

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

FIRST APPEAL NO. 840 OF 2004

1. Sunita w/o. Prakash Ghule,
Age 26 years, Occu. Household,
R/o. Dhanora Road, Beed.
2. Akash s/o. Prakash Ghule,
Age 4 years, Minor,
3. Parag s/o. Prakash Ghule,
Age 2 years, Minor,

Nos. 2 and 3 under the
guardianship of their mother
Sunita w/o. Prakash Ghule,
Claimant No. 1.

**....Appellant.
(Claimants)**

Versus

1. Samiyoddin s/o. Sk. Jamaloddin,
Age Major, Occu. Business,
R/o. Bori, Taluka Jintoor,
District Parbhani.
2. The National Insurance Co. Ltd.,
Divisional Office, Hazari Chambers,
Station Road, Aurangabad.

....Respondents.

Mr. S.G. Chapalgaonkar, Advocate for appellants.

Mr. D.V. Soman, Advocate for respondent No. 2.

CORAM : T.V. NALAWADE, J.
DATED : 1st March, 2016.

JUDGMENT :

- 1) The appeal is filed against judgment and award of
Claim Petition No. 118/1999, which was pending before the

Claims Tribunal, Beed. The Claims Tribunal has dismissed the claim and so, the original claimants have challenged the decision. Both the sides are heard.

2) The accident took place on 23.2.1999 at about 11.00 p.m. within local jurisdiction of Yousuf Wadgaon Police Station, Tahsil Kaij, District Beed. The deceased was present in jeep bearing No. MH-22/7666. It is contended that when the jeep came near village Kodari, one truck came from the opposite direction and it passed the jeep and after that one tractor and trailer came from the opposite direction. It is contended that the tractor passed the jeep, but there was collision between trailer of the tractor and jeep and the accident took place. It is contended that Prakash Ghule died on the spot. Claimant No. 1 is the widow of Prakash and claimant Nos. 2 and 3 are minor issues of claimant No. 1, born from the deceased. They were aged about 4 years and 2 years at the relevant time.

3) The claim was filed against owner, driver and Insurance Company of aforesaid jeep. It is the case of claimants that the deceased was working as a Supervisor in Government Milk Diary and he was earning Rs. 5000/- p.m. It is the case of claimants that the deceased was income tax payer and

claimants were depending on the income of deceased for their livelihood. Under various heads, they had claimed compensation of Rs. six lakh.

4) The claim was prosecuted against the owner and the Insurance Company of aforesaid jeep. Insurance Company filed written statement. Insurance Company contended that the accident took place due to fault of driver of tractor and there was no fault on the part of jeep driver. Insurance Company contended that deceased was illegally travelling in jeep when it was a private vehicle. It is contended that the jeep was being used for carrying fare paying passengers and so, there was the breach of conditions of policy. Other defence like absence of driving licence of jeep driver was also taken. Owner did not contest the matter.

5) To substantiate the claim, the widow examined herself. She has no personal knowledge regarding the accident. Claimants examined one PSI Shri. Bhoi, who had filed chargesheet. The said PSI has given evidence that after making investigation of the case, he filed chargesheet against the driver of jeep and also the driver of unknown tractor. His evidence shows that the tractor driver and the tractor could not be traced.

In the cross examination, he has admitted that jeep was unauthorisely and illegally carrying passengers from one place to another.

6) The Tribunal has dismissed the claim by holding that the negligence of the jeep driver is not proved. Some observations are also made to hold that the material on the record is sufficient to prove that the jeep was being used for carrying fare paying passengers.

7) This Court has carefully gone through the police papers. The learned counsel for Insurance Company placed reliance on the case reported as **(2007) 13 SCC 476 [Oriental Insurance Co. Ltd. Vs. Premlata Shukla and Ors.]**. The learned counsel for Insurance Company submitted that in view of the evidence given by PSI and the record created by police, inference is possible that accident took place due to fault of tractor driver and another inference is possible that the deceased was travelling as fare paying passenger in the jeep.

8) It appears that F.I.R. was given by a person, who was travelling in the jeep, but he did not mention that he or the deceased were travelling as fare paying passengers. On the

basis of this report, the crime was registered for the offences punishable under sections 279, 338, 304-A of Indian Penal Code. No offence was registered for using the jeep for carrying fare paying passengers when there was no permit for taking fare paying passengers. Copy of spot panchanama is at Exh. 40 and it is not disputed. This document shows that the impact was so forceful that one hand of a person, who was present in the jeep, was lying on the road. Deceased Shri. Ghule died on the spot and one more person like Ganpat died and dead body of Ganpat was found in two pieces. The top portion of the jeep was detached due to impact and even the seats had come out of the jeep. In view of these circumstances and the other circumstances like accident took place in the night time and there was collision between the jeep and trailer, police filed chargesheet against the drivers of both the vehicles. When the tractor, the front portion, had passed the jeep, it can be said that either the jeep had gone to wrong side towards road or driver of the jeep could not see the trailer and due to that, there was collision between trailer and the jeep or the jeep driver was not able to see the things and jeep was not in his control and due to that the jeep dashed against the trailer. Tar portion of road had width of 18 ft. and on either side, there were sidepattis of 12 ft. width. The parts of the jeep were spread up to long distance. The

tractor cannot be driven with high speed and it is clear that the jeep was driven with excessive speed. In view of these circumstances, it was necessary for the respondents to examine some eye witnesses to prove that it was the fault of tractor driver. As there is no such direct evidence and there are aforesaid circumstances, doctrine of *res ipse loquitur* can be used. If the case was of composite negligence, the claimants are entitled to move against one of the two joint tort feasons. Thus, the Tribunal has committed serious error in holding that the claimants have failed to prove that there was no negligence on the part of jeep driver.

9) The Tribunal has calculated compensation on the basis of evidence given on income. Deceased was in Government employment and record of salary was produced. Gross salary was Rs. 5,514/- p.m. He was working as Inspector for assessment of gravity of milk. The Tribunal deducted 1/3rd amount for personal expenses. 17 is used as multiplier for calculation of loss of dependency. Though 16 can be used. If 16 is adopted as multiplier, then the loss of dependency comes to Rs. 6,27,264/-. The amount of Rs. 15,000/- can be given under the head of loss of consortium and the amount of Rs. 5,000/- can be given under the head of funeral expenses. Thus, the total

amount of Rs. 6,47,264/- can be given. The claim was restricted to Rs.6,00,000/-, but just amount of compensation needs to be paid and deficit court fees can be recovered. Interest at the rate of 9% p.a. can be given in view of the rate of interest given by the nationalised banks. So, the following order is made.

ORDER

Appeal is allowed. Judgment and award of the Tribunal of dismissal of the claim petition is hereby set aside. Claim Petition is allowed. Present respondent Nos. 1 and 2 jointly and severally do pay compensation of Rs. 6,47,264/- (Rupees six lakh forty seven thousand two hundred sixty four) on the principle of fault. This amount is inclusive of the amount which could have been awarded under the principle of no fault. Interest at the rate of 9% p.a. will be payable on the compensation amount from the date of petition till the date of realisation. Deficit Court fee to be recovered. 75% amount be paid to widow and remaining amount be equally distributed between the issues.

[T.V. NALAWADE, J.]

ssc/