

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

FIRST APPEAL NO.: 1632 OF 2013

ICICI Lombard General Insurance
Company Ltd., Through it's Legal
Manager at Adalat Road,
Aurangabad.

... **APPELLANT**

VERSUS

1. Sunita S/o Ramu Bhosale,
Age: about 30 years, Occu.
Household, R/o Sureshnagar,
Newasa, Tq. Newasa, Dist.
Ahmednagar.
2. Akash S/o Ramu Bhosale,
Age: about 04 years, Occu. Nil,
R/o. Sureshnagar, Newasa Tq. Newasa,
Dist. Ahmednagar.
3. Gayatri D/o Ramu Bhosale,
Age: about 03 years, Occ. Nil,
R/o. Sureshnagar, Newasa Tq. Newasa,
Dist. Ahmednagar.
4. Anjali D/o Ramu Bhosale,
Age: about 8 years, Occ. Nil,
R/o Sureshnagar, Newasa Tq. Newasa,
Dist. Ahmednagar.
5. Datta S/o Ashru Waghulkar,
Age: Major, Occu.: Business,
R/o Khawadi, newasa Kh.
`Tq. Newasa, Dist. Ahmednagar.
6. Dnyaneshwar S/o Laxman Mandane,
Age: Major, Occ. Driver,
R/o Newasa Kh., Madhyameshwar Nagar,
Tq. Newasa, Dist. Ahmednagar.

... **RESPONDENTS**

Mr. A. G. Choudhari, Advocate for the Appellant.
Mr. S. S. Kotkar, Advocate for the Respondent Nos.1 to 4.

@@@

CORAM:- T. V. NALAWADE, J.
DATED:- 24th FEBRUARY, 2016.

JUDGMENT:

1. The appeal is filed by insurance company to challenge the judgment and Award of claim petition No.288 of 2009 which was pending before Claims Tribunal, Shrirampur, District Ahmednagar. Both sides are heard.
2. The claim was filed in respect of death of one Ram Dinkar Bhosale who died in motor vehicle accident on 23rd March, 2009. The accident took place at about 09.30 p.m. on Ahmednagar - Aurangabad road within local jurisdiction of Newasa Police Station. The claim was filed by the widow and minor issues of the deceased.
3. It is the case of the claimants that the deceased was a pedestrian and Maroti Van No.MH-14-AH-3652 gave dash to the deceased from backside and the accident took place. It is their case that the Respondent No.2 Dnyaneshwar was driving the offending vehicle and the offending vehicle was owned by Respondent No.1. This vehicle was insured with Respondent No.3, appellant. It is the case of the claimants that the accident took place due to the fault of the driver of the offending vehicle. It is case

of claimants that the deceased was working in hotel from Vadala Bharoba, Tahsil Newasa and he was preparing Tandori Roti in the hotel and he was earning Rs.4,500/- per month. It is contended that in future he would have earned more amount and there is loss of dependency. The age of the deceased is given as 35 years. Compensation of Rs.7 Lakh was claimed.

4. Respondent No.1 and 2 driver and owner filed written statement. The driver admitted that he was on driver's seat at the relevant time but he contended that it was not his fault. Alternatively, it was contended that the vehicle was insured with Respondent No.3 and the Respondent No.3 is bound to indemnify the owner.

5. Insurance company filed written statement and contested the matter. It denied every thing. It contended that the claimants need to prove each and every contention. Alternatively, it was contended that there was no fault of the driver of the offending vehicle and as deceased all of a sudden tried to cross the road, accident took place. It is contended that there is possibility that there is collusion between the claimants and the owner of the offending vehicle and false record of case is prepared

against the Respondent No.2, driver.

6. Before the Tribunal the widow of the deceased gave evidence. She has no personal knowledge regarding the accident. The claimants placed reliance on police papers. It appears that in respect of the accident dated 23rd March, 2009 report was given on 24th March, 2009 and initially it was informed that unknown vehicle had given dash to the deceased. The spot Panchanama shows that there were marks of tyre showing that brakes were applied and the vehicle had dashed against divider also. Thus, motor vehicle was involved in the accident. It is not disputed that during investigation it revealed that the vehicle of Respondent No.1 was involved in the accident. Accordingly, statement of Respondent No.1 was recorded by police and then charge sheet was filed against Respondent No.2. Such written statement is also filed by Respondent Nos.1 and 2. It can be said that after few months, the vehicle of Respondent No.1 was traced and then the charge sheet was filed by police. Only due to this circumstance, inference is not possible that the police prepared false record and there is collusion between the claimants and Respondent No.1. One Rajane, a police

personnel working in the aforesaid police station is examined, as the investigating officer is not alive. In his evidence, he has stated that after investigation it revealed that vehicle of Respondent No.1 was involved in the accident and charge sheet was filed against Respondent No.2. There is the record of such nature. The learned counsel, for insurance company submitted that the offending vehicle was not seized and Panchanama of that vehicle was not prepared and this circumstance creates doubt about the police papers. It is true that such Panchanama is not produced on record by claimants but the insurance company has also not brought on record anything to show that such investigation was not made or that the vehicle was not plying on that road at the relevant time. When the owner himself is admitting that his vehicle met with the accident and there is nothing on record to infer that there is collusion between the owner and claimants, it is not possible to accept the contention of the insurance company that the vehicle of Respondent No.1 was not involved in the accident.

7. On the point of quantum of compensation, it can be said that the Award is on lower side. When the accident

took place in the year 2009 the Tribunal presumed that the monthly income of the deceased was Rs.4,500/- and that was done on the basis of evidence of Kale, the owner of the hotel. Though it is true that the accounts of the hotel are not produced or even receipt which could have been obtained from the deceased is not produced, not much can be made about it. In the year 2009 even a labour could have earned Rs.3,000/- per month. The age of the deceased was between 30 and 35 years. The future prospects of increase in income could have been considered and in that case also the Tribunal could have presumed that the income was Rs.4,500/- per month. The amount of Rs.25,000/- only is granted under the head of loss of love and affection and amount of Rs.15,000/- is granted under the head of loss of consortium. Much more amount could have been granted under these heads. 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, following order is made:

(i) Appeal is dismissed.

-(7):-

1632

(ii) The amount, if any, lying in this court is to be disbursed as per the Award made by the Claims Tribunal.

[T. V. NALAWADE, J.]

Dated:24/02/2016.
ans/1632