

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

FIRST APPEAL NO. 822 OF 2014

Suresh Baburao Yadav,
Age: Major, Occu: Business,
R/o : Pitale Colony, M.I.D.C., Nagapur,
Ahmednagar, Dist. Ahmednagar.

...Appellant

versus

1. Smt. Sangita Ashok Walunj,
Age: 39 years, Occu: Household,
2. Shubham Ashok Walunj,
Age: 18 years, Occu: Education,
3. Pratap Ashok Waluj,
Age: 15 years, Occu: Education,

No. 3 minor under guardianship
of mother Applicant No. 1.

4. Piraji Narayan Walunj,
Age: 67 years, Occu: Agril,
5. Sou. Gangubai Piraji Walunj,
Age: 63 years, Occu: Household,
All R/o. Takali Dhokeshwar,
Tq. Parner, District Ahmednagar.

...Respondents

.....
Mr. S. P. Brahme, Advocate for appellant.
Mr. P. S. Dighe, Advocate for respondent Nos. 1 to 3 and 5.
Respondent No. 4 – served.
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CORAM : N.W. SAMBRE, J.

DATE : 27TH MARCH, 2015

ORAL JUDGMENT :

. Present appeal is by non-applicant to the Motor Accident
Claim Petition No. 239 of 2006.

2. It is the case of present appellant that, son of the appellant was riding a motor cycle bearing Registration No. MH-16J 9079 and was travelling from Bhistbag side towards MIDC. According to him, deceased Ashok who was riding motor cycle bearing Registration No. MH-20-X-734, dashed against his vehicle on 11/04/2006, resulting into serious accident, causing death of Ashok. Legal heirs of Ashok preferred M.A.C.P. No. 239 of 2006 before the Motor Accident Claims Tribunal, Ahmednagar. To the claim petition, present appellant filed his written statement at Exhibit-26 opposing the claim and has denied his liability, as according to him, he was not driving vehicle negligently.

3. The claim put forth by the claimants is based on monthly salary of Ashok to the tune of Rs. 12,000/-, who at the relevant time was serving in L.& T. Company.

4. As consequence of the accident in question, Crime No. 99 of 2006 came to be registered and charge sheet came to be filed against the son of appellant in the Court of Judicial Magistrate, First Class, Ahmednagar.

5. It is reported that it is not in dispute that the son of appellant-accused was acquitted of the charge.

6. The claimants claimed compensation of Rs.10,00,000/- having regard to the income and age of deceased Ashok.

7. Based on the pleadings raised by the parties, following issues were framed at Exhibit-10 and same were answered accordingly.

1.	Whether petitioners prove that the deceased Ashok died in motor vehicular accident of dated 11-4-2006?	Yes.
2.	Whether petitioners prove that deceased Ashok died in the accident due to rash and negligence driving of vehicle motorcycle No. MH-16-J-9070 owned by opponent?	Partly Yes.
3.	What is just and reasonable compensation and against whom it is to be awarded ?	Rs. 5,81,000/-
4.	What order and Award?	As per final Award.

8. The tribunal proceeded to analyze the evidence placed before it and ordered the payment of Rs.5,81,000/- along with interest @7.5% p.a. as compensation to the claimants from the present appellant, as vehicle involved in the accident was not insured.

9. As such, present appeal.

10. The present appellant raised foremost contention of contributory negligence, which has prompted the tribunal to order

compensation by the appellant and according to him, 70% liability was rested upon the present appellant, whereas 30% to that of deceased Ashok. According to him, contributory negligence should have been evaluated 50% of deceased Ashok and 50% of the son of appellant. In support of his contention, he has invited my attention to the observations made by learned tribunal in paragraph Nos. 21 and 23, which reads thus :

"21. From the police papers, particularly spot panchnama (Exh.18) it is seen that the road where accident occurred is 25 ft. in width. Once accident is admitted, which motorcyclist was going to which direction has no importance in this particular case. The panchnama shows that the spot of accident is at 11 ft. from north edge of the road and at 13 ft. from south edge of the road. It means, accident appears to have been occurred due to error of judgment of both the motorcyclists. Considering fatal injuries sustained by deceased and condition of the road at the place of accident, it was duty of son of opponent to ride on motorcycle in safe speed. Therefore, more negligence can be attributed to him while deciding this petition.

23. Thus considering all the aspects of the case, I am of the opinion that the driver of the offending motor cycle was 70% negligent for happening of the accident. Therefore, remaining 30% negligence goes to the deceased. In the circumstances, the applicants are entitled to 70% of the amount arrived at, as per calculations made in

the foregoing paragraphs. Said amount comes to Rs. 5,81,000/-".

11. According to him, the tribunal has formed an opinion contrary to the material that was placed on record for reaching to the conclusion that negligence of the son of present appellant was to the extent of 70% was not sufficient to establish. According to him, appropriate support can be drawn from the judgment of Apex Court in the matter of ***Renuka Devi H. Etc. vs. Bangalore Metropolitan TPT Corpn. Etc.*** reported in **AIR 2008 SC 1967**. He further submits that, upon acquittal from the criminal case from the charge of alleged negligent driving by the Criminal Court, benefit thereto should have extended to the son of present appellant. As such, prayed for reducing the degree of contributory negligence of the son of present appellant to the tune of 50%. In other words, according to him, contributory negligence should have been 50% of son of present appellant and 50% of deceased Ashok.

12. While countering the above referred submissions made by learned Counsel for the appellant, Mr. Dighe, learned Counsel for the claimants would urge that learned tribunal has taken into account the spot panchnama (Exhibit-18) for the purpose of reaching to the conclusion that the negligence of son of present appellant could be termed as 70%. In support thereof, he has invited my attention to the

observations as regards the spot of incident, width of road, direction from which the deceased Ashok and son of present appellant were riding and place of accident on road. According to him, the tribunal has rightly concluded the negligence of the son of appellant to the extent of 70%. In addition to above, he would urge that no evidence was brought on record to discharge the burden of proving that son of the appellant was not negligent in driving the vehicle. According to him, once the negligence is accepted to the tune of 50% by the son of appellant, varying the degree is required to be left to the option of the tribunal, who has rightly drawn negligence by 70% as against the son of appellant. According to him, the acquittal from the criminal charges will be hardly of any assistance in the present case, as considerations in the criminal case and that of present case will be of altogether different. As such, according to him, the appeal is liable to be rejected.

13. With the assistance of respective Counsel, I have gone through the spot panchnama i.e. Exhibit-18. It is required to be noted that the son of appellant herein was travelling from east to west direction, whereas Ashok was travelling from MIDC to Bhistbag. Width of the road is taken 24 feet and it has to be concluded that half part of the road was available for the son of appellant and half to Ashok. The accident took place on the side of the part of Ashok, as son of present appellant has transgressed his limit for use of 12 feet

and hit Ashok. The accident took place on the right side of the Appellant's son having regard to the direction to which son of present appellant was travelling. If the son of appellant herein has entered into the part of road which was available for driving the vehicles coming from opposite side, negligence of the son of present appellant was rightly taken to have established. It is also required to be noted that the accident took place on the northern edge. As such, the tribunal has rightly concluded that the son of appellant herein was negligent in driving the motorcycle.

14. Once the negligence of the son of present appellant was established and particularly having regard to the submission of 50% negligence could be attributed to the son of present appellant, the degree of negligence that is required to be gone into and established having regard to the spot panchnama (Exhibit-18) is rightly appreciated and findings recorded to that effect by the tribunal.

15. In my opinion, no interference in the appellate jurisdiction is called for, as no perversity is noticed in the impugned order. The appeal fails, stands rejected.

[N.W. SAMBRE, J.]