

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2675 OF 2013

1] Yasmeen Malaka W/o Late Ali Ahmed Khan
Age : 37 years, Occu.: Household,
R/o Opp. Bharat Studio, Baijipura,
Aurangabad

2] Umar S/o Ali Ahmed Khan,
Age : 14 years, Occu.: Nil,
U/g. of Appellant no.1

3] Shafaque D/o Ali Ahmed Khan,
Age : 11 years, Occu.: Nil,
U/g. of Appellant No.1

4] Sahras D/o Ali Ahmed Khan,
Age : 5 years, Occu.: Nil,
U/g. of Appellant No.1

The appellant no.2 to 4 are minor
being represented through appellant no.1

5] Sirajunnisa W/o Irshad Khan
Age : 60 years, Occu.: Nil,
R/o As above

.. Appellants
(Orig. Claimants)

VERSUS

1] United India Insurance Company,
Through its Divisional Manager,
at Aurangabad

2] Vishnu S/o Tukaram Sonawne,
Age : Major, Occu.: Business &
Owner of Truck bearing No.
MH-20-AT-4345) R/o Soegaon,
Tq. Soegaon, Dist. Aurangabad

3] Raghunath S/o Kashinath Yendole
Age : Major, Occu.: Driver,
R/o Bhawanipura, Soegaon,
Tq. Soegaon, Dist. Aurangabad

4] Mujahed Bin Abdulla,
Age : Major, Occu.: Business,
R/o Ajantha, Tq. Sillod,
District – Aurangabad

(Policy Holder of Truck No.MH-20
AT-4345) (Previous Reg. Mark
Noi. MP-07-G-4674)

.. Respondents

Mr. P.B. Gapat, Advocate h/f. Mr. V.S. Pawar, Advocate for
the appellant

Mr. S.V. Kulkarni, Advocate for the respondent no.1

None present for respondent nos.2,3 and for respondent no.4,
though served.

CORAM : M.T. JOSHI, J.

DATE : 06/01/2015

ORAL ORDER :

1. **Admit.**

2. Heard finally, with consent of both the sides.

3. The present appeal is filed by the original claimants-applicants in a petition under section 166 of the Motor Vehicles Act. They are aggrieved by the finding of the learned Member of the Motor Accident Claims Tribunal, that the deceased was 80% negligent which has resulted into the accident while the truck driver – original respondent no.3 was 20% negligent. Accordingly, though the learned Member has concluded that the loss would be to the extent of Rs.7,50,000/,

the respondents would be jointly and severally liable to pay only 20% i.e. Rs.1,50,000/- with interest as awarded.

4. The accident has occurred on 18/9/2007 at 11.00 a.m. near Mata Mandir in Aurangabad. At that time, vehicle bearing no. MH-20-AT-4345 owned by respondent no.2 was being driven by respondent no.3. The deceased was travelling by a motorcycle alongwith his employee from behind. It is the case of the appellants-claimants that as the respondent no.3 suddenly applied the brakes of the truck, the motorcycle dashed to the truck from behind, causing the death of the deceased.

. Certified copy of the F.I.R. at Exhibit 22 would show that it was filed by the employee of the deceased - Akhtar Khan Vajir Khan, wherein all these details are given. Before the learned trial Court, however, the present appellants failed to examine either the said complainant or any other eye witness. The learned Member has highlighted this fact and on the basis of the certified copy of the panchanama of the spot of occurrence at exhibit 23, inferred that the deceased ought to have been cautious while driving the

motorcycle behind the truck. Therefore, the impugned finding and the order came to be recorded.

5. Learned counsel for the appellants-claimants submits that while appellant no.1 is the widow of the deceased, appellant nos.2 to 4 are the minor issues of the deceased and appellant no.1 while the appellant no.5 – Sirajunnisa is the old aged father of the deceased who could not conduct the trial properly in the trial Court. He therefore submits that either the appeal be allowed or in the alternative the award passed by the learned Member be set aside and the case be remanded back to the learned Member with grant of opportunity to lead the evidence in proper manner.

6. Mr. Kulkarni, learned counsel for respondent no.1 submits that sufficient opportunity was granted to the appellants-claimants to lead the evidence in the trial Court.

7. Upon hearing both sides and finding that the appellant no.1 is the widow and appellant nos.2 to 4 were the minors and appellant no.5 is the old aged person, in my view, one opportunity can be granted to

them to lead evidence in the trial Court so that the truth may come on record. At the same time, the respondent no.1 i.e. the insurer cannot be penalized by awarding interest in case compensation is enhanced by the Tribunal after recording the evidence afresh.

8. In the circumstances, the following order:-

I) The Appeal is hereby allowed without any order as to costs.

II) The impugned judgment and award dated 15/3/2010 passed by the Member, Motor Accident Claims Tribunal & Ad-hoc District Judge-1, Aurangabad in M.A.C.P. No. 14 of 2009 is hereby quashed and set aside.

III) Instead, the case is remanded back to the concerned Tribunal. The Tribunal is directed to grant opportunity afresh to the appellants as well as the respondents to lead the evidence and, thereafter, pass fresh award as per the due procedure of law.

IV) In case there is any enhancement in the compensation, the Tribunal shall not grant interest over the enhanced compensation in view of the above material

on record.

V) The parties to appear before the learned Tribunal on 10th March, 2015.

VI) R & P be remitted back to the learned Tribunal.

9. First Appeal is disposed of accordingly.

[M.T. JOSHI]
JUDGE

arp/