

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

FIRST APPEAL NO.: 144 OF 2007

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| 1) M/S New India Assurance Co. Ltd.,
having it's registered and Head Office
at 87 M.G. Road, New India Assurance
Building, Fort Mumbai 400 001,
Branch Office at Abott Build, Nr. Ashoka
Hotel, Ahmednagar and Division Office at
Dr. Rajendra Parsad Road,
Ajay Engg. Compound,
Aurangabad-431 005,
through it's Asstt.. Divisional Manager ... ORIGINAL 3 Rd
Mr. Namdeo Hiralal VIspute, 54 years. RESPONDENT |
| 2) Shobit Bhatia s/o Shamsunder Bhatia, ... ORIGINAL
Major, Occ. Business, R/o 3-141, RESPONDENT NO.2
Guru Nanakpura, Haldwani,
Dist. Nanital, Uttar Pradesh. ... <u>APPELLANTS</u> |

VERSUS

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| 1) Smt. Shashikala w/o Petras Thokal
age 28 Yrs, Occu. Nil. | |
| 2) Master Amar s/o Petras Thokal,
Age 10, Occupation : Education | ... ORIGINAL CLAIMANTS |
| 3) Master Suraj s/o Petras Thokal,
Age 9, Occupation : Education | |
| 4) Master Prince s/o Petras Thokal,
Age 7, Occupation : Education | |

Respondent No.2 to 4 being minors
through their Natural mother Respondent No.1.

All are r/o Punchsheelnagar,
Railway Station, Ahmednagar - 414 001.

5) Jai Bhawan Harisingh Jat,
Deleted.

.... **RESPONDENTS**

Mr. N. V. Upadhye, Advocate for Appellants.
Mr. R. K. Temkar, Advocate for Respondent Nos.1 to 4.
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CORAM : T. V. NALAWADE, J.
DATED : 8th JANUARY, 2016.

ORAL JUDGMENT:

1. The appeal is filed against judgment and Award of claim petition No.195 of 2002 which was pending before Claims Tribunal, Ahmednagar. Heard learned counsel for the Appellants.

2. The claim was filed by present Respondents in respect of death of one Petras Thokal. He was the husband of claimant No.1 and father of present Claimant Nos.2 to 4. The accident took place on 20th December, 2000, at 9:15 p.m., near Narayangaon Police Station within local jurisdiction of Narayangaon Police Station. The deceased was working as Assistant Fitter in irrigation department of the State Government and his monthly salary was

Rs.4,290/-. He was aged about 32 years. It is the case of claimants that they were depending on the deceased for their livelihood.

3. The deceased was traveling in a truck of irrigation department. It is contended that another truck bearing No. UP-02-D-2677 came from opposite direction and gave dash to the truck of irrigation department. The other truck was owned by Respondent No.2 and it was insured with Respondent No.3, present Appellant. It is the case of claimants that the accident took place due to the fault of the driver of truck No.UP-02-D-2677. Under various heads they had claimed compensation and total compensation of Rs.8 Lakh was claimed.

4. The insurance company filed written statement at Exhibit-23 and it denied everything. Alternatively, it contended that the accident took place due to the fault of the driver of the truck of irrigation department.

5. Issues were framed on the basis of aforesaid pleadings by the Claims Tribunal. Only the claimants gave evidence. Claimant No.1 examined herself and the claimants placed reliance on copies of police papers. The

police papers at Exhibit 35 to 37 were not seriously disputed. The postmortem report is at Exhibit-38.

6. The fact of the accident is not disputed. The crime was registered on the basis of report given by one Police Officer and copy of FIR is at Exhibit-34. It appears that during investigation, the statements of persons who were traveling in the truck of irrigation department were recorded. The spot Panchanama was prepared. On the basis of investigation, the police formed opinion that the accident took place due to the fault of driver of truck No.UP-02-D-2677. This Court has carefully gone through the contents of spot Panchanama. That shows that the truck driver of Truck No. UP-02-D-2677 lost control and his truck gave dash to the truck of irrigation department. The accident took place in the night time. The doctrine of *Res ipso Locutor* can be used. It was necessary for other side to examine the driver of Truck No. UP-02-D-2677 to give evidence in rebuttal but no such evidence is given. On the basis of aforesaid material, the Tribunal has come to be conclusion that the accident took place due to the fault of driver of Truck No. UP-02-D-2677. This Court sees

no reason to interfere in this finding of the Tribunal.

7. The claimant No.1 has given evidence that the deceased was working in irrigation department and he was 32 years old. Salary slip is placed at Exhibit-52. It was for November, 2000 and the gross salary was Rs.4,290/-. After considering standard deductions it could have been easily presumed that the income of the deceased from the salary was at-least Rs.4,000/-. Considering the prospectus of increase in salary as the deceased was in permanent employment, the Tribunal could have presumed the monthly income was more than Rs.6,000/- but the Tribunal has presumed the monthly income as Rs.5,500/-. The Tribunal has taken 17 as multiplier for calculation of loss of dependency though the Tribunal could have taken 16 as multiplier in view of the age of the deceased. In any case, more compensation could have been granted under the head of loss of dependency, in view of the aforesaid circumstances. The Tribunal has granted the compensation of Rs.7,80,000/- under this head. The remaining amount from the amount of Rs.8,93,000/- is granted under the heads of compensation on the count of

loss of consortium, compensation on count of loss of love and affection, the compensation under the head of funeral expenses and the compensation under the head of amount spent for carrying the dead body to the residential place. Considering aforesaid circumstances more amount could have been easily granted by the Tribunal. In view of these circumstances, this Court holds that it is not possible to interfere in the decision of the Tribunal on the point of quantum of compensation also.

8. In the result, appeal stands dismissed.

(T. V. NALAWADE, J.)

Dated:8/01/2016.
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