

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

FIRST APPEAL NO. 669 OF 2005

United India Insurance Co. Ltd.
Through its Divisional Manager,
Chabada Home, New Osmanpura
Circle, Aurangabad.

.... APPELLANT/
[ORI. RESP. NO. 1]

V E R S U S

1. Jaishree w/o Ratnadeep Pardeshi
Age : 40 Yrs., Occ. Household,
R/o : Pardeshipura, Paithan,
Dist.: Aurangabad.
2. Vishwajeet s/o Ratandeeep Pardeshi
Age : 10 Yrs., Occ. Student, minor
u/g of R.No. 1.
3. Asmita D/o Ratandeeep Pardeshi
Age : 4 Yrs., Occ. Student, RESP. NOS. 1 TO 3/
minor u/g of R.No. 1. [ORI. CLAIMANTS]
4. Shaikh Haroon s/o Shaikh Rahimnuddin
Age : 24 Yrs., Occ. Driver,
R/o : Pimpalwadi, Tq. Paithan,
Dist.: Aurangabad.

5. Shaikh Bnaimoddin s/o Shaikh Rahimnuddin
Age : Major, Occ. Business,
[Reg. Owner of MH-20-W-1896]
R/o : Mudhelawadi, Tq. Paithan,
Dist.: Aurangabad.
6. The Branch Manager,
New India Insurance Co. Ltd.
Ahmednagar.
7. Affarsingh s/o Balaram Pardeshi
(Khandagale), Age : 76 Yrs.,
Occ. Agril., R/o : Pardeshipura,
Paithan, Tq. Paithan, Dist.
Aurangabad.

..... RESPONDENTS

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

Mr. R.R.Shaikh, Advocate for R.Nos. 4 & 5.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 17th FEBRUARY, 2016

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JUDGMENT :

1. The Appeal is filed by the Insurance Company against the Judgment and Award of M.A.C.P. No. 535/2001, which was pending before the Motor Accident Claims

Tribunal, Aurangabad. Learned counsels for both sides are heard.

2. The accident took place on 08/01/2000 at about 3.30 p.m. within the local jurisdiction of Bidkin police station, Tq. Paithan, district Aurangabad. Deceased Ratnadeep was riding motorcycle. It is contended that Tempo Trax taxi owned by respondent No. 3 gave dash to the motorcycle of deceased and accident took place. Deceased was seriously injured and treatment was given to him at various places like Rubi hospital, Pune, etc. He died during treatment after about 3 months from the date of the accident. The claim was filed by the widow and 2 minor issues of the deceased. It is their case that the deceased was agriculturist, businessman and social worker and his monthly income was ₹ 10,000/- and they were totally depending for their livelihood on the income of the deceased. Under various heads i.e. treatment, medicines, loss of dependency etc. compensation of ₹ 15 Lakh was claimed by them.

3. The claim was contested by the insurance company by filing Written Statement. It contended that the

accident took place due to fault of the deceased. Other contentions made by the claimants were also denied. The owner of the offending vehicle also filed Written Statement and contested the matter.

4. To prove the claim, widow of the deceased gave evidence which is as per the aforesaid contentions. She has no personal knowledge regarding the accident. The claimants have relied on copies of police papers. Copy of charge sheet shows that after making investigation, police blamed driver of Tempo Trax and filed charge sheet against him. Spot panchanama was prepared on the same day. The papers of investigation show that the Trax had given dash to one Maruti Car and then to the motorcycle of the deceased which was following Maruti car. The Trax then turned turtle. Thus, police papers show that the driver of the Trax had lost control over the vehicle. In view of these circumstances and as the Trax driver is not examined, there was no other alternative before the Tribunal but to hold that the Trax driver caused accident. No interference is possible in this finding of the Tribunal.

5. To prove the income of the deceased, claimant has examined employee of MSRTC viz. Depot Manager. His evidence shows that deceased was running S.T. canteen and he was paying licence fees of ₹ 4,420/- per year to MSRTC. Record is produced to show that the deceased was elected as Councilor of Paithan Municipal Council two times. Record is also produced to show that the deceased was Director of Saint Eknath Sahakari Sakhar Karkhana, Eknath Nagar, Tq. Paithan for the period of 2 years. Revenue record is produced to show that the deceased was having at least 5 Acres of irrigated land.

6. In view of the aforesaid record, the Tribunal has presumed that the monthly income of the deceased was ₹ 6,000/- to ₹ 7,000/-. It is further held that there is monthly loss of ₹ 4,000/- to ₹ 5,000/- to the claimants. Age of the deceased was between 35 – 40 years and so 16 is used as multiplier. The amount of ₹ 7 Lakh is calculated as the loss of dependency. The Tribunal has considered the bills of medicines and treatment, which are mainly of Rubi hospital, Pune. There are also bills of pathology and x-rays. In view of the record, the Tribunal has held that the compensation of

₹ 10 Lakh can be given under the heads of loss of dependency and amount spent on treatment and medicines. The amount of ₹ 15,000/- is awarded under the head of loss of consortium.

7. In view of the aforesaid circumstances, this Court holds that the compensation amount is on lower side. There is nothing on the basis of which the decision of the Tribunal can be interfered with.

8. In the result, First Appeal No. 669 of 2005 stands dismissed.

[T.V.NALAWADE, J.]