

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

FIRST APPEAL NO. 1142 OF 2015

The Reliance General Insurance Co. .. Appellant

Versus

Latabai Datta Ingle and other .. Respondents

Shri S. G. Chapalgaonkar, Advocate for the Appellant.
Shri Ramesh R. Imale, Advocate for Respondent Nos. 1 to 5.
Shri A. B. Hawale, Advocate for the Respondent No. 6.

CORAM : S. V. GANGAPURWALA, J.

DATE : 19TH OCTOBER, 2015.

PER COURT :

. The claim for compensation filed by the respondents/claimants U/Sec. 166 of the Motor Vehicles Act (for short "M. V. Act") is allowed. Aggrieved thereby the Insurance Company has filed the present appeal.

2. Mr. Chapalgaonkar, the learned counsel for the appellant submits that, the appeal is filed basically on two counts : (i) the driver of the jeep was not responsible for the accident and (ii) the aspect of future prospects has been wrongly considered.

3. The learned counsel submits that, the claimant No. 1 Latabai who is the widow of the deceased is appointed on

compassionate ground. As such, the question of future prospects ought not have been considered. So also, the aspect of dependency cannot be considered as the claimant No. 1 is already appointed on compassionate ground. The learned counsel relies on the judgment of the Apex Court in the case of **Bhakra Beas Management Board Vs. Smt. Kanta Aggarwal and others** reported in ***AIR 2008 SC 3118***. The learned counsel further submits that, the aspect of negligence has not been properly dealt by the Tribunal. Perusal of spot panchanama, it is clear that, there are four vehicles involved in the accident, though the Tribunal has held that it is a case of involvement of three vehicles. The learned counsel submits that, even as per Tribunal three vehicles are involved in the accident and the Tribunal is coming to the conclusion that, the spot panchanama may not depicted the real state of affairs i. e. the manner as to how the accident has taken place. Then, in such case the Tribunal ought to have issued notice to the driver of the vehicle to arrive at a proper conclusion. The same is also requirement as per Rule 260 and 261 of the Maharashtra Motor Vehicles Rules. The learned counsel relies on the judgment of the learned Single Judge of this Court in the case of **New India Assurance Co. Ltd. V/s. Smt. Suman Bhaskar Pawar** reported in ***2010 (2) Mh. L. J. 177***.

4. Mr. Imale, the learned counsel for respondents submits

that, there is no need to issue notice to the driver. A person who was travelling as a passenger in the jeep had come before the Tribunal and deposed about the negligence of jeep driver. According to the learned counsel he is an independent witness. Only because he was friend of the deceased the said fact would not be sufficient to discard the evidence of the said passenger of the Jeep in totality. The learned counsel further submits that, the fact that, the claimant No. 1 is appointed on compassionate ground would not make any difference, as far as claim petition or the quantum of compensation is concerned. The learned counsel relies on the judgment of Apex court in the case of **Vimal Kanwar and others Vs. Kishore Dan and others** reported in *(2013) 7 SCC 476*.

5. With the assistance of the learned counsel I have gone through the judgment and record and proceedings.

6. As far as the aspect of future prospects is concerned so also the dependency on account of claimant No. 1 being appointed on compassionate ground the latest judgment of the Apex Court in a case of **Vimal Kanwar and others Vs. Kishore Dan and others** reported supra has held that, salary receivable by the dependent claimant upon compassionate appointment due to victim's death does not come within periphery of Motor Vehicles Act, to be termed as pecuniary advantage and the same is not

liable for deduction. The latest judgment of the Apex Court will be required to be considered.

7. The Tribunal has held that, the spot panchanama and the sketch of the accident drawn at the time of spot panchanama do not correspond to the facts. It shows all the vehicles are running in the same direction. Perhaps it may happen that, after the impact the vehicles have changed their directions. The impact of the accident was very high. In such cases, the principle of *res ipsa loquitur* would not have been applied and the Tribunal also went on the premise that, the respondent no. 2 did not examine any witness to contravene the version of the application on the point of negligence. The Tribunal ought to have issued notice to the driver. The driver was not added as a party. Considering the factual matrix involved in the present case i. e. involvement of three vehicles in the accident, the spot panchanama and the sketch not being relied by the Tribunal as not in tune with the manner of accident and also going on the premise that, respondent did not examine any eye witness, the Tribunal ought to have invoked its jurisdiction under Rule 260 and 261 of the Maharashtra Motor Vehicles Rules.

8. In light of the above, it would be appropriate to remit the matter back to the Tribunal only with regard to redetermination of the aspect of negligence after issuing notice to the driver of the

Jeep.

9. Even if the best case is taken for the appellant, none the less the claimants would be entitled for some amount. The Insurance Company/present appellant has deposited the entire amount under the award. There would not be any impediment to allow the claimants to withdraw 50% of the amount deposited in the proportion as awarded by the Tribunal inclusive of the amount already withdrawn earlier.

10. In the result I pass the following order.

11. The matter is remitted back to the Tribunal for deciding the matter afresh with regard to the finding on the issue of negligence of the Jeep driver and to that extent the impugned judgment and order is quashed and set aside.

11. The claimants are entitled to withdraw 50% of the amount deposited (inclusive of amount already withdrawn) in the proportion as awarded by the Tribunal. The remaining 50% shall be kept in fixed deposit by the Tribunal till the disposal of the petition. The Tribunal shall issue notice to the driver of the Jeep and thereafter determine the aspect of negligence afresh vis-a-vis the amount payable to the claimants. The Tribunal shall pass further orders with regard to the disbursement of the

remaining amount in tune with the judgment delivered by the Tribunal. The parties shall appear before the Tribunal on 18th November, 2015. The claimants and the present appellant/ Insurance Company are appearing before this Court as such no need to issue notice to them. The Tribunal may issue notice to the owner of the vehicle and the driver of the vehicle. In case, even after notice the driver of the Jeep does not appear, the Tribunal may proceed further to decide the said issue and the same be decided expeditiously and preferably within nine (9) months from the date of appearance. Record and proceedings be sent back to the Tribunal forthwith. The first appeal accordingly disposed of. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Oct. 15