record copy of license to run Fair Price Shop at village Umra. This evidence coupled with the fact that deceased was an able bodied person maintaining family comprising of his wife and daughter is sufficient to hold that he was earning monthly income of Rs.6,000/-. Even otherwise in view of judgment of the Supreme Court in the matter of **Smt. Laxmi Devi & Others. vs Md. Tabbar reported in 2008(2) TAC SC 394**, notional income of even unskilled labour is to be taken at Rs.3,000/- per month. In the case in hand deceased was Fair Price Shop Licensee having sufficient quota, as reflected from the license. Therefore, no infirmity can be found with the finding of the learned Tribunal that he was earning Rs.6,000/- per month. Rather the learned Tribunal has assessed his income modestly. In the result appeal is devoid of merit. Therefore the following order:-

- i. Appeal is dismissed with no order as to cost.

[A.M. BADAR, J.]