

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

FIRST APPEAL NO.2530 OF 2013
WITH
CIVIL APPLICATION NO.13168 OF 2012

The New India Assurance
Company Ltd., Branch Nashik,
Division Office-King's Road,
Abbot Building B/H Ashoka Hotel,
Ahmednagar,
through its authorised signatory,
Manager (Legal Hub) at Aurangabad .. Appellant

Versus

1. Ashok s/o Deoram More,
Age 30 years, Occu. Sugarcane
cutting, R/o Adarsha Vasahat,
Satkund, Taluka Kannad,
District Aurangabad
2. Sau. Sunita w/o Ashok More,
Age 28 years, Occu. Sugarcane
cutting, R/o As above
3. Khan Jamil s/o Ahmed
Bashirkhan, Age Major,
Occu. Business R/o 121,
Main road, Nashik .. Respondents

Mr V.R. Mundada, Advocate for appellant
Mr A.T. Kanawade, Advocate for respondents No.1 and 2

- WITH -
CIVIL APPLICATION NO.4426 OF 2015
IN
FIRST APPEAL NO.2530 OF 2013

Ashok s/o Deoram More and anr. ..Applicants

Versus

Khan Jamil s/o Ahmed Bashirkhan and anr. ..Respondents

Mr A.T. Kanawade, Advocate for applicants
Mr V.R. Mundada, Advocate for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 14th July 2015

PER COURT

Heard.

2. This is an appeal under the provisions of Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for brevity).
3. Against grant of compensation of Rs.4,35,000/-, the present appeal is preferred by the Insurance Company.
4. The brief facts, as are necessary for deciding the present appeal are as under :
5. Master Sandeep, three years old child, as is reflected in post mortem report, lost his life in an accident, when he was hit by insured vehicle i.e.Taxi No.MH-15-D-6053.
6. In view of provisions of Section 166 of the Act, the claimants claimed compensation of Rs.2 lakhs along with interest at the rate of 18% per annum.
7. Learned Member of Motor Accident Claims Tribunal, Kopergaon appreciated the evidence of original petitioner Ashok

More who was examined, whereas neither the present appellant nor the vehicle owner have brought any evidence on record in rebuttal.

8. Based on the evidence, the Motor Accident Claims Tribunal allowed the claim as under:

Sr.No.	Heads	Amount
1	Pecuniary Compensation for loss of income	Rs.2,25,000/-
2	Non-pecuniary Damages	Rs. 75,000/-
3	Future prospects	Rs. 75,000/-
4	Loss of estate and Funeral expenses	Rs. 10,000/-
5	Compensation on account of love and affection	Rs. 50,000/-
	TOTAL	Rs.4,35,000/-

9. Amongst other, the grounds as raised are, the permission under Section 170 of the Act was availed by the appellant so as to defend the case on merit and as such, appellant is entitled to agitate the present appeal on merit. It is claimed that Master Sandeep, who was about three years at the time of his death, was

also having other brothers and sisters. It is then claimed that the driver of the vehicle was not holding the valid and effective driving licence. The driver could not be produced as witness, as he was reported to be dead. The evidence, as is brought on record is misread and mis-interpreted. The excessive compensation of Rs.2 lakhs was awarded.

10. I have heard learned Counsel for the appellant at length.

11. From the record, it depicts that deceased Sandeep, whose age as per post mortem report Exh.45 was certified to be three years, was sitting under a tree when he was hit by the vehicle, which is involved in the accident in question. The original petitioner Ashok lodged first information report at Exh.42 on 3rd May 2000 to that effect.

12. The claimant, having submitted claim petition before the Tribunal, examined himself and has brought on record his case as was cited in the claim petition. He has also entered into witness box. The vehicle owner though was a party, remained absent so did the insurance company has not adduced any evidence. It is claimed by the appellant that they have tried their level best to bring the said vehicle driver before the Court, however, their attempts were unsuccessful.

13. It is required to be noted here that the appellant herein has claimed that the driver was not holding the valid and effective licence and he was not at fault. In absence of any evidence, documentary or otherwise brought on record by the appellant, the burden as was on the present appellant to prove the said fact was not discharged and as such, the learned Tribunal, in my opinion was right in holding that the accident was rightly proved and Master Sandeep, son of original petitioner Ashok died in that accident. Then, while relying upon certain catena of judgments delivered by various High Courts and Apex Court, learned Tribunal has considered the age of Sandeep as mentioned in post mortem report to be correct one and then has proceed to analyse the claim.

14. It is considered by the Tribunal that in the judgments which were delivered by Delhi High Court in the matter of **Mohammed Ayub Vs. Satishkumar**, reported in **2010 ACJ 420** and **Chiranjilal Vs. Mangatram**, reported in **2011 ACJ 614**, the age of applicants was considered to be seven and nine years and their notional income was considered to be Rs.15,000/- per annum. The Tribunal also considered the law laid down in the matter of **Lata Wadhwa Vs. State of Bihar**, reported in **2001, ACJ 1735 (SC)** and then noted that loss of income from the child towards family should be taken to be to Rs.24,000/- per annum.

15. It is further required to be noted herein that the learned Tribunal has further observed that the Supreme Court has granted compensation of Rs.75,000/- towards future prospects of the child and has reproduced the observations to that effect in the matter of **R.K. Mallick Vs. Kiran Pal**, reported in **2009 (8) Scale 451**. The Tribunal extensively considered the law laid down by the Apex Court in the matter of Lata Wadhwa (cited supra) and has formed an opinion that non-pecuniary damages of Rs.75,000/- are also required to be awarded. The entire split-up as given by the Tribunal is based on various judicial pronouncements delivered by High Courts and Apex Court under the provisions of Motor Vehicle Act.

16. Having observed that the appellant herein has failed to discharge its burden by examining independent witnesses or by bringing on record the documentary evidence as regards non holding the valid driving licence by the driver, in my opinion, the Tribunal was right in saddling the costs on the appellant.

17. In view of above background, no case for interference is made out. First Appeal stands dismissed. As a consequence, Civil Application No.13168 of 2012 moved by the appellant for stay is also rejected.

18. Civil Application No.4426 of 2015 is for granting permission to withdraw the amount deposited in this Court. In my opinion, the said application can be disposed of with following observations:

19. The amount to the extent of Rs.5,00,000/- deposited in this Court in the present appeal by the appellant be forthwith deposited for a period of six years in a Nationalised Bank in the joint account of respondents No.1 and 2, who will be entitled to the quarterly rest interest from the said Bank and they will be entitled to withdraw the balance amount including the amount of interest, as has been accrued thereon. Civil Application No.4426 of 2015 stands allowed in above terms.

(N.W. SAMBRE, J.)

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