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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**FIRST APPEAL NO.1433/2014
WITH
CIVIL APPLICATION NO.7197/2015**

National Insurance Company Ltd.,
Through its Division Office,
Divisional Manager, Hazare Chambers,
Railway Station Road, Aurangabad.
Dist.Aurangabad.

...Appellant..
(Org.res.no.2)

Versus

- 1] Smt.Sakhubai w/o Anna Shinde,
age 21 yrs., occu.household and
labour r/o Gangachincholi
Tq.Ambad Dist.Jalna.
- 2] Vikas s/o Anna Shinde,
age 3 yrs., occu.nil, minor,
u/g of respondent no.1
Sakhubai – natural mother.
- 3] Kishor s/o Anna Shinde,
age 2 yrs., occu.nil, minor,
u/g of respondent no.1 –
Sakhubai – natural mother.
- 4] Sow.Sitabai w/o Gangaram Shinde,
age 43 yrs., occu.labour,
- 5] Gangaram s/o Rama Shinde,
age 46 yrs., occu.labour,
r/o Gangachincholi Tq.Ambad Dist.Jalna.
- 6] Sadashiv Pandurang Rodge,
age 30 yrs., occu.service,
r/o Kesapuri Camp, Majalgaon.
Tq.Majalgaon Dist.Beed.

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At present r/o Manager,
Dyanradha Multistate Cooperative
Society Branch Tirthpuri
Tq.Ghansawangi Dist.Jalna.

7] Rameshwar s/o Narayan Bulbule,
age 50 yrs., occu.business,
r/o Daithana (Kh) Post Tirthpuri
Tq.Ghansawangi Dist.Jalna.

...Respondents...

(Nos.1 to 5 org.claimants
Nos.6 & 7 org.respondents)

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Shri S.V. Kulkarni, Advocate for appellant.

Shri Swapnil A. Deshmukh, Advocate for respondent nos.1
to 5.

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CORAM: N.W. SAMBRE, J.

DATE: 07.07.2015

ORDER :

1] The appellant – Insurance Company has questioned the legality and validity of the award delivered by the Motor Accident Claims Tribunal in Motor Accident Claim Petition No.142/2013 on April 28, 2014 whereby the appellant was directed to pay compensation of Rs.5,57,000/- to the claimants – respondent nos.1 to 5 herein, alongwith interest at the rate of 7.5% p.a.

2] The accident in question took place on 5.10.2012 when the son of the deceased Anna was riding a motor-

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cycle, which met with an accident on the extreme left side of the road i.e. he was driving on his correct side.

3] It is claimed in the petition u/s 166 of the Motor Vehicles Act that deceased Anna was a daily wager and was earning around Rs.200/- per day. Based on the evidence brought before it, the Tribunal has ordered award of the compensation.

4] Learned counsel for the appellant has raised two-fold contentions :

a] The contributory negligence on the part of the deceased Anna while he was driving the motor-cycle in question, which is involved in the accident and

b] The deceased Anna was not holding any driving licence.

5] So far as first contention of the learned counsel for the appellant as regards contributory negligence is concerned, it is required to be noted that the claimants in support of their claim petition have placed on record copy of the FIR at Exhibit 26 and spot panchanama at Exhibit 27. Based on the *post-mortem* report (Exhibit 28), the Tribunal has drawn an inference that the deceased Anna died because of suffering serious

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injuries in the accident in question. With the assistance of learned counsel for the appellant, I have perused the spot panchanama (Exhibit 27) including the spot map. From the same, it is noticed that the deceased Anna was traveling from south to north direction and was on the extreme left side of the road. As such it could be inferred that the spot of accident, which is on the extreme left side of the road, the deceased Anna was driving on his correct side and as such there is no question of the deceased Anna driving the vehicle in a rash and negligent manner by contributing to the accident in question. In view thereof, in my opinion, the point, as is sought to be canvassed as regards contributory negligence, does not hold any substance particularly in absence of any evidence brought to that effect on record.

6] So far as second contention of the learned counsel for the appellant is concerned i.e. the deceased Anna was not holding any driving licence, it is required to be noted that for proving the said fact, the burden is on the present appellant – Insurance Company. So as to exhibit discharge of the said burden, the learned counsel for the appellant has invited my attention to the

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evidence of witness Gangaram, who was examined as claimants' witness No.2. Said Gangaram in his evidence has stated that the deceased Anna was not able to drive the vehicle properly. In my opinion, the said piece of evidence cannot be stretched to the extent of drawing an inference that the deceased Anna was not holding any driving licence and was unable to drive the vehicle properly. Rather, it has come on record that the deceased Anna was a regular motor-cycle rider and used to drive the motor-cycle regularly. In view of the same, in my opinion, the appellant – Insurance Company has also not discharged its burden.

7] Apart from above, the Tribunal has taken into account the income of the deceased Anna to the extent of Rs.100/- per day as a daily wager i.e. Rs.3,000/- per month and as such proceeded to draw the inference as regards the annual income of the deceased Anna.

8] Having perused the judgment delivered by the Tribunal, it is noticed that the Tribunal was alive of all the above referred intricacies and has dealt with every aspect which was canvassed before it by the respective parties.

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9] The points as are sought to be canvassed before this Court, in my opinion, are devoid of any substance. As such, the first appeal stands dismissed with no order as to costs.

10] The respondent nos.1 to 5 – claimants, who are applicants in Civil Application No.7197/2015, have filed the same for withdrawal of the amount. In view of dismissal of First Appeal, the applicant nos.1,4 and 5 are permitted to withdraw an amount of Rs.2,50,000/-. Balance amount be deposited in any Nationalized Bank in a fixed deposit, to which the applicant nos.2 & 3 will be entitled to withdraw upon attaining their age of majority. Civil Application No.7197/2015 is accordingly disposed of.

(N.W. SAMBRE, J.)