

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

FIRST APPEAL NO.: 55 OF 2009

The United India Insurance Company Ltd.,
Through its Sr. Divisional Manager,
Divisional Office, Osmanpura,
Aurangabad.

... **APPLICANT/ APPELLANT**
(ORIG. RESPDT.NO.3)

VERSUS

1. Nilima S/o Ishwarchad Kharat,
Age: 42 years, Occ. Household,
R/o: C/o: Dr. C. S. Bhise,
Gandhi Nagar, Ward No.18,
Chikhli, District: Buldhana.
2. Anuja D/o Ishwarchand Kharat,
Age: 25 years, Occu. Education,
R/o: C/o: Dr. C. S. Bhise,
Gandhi Nagar, Ward No.18, Chikhli,
District : Buldhana.
3. Monika D/o ishwarachand Kharat,
Age: 23 years, Occ. Education,
R/o: C/o: Dr. C. S. Bhise,
Gandhi Nagar, Ward No.18, Chikhli,
District : Buldhana.
4. Sanket S/o Ishwarchand Kharat,
Age: 21 years, Occ. Education,
R/o: C/o: Dr. C. S. Bhise,
Gandhi Nagar, Ward No.18, Chikhli,
District : Buldhana.
5. Aachal S/o Sripat Bagal,
Age: Major, Occup: Business,
R/o: Ashok Nagar, Chikalthana,
Taluka District : Aurangabad.
6. Bhaskar S/o Sambhaji Narwade,
Age: 26 years, R/o: Dongargaon,
Taluka : Kalamnuri, Dist. Hingoli

At Present R/o: Shindeban Zopadpatti,
Taluka and District Aurangabad.

... **RESPONDENTS**
(NOS.1 TO 4 ORIGINAL
CLAIMANTS & NOS.5 & 6
ORI. RESPDT.NOS.1 & 2)

Advocate for the Appellant: Mr. S. V. Kulkarni.
Advocate for the Respondent Nos.1 to 4: Mr. Amol P. Khedkar.
Advocate for Respondent Nos.5 and 6: Mr. V. M. Chate.
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CORAM:- T. V. NALAWADE, J.
DATED:- 18th JANUARY, 2016.

JUDGMENT:

1. The appeal is filed by insurance company to challenge the judgment and Award of claim petition No.177 of 2004 which was pending before Claims Tribunal, Aurangabad. Both the sides are heard.
2. The insurance company has challenged the decision on the ground that two vehicles were involved and the contributory negligence of the deceased is not considered by the Tribunal. Some arguments were advanced on the point of quantum of compensation also.
3. There is direct evidence of claimant No.1, widow of the deceased. Deceased was driving Maroti Car and the claimant No.1 was present in his company. She has given evidence that the Matador came from opposite direction

with excessive speed and it gave dash to Maroti Car. Thus, she blamed the driver of Matador which was insured with the Appellant. Much was argued by learned counsel for insurance company on one admission given by the claimant No.1 that there was head on collision between Maroti and Matador. This Court has accordingly gone through the police papers which includes spot Panchanama. Police made inquiries with eye witnesses and others and charge sheet was filed against driver of Matador. In spite of this circumstance, the respondents have not examined driver of Matador to give evidence. In rebuttal no evidence is given when there is direct evidence of claimant. Copy of spot Panchanama shows that there is a map showing the location of the two vehicles on the road. The matador had crossed the middle line of the road and it had gone to the wrong side of the road. The Maroti Car was present on the correct side of the road. Though front portions of both the vehicles were damaged, due to the aforesaid positions of the two vehicles shown in the spot Panchanama, it cannot be said that it was ahead-on collision. Thus, the Tribunal has not committed any error in giving finding that the accident took place due to the fault of Matador driver.

4. The deceased was working in Forest Department as Assistant Conservator and he was aged about 50 years. His gross salary per month was Rs.25,310/-. When the accident had taken place on 12th April, 2003, the Tribunal considered only the aforesaid salary and no probable increase due to revision of pay in future was considered. Though the multiplier of 11 was considered, the possibility of increase of the pay due to revision of pay is not considered. Further, the Tribunal has not given much amount under the heads like loss of consortium. Thus, the total amount of Rs.20,43,153/- granted as compensation is on lower side. The interest at the rate of 6% p.a. only is given when 9% p.a. could have been granted. Thus, it is not possible to interfere on the point of quantum also.

5. In the result, the appeal stands dismissed.

(T. V. NALAWADE, J.)

Dated:18/01/2016.
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