IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 135 OF 2002.
WITH
CIVIL APPLICATION NO.1826 OF 2004.
WITH
CIVIL APPLICATION NO. 7355 OF 2002.
WITH
CIVIL APPLICATION NO. 1215 OF 2002.

Oriental Insurance Co. Ltd.
Daulat Building, Shivaji Chowk
Parbhani, Through its Authorized
Signatory, Asst. Manager,
Aurangabad Div. Aurangabad. **....Appellant.**
(Ori. Resp. 2)

Versus

1] Smt. Yamunabai w/o Shekurao Khude
Age 33 yrs, Occ. Household,
R/o. Yeshwant Nagar, Parbhani.

2] Ku. Sheetal d/o Shekurao Khude
Age 13 yrs, Occ. Education

3] Ku. Vaishali d/o Shekurao Khude
Age 12 yrs, Occ. Education

4] Ku. Suchita d/o Shekurao Khude
Age 10 yrs, Occ. Education

5] Vishal s/o Shekurao Khude
Age 7 yrs, Occ. Education

Respondents no. 2 to 5 u/g of their
mother respondent no. 1. .....Ori. Claimants

6] Vijay s/o Kalyanrao Kale
Age 47 yrs. Occ. Business
Owner of Jeep R/o Andora
Tq. Kalamb, Dist. Osmanabad. Ori. Resp. No. 1.
....Respondents

Mr. Dhananjay Deshpande, Advocate for appellant.
Mr. S.S.Rathi Advocate for respondent Nos.1 to 5.

CORAM : T.V. NALAWADE, J.
DATED : 18th January, 2016.

JUDGMENT :

1) The appeal is filed against judgment and award of claim petition No. 325/1999, which was pending before the Claims Tribunal, Parbhani. Only the Insurance Company has challenged the decision.

2) The accident took place on 15.5.1999 within local jurisdiction of Kallamb Police Station, District Osmanabad. Deceased Shekurao Khude was aged of 35 years. Claimant No. 1 is the widow of deceased and remaining four claimants are minor issues of claimant No. 1 born from the deceased. It is contended that the deceased was travelling in a jeep bearing No. MH-25/A-387 as a gratuitous passenger. It is contended that due to rash and negligent driving of the jeep by it's driver, the jeep gave dash to a tractor. Shekurao died in the accident. It is contended that Shekurao was employed in a Government Department and his monthly salary was Rs. 6,744/-. It is contended that the claimants were depending on the income of deceased for their livelihood. They had claimed compensation of

Rs. nine lakh.

3) Insurance Company filed written statement and contested the matter. It contended that there was head on collusion between the two vehicles and so, the owner and driver of other vehicle are necessary parties. Other contentions regarding the fault of jeep driver are denied. Alternatively, it was contended that the jeep driver was not holding valid and effective driving licence and there has been breach of conditions of policy. It was also contended that the deceased was present in the vehicle as fare paying passenger.

4) Claimant No. 1 gave evidence, but she was not present in the vehicle at the relevant time. Her evidence is only on the point of quantum of compensation. The claimant relied on police papers. Police had blamed drivers of both the vehicles for the accident.

5) The learned counsel for the Insurance Company placed reliance on the case reported as **1992 Mh.L.J. 1156 [Maharashtra State Road Transport Corporation and ors. Vs. Ramchandra Ganpatrao Chincholkar and ors.]** and submitted that the driver and owner of the tractor were

necessary parties and so, the judgment and award needs to be set aside. On this point, the learned counsel for original claimants placed reliance on the decision given by this Court in **First Appeal No. 1422/2003 [Vasant Ganpatrao Kale Vs. Ramdas s/o. Dhondiba Rode and Anr.] dated 16.12.2015.** This Court has considered the recent case of Supreme Court reported as **2015 AIR SCW 3169 [Khenyei Vs. New India Assurance Co. Ltd.].** It is settled law that when it is the case of joint tort feasors, the victim can proceed against one of the two joint tort feasors. Thus, there is no force in the contention of the Insurance Company that the owner and Insurance Company of other vehicle are necessary parties to the proceeding.

6) For proving the income of the deceased, salary certificate issued by the Government Department, Geology Department, is produced and it shows that his monthly salary was Rs. 6,744/-. He was working as Deputy Accountant. His age was around 35 years. Considering the size of the family, 1/4th amount could have been deducted for calculation of loss of dependency. But, the Tribunal has deducted 1/3rd amount and accordingly, the compensation is calculated which is Rs. 4,60,592/-. Amount of Rs.10,000/- is given under the head of loss of consortium, amount Rs. 10,000/- is given under the head of

love and affection and amount of Rs. 5,000/- is given under the head of funeral expenses. Thus, the compensation awarded is on the lower side.

7) No evidence is given to prove the breach of conditions of policy by the Insurance Company. There is nothing on the basis of which interference is possible in the judgment and award of the Tribunal.

8) In the result, the appeal stands dismissed. Civil Applications are disposed of.

[T.V. NALAWADE, J.]

ssc/