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

FIRST APPEAL NO. 1487 OF 2008

M/s National Insurance Co. Ltd.,
having its registered & Head Ofice at
3 Middleton Street Kolkatta-700071
Branch at Latur Divisional Office at
Station Road, Hazari Chambers,
Aurangabad-431 005 through its
Divisional Manager
Banabihari Dibyasingh Patra,
Age: 50 years ...Appellant

versus

1. Smt. Saralabai w/o Ashok Kotecha,
Age: 41 years, Occ: Household,

2. Amol s/o Ashok Kotecha,
Age: 23 years, Occ: Nil,

3. Atul s/o Ashok Kotecha,
Age: 21 years, Occ: Nil,
All R/o.Hattenagar, Latur

4. Shrikrishna s/o Ganpat Dalanje,
Major, Occ: Tipper Driver,
R/o. Pandharpouni, Tq. Chimur,
Dist. Chandrapur,
(deleted)

5. Pravinkumar s/o Maganlal Pugliya,
Major, Occ: Business, R/o. Modern
Service, Station Road, Padoli,
(Near LTV school Kotwali Ward)
Chandrapur, Dist. Chandrapur.

6. Gajanan s/o Yeshwantrao Chandekar,
Major, Driver, R/o. Patanboro,
Tq. Zari District Yeotmal.

7. Oriental Insurance Co. Ltd.
Br. Latur through Divisional
Office, Adalat Road, Aurangabad.

8. Smt. Manabai w/o Madanlal Surana,
Age: 54 years, Occ: Household,

9. Narendra Madanlal Surana,
Age: 36 years, Occ: Business,
Both R/o. Kumbha, Tq. Wani,
Dist. Yeotmal.

10. Mangal w/o Satishkumar Darda,
Age: 32 years, Occ: Household,
Shivajinagar, Yeotmal.

11. Mamta w/o Satishkumar Sand,
Age: 28 years, Occ: Household,
R/o. Wani, Tq. Wani,
Dist. Yeotmal.

12. Manisha w/o Rajeshkumar Yeotmal,
Age: 28 years, Occ: Household,

13. Madhubala w/o Yogeshkumar Bardiya,
Age: 25 years, Occ: Household,
R/o. Nachangaon, Tq. & Dist.Amravati.

(As per Registrar's Court's Order
dt.16/2/10 appeal is dismissed
against Res.Nos.10 to 12) ...Respondents

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Mr. V.N. Upadhye, Advocate for appellant
Mr. H.P. Jadhav, Advocate for respondent Nos. 1 to 3
Mr. R.F. Totala, Advocate for respondent No. 7

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CORAM : N.W. SAMBRE, J.

DATE : 30th JUNE, 2015

ORAL ORDER :

Present appeal is by the Insurance Company under the provisions of Section 173 of the Motor Vehicles Act questioning the award delivered by the Motor Accident Claims Tribunal, Latur in

Motor Accident Claims Petition No.276 of 2003 on 06/06/2007.

2. Parties herein shall be referred to as their status in the claim petition.

3. The claimants submitted the claim of Rs.4,00,000/- against death of one Ashok Kotecha who died in the accident of two vehicles namely jeep, in which he was travelling and tipper. Both these vehicles were insured with non applicant Nos. 3 and 5 Insurance Companies.

4. Claimant No. 1 is widow of deceased Ashok, whereas claimant Nos. 2 and 3 are his sons. It is claimed in the claim petition that the deceased Ashok was running business of grocery shop and other mercantile and based on the same, claim of Rs.4,00,000/- was made.

5. The above referred claim was resisted by non applicant Nos. 3 and 5 by filing written statement, wherein plea of involvement and responsibility to pay compensation by other insurance company was raised. In addition to above, though the accident in question was admitted, the income as is sought to be brought on record qua the claimants was also disputed.

6. The claim petition came to be allowed by an award dated 06/06/2007 wherein the tribunal has ordered the payment of compensation of Rs.17,03,330/- with interest @7.5% p.a. As such, present appeal.

7. Heard Mr. Upadhye, learned Counsel for the appellant and Mr. Jadhav, learned Counsel for the claimants.

8. According to Mr. Upadhye, learned Counsel for the appellant, the claim as is allowed by the tribunal is required to be upset and set aside, particularly to the extent of claim awarded in addition to above Rs.4,00,000/-. According to him, the appeal in question is restricted only to the extent of claim awarded above Rs. 4,00,000/-. He would urge that perusal of spot panchnama reflects that it is the case of contributory negligence and according to him, both the insurance companies non applicant Nos. 3 and 5 with whom respective vehicles, which were involved in the accident, were insured, are liable to pay compensation and as such, the degree of compensation qua present appellant needs to be proportionately reduced. In addition to above, he would urge that the income that is taken into account, particularly in the back ground of the fact that claimant Nos. 2 and 3 were not dependents, the amount of

compensation as is ordered is liable to be set aside by reducing total income of the deceased. He would further urge that present income from the shop is not taken into account while awarding compensation.

9. Mr. Jadhav, learned Counsel for the claimants while supporting the award delivered by the tribunal, would urge that it is always open for the tribunal to grant compensation more than the claim made in the claim petition. He would further urge that the tribunal has analyzed the evidence brought before it, particularly the evidence of claimant No. 2 which was not controverted in true sense by present appellant, non-applicant Nos. 3 and 5, same is rightly appreciated. In addition to above, he would urge that the insurance company has neither examined any body nor any documentary evidence was brought on record to counter the claim made in the claim petition and to discharge its burden.

10. With an intention to analyze rival contentions of the parties, this Court with the assistance of Mr. Upadhye, learned Counsel for the appellant, has gone through the spot panchnama and evidence of claimant No. 2, also perused the defence raised by the insurance company while opposing the claim petition.

11. The only point, in my opinion, needs to be considered is, whether the tribunal was right in granting compensation, particularly when there is involvement of both vehicles?

12. Claimant No. 2 Amol was examined at Exhibit-27. In his deposition, he has admitted that his father was earning Rs.2,50,000/-. He has also deposed that he has produced income documents and audited accounts of his father so as to substantiate his claim.

13. In cross examination, the evidence of the said witness was at all not disturbed by present appellant. It is noticed that only elicitation in the cross examination which was sought to be brought on record that income tax documents which were produced by the said witness were forged.

14. It is required to be noted that the appellant Insurance Company has neither examined any witness so as to discharge its burden of false claim nor brought on record any documentary evidence so as to demonstrate that the documents which were placed on record so as to substantiate the claim were false and bogus.

15. It is further required to be taken note of the fact that while analyzing the claim before tribunal, the tribunal has taken into account the documentary evidence which was brought on record so as to reach to a conclusion that particular income of deceased Ashok and based on the same has noted that Ashok has earned amount of Rs.5,74,042/- for last three years. Based on the above having properly adjusted 1/3rd amount which could have spent for his own, dependency loss was calculated at Rs. 1,27,564/-.

16. The tribunal thereafter proceeded to evaluate the amount of compensation. The compensation as was awarded by the tribunal, in my opinion, is based on documentary and oral evidence that is brought on record by the claimant.

17. So far the next contention of Mr. Upadhye as regards contributory negligence is concerned, it is required to be noted that the appellant has neither examined any witness in support of such claim nor said document was confronted with the evidence of claimant. In such eventuality, the claim of present appellant that the case of contributory negligence should have been accepted by the tribunal by restricting the liability of present appellant to the extent of negligence of the driver of the vehicle which was insured with present appellant is required to be rejected. In my opinion, award under

challenge does not call for any interference. As such, the appeal fails, stands dismissed.

[**N.W. SAMBRE, J.**]

Tupe/30.06.15