

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

FIRST APPEAL NO. 836 OF 2012

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ICICI Lombard Motor Insurance Co.,
Office @ 414, Veer Savarkar Marg,
Nera Siddhi Vinayak Temple Prabhavati
Mumbai, Branch Office Nanded
and Divisional Office, Aurangabad.

..Appellant/
(Orig Resp No.2.)

VERSUS

1. Shabana Begum w/o Navidulla Khan
age 35 years, Occ. Household.
2. Uzma Khan d/o Navidulla Khan,
age 18 years, Occ. Education.
3. Shahjadulla Khan s/o Navidulla Khan,
age 13 years, Occ. Minor, Education.
4. Sanaullah Khan s/o Navidulla Khan,
age 11 years, Occ. Education
Petitioner Nos. 3 and 4 are minors and
U/g of their real mother i.e. petitioner
No.1, All R/o Habibiya Colony, Nanded.
5. Ziyaul Raheman Khan s/o Mohd. Khan,
age 52 years, Occ. Business,
R/o Hingoli Gate, Ashraf Nagar,
Nanded, Tq. & Dist. Nanded. **..Respondents..**

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Advocate for Appellants : Mr V N Upadhye
Advocate for Respondents 1-4 : Mr G R Syed
Respondent No.5 – served absent.

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**CORAM : V.K. JADHAV, J.
Dated: March 15, 2016**

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ORAL JUDGMENT :-

1. Being aggrieved by the judgment and award passed by learned Member, MACT, Nanded on 19.1.2012 in MACP No.285/2008, the original respondent no.2- Insurer has preferred this appeal.

2. Brief facts giving rise to the present appeal are as follows :-

On 19.2.2008 at about 07.30 p.m. deceased Navidulla Khan was proceeding on bicycle from Dhanegaon to Nanded. On the way, a truck bearing registration No.MH-26/H-6324 came from his back side in high speed and gave dash to his bicycle, in consequence of which, Navidulla Khan died on the spot. On the same day, Crime No.56/2008 came to be registered at Police Station Cidco (Rural). The respondents/original claimants 1 to 4 filed MACP No.285 of 2008 for grant of compensation. Learned Member of the Tribunal, Nanded, by impugned order dated 19.1.2012 partly allowed the said petition and thereby directed the present appellant and respondent no.5-owner of the vehicle involved in the accident to pay

compensation amount of Rs.7,45,000/- to the claimants alongwith proportionate interest @ 9% p.a. inclusive of “No Fault Liability” amount. Hence, this First Appeal.

3. Learned counsel for the appellant submits that, the alleged accident had taken place on 19.2.2008 and on the same day, brother of the deceased had lodged complaint in the concerned police station against unknown vehicle. Learned counsel submits that, on 28.2.2008, the complainant/brother of deceased has further informed to the police that, he got information from one other person about the involvement of truck bearing registration No.MH-26/H-6324 in the accident. On its basis charge sheet came to be submitted before the Court. Learned counsel further submits that, the respondent/original claimant no.1 has only examined herself on oath before the Tribunal, however, she was not an eye witness to the incident. So far as the accident in question is concerned, claimants have not examined any witness to the accident. Learned counsel further submits that even the police papers such as FIR, Spot Panchnama, Inquest Panchnama, Postmortem report,

Charge Sheet were not exhibited before the Tribunal. Learned counsel submits that said documents cannot be read in evidence. Learned counsel further submits that the respondents/claimants have examined one witness to prove the income of the deceased. According to the claimants, deceased Navidulla Khan was working as Maintenance In-charge in the office of a Govt. Transport contractor i.e. the witness Abdul Shahed s/o Abdul Hamid on monthly salary of Rs.5,500/- p.m. Learned counsel submits that, said certificate is false and there is absolutely no evidence to substantiate the income of deceased Navidulla as claimed by the respondents-claimants. Learned counsel submits that the Tribunal has committed a grave mistake while assessing the compensation by relying upon the so called income proof.

4. Learned counsel for respondents-claimants submits that the owner of the vehicle involved in the accident has not contested the claim petition in any manner. Learned counsel submits that after due investigation, the concerned police station has

submitted charge sheet against the driver of the said truck. Learned counsel submits that certified copies of all the police papers came to be submitted before the Tribunal. Learned counsel further submits that, even the Tribunal has referred the said documents in the judgment. Learned counsel submits that even the appellant-insurer never raised objection before the Tribunal as to the police papers produced before the Tribunal. Even during the course of arguments it was not submitted before the tribunal that the said police papers cannot be read in evidence as the same were not exhibited. Learned counsel further submits that the claimants have examined the witness for proving income of the deceased. Said witness has stated on oath before the tribunal that deceased Navidulla was under his employment as Maintenance In-charge on monthly salary of Rs.5,500/-. There is no reason to disbelieve his evidence. Learned counsel submits that the Tribunal has rightly considered the income proof and accordingly awarded just and reasonable compensation. Learned counsel submits that there is no merit in the appeal and the appeal is, thus, liable to be dismissed with costs.

5. Following points arises for my determination and I have recorded my findings thereon for the reasons given below :-

POINTS

FINDINGS

1. Whether the appellant prove involvement of the vehicle bearing Registration No.MH-26/H-6324 in the accident dated 19.2.2008 ?

Affirmative.

2. Whether the respondents prove that, the driver of the said motor vehicle bearing Registration No.MH-26/H-6324 was driving it in rash and negligent manner and caused the accident ?

Affirmative.

3. Whether the respondents are entitled for compensation ? If Yes, to what extent and from whom ?

Affirmative
From appellant &
Resp.No.5 (orig
Resp Nos. 1 & 2)

4. What order ?

As per final order.

REASONS

6. So far as the accident in question is concerned, it is not disputed that deceased Navidulla Khan met with an accidental death. On the day of incident itself, the matter was reported to the police and on the basis of F.I.R submitted to the police, Crime was registered. Furthermore, deceased Navidulla died on the spot on account of the said accident and, accordingly, on the

same day postmortem was conducted on his dead body. Even on the day of accident itself or subsequent to it, spot panchnama and inquest panchnama also came to be drawn by the Police. So far as involvement of the vehicle truck bearing registration No.MH-26/H-6324 in the accident is concerned, though Crime was registered against unknown vehicle, during the course of investigation, it was transpired that, said vehicle was involved in the accident and, accordingly, charge sheet came to be submitted against the driver of the said truck. Even though, respondent-owner of the truck duly served, he remained absent before the Tribunal. Thus, respondent-owner has not disputed the involvement of his vehicle in the accident. The appellant-insurer has also not examined any witness including the respondent-owner or his driver before the Tribunal to substantiate its contention that the accident had not taken place on that day and said vehicle truck was not involved in the accident. Furthermore, the Tribunal has referred almost all the police papers in the impugned Judgment. Learned counsel for respondents-claimants has rightly pointed out that the appellant-

insurer had never raised any objection so far as the police papers including the charge-sheet before the Tribunal. Even the Tribunal has observed in the impugned judgment that, as per the contents of the spot panchnama, blood was lying on the spot and bicycle found lying in damaged condition on the spot itself. Even the brake marks of the vehicle were also found on the spot. As per the postmortem report, probable cause of death is due to hemorrhagic shock due to head injuries. The learned Member of the Tribunal has observed that, not a single question is put to the claimant no.1 denying the involvement of the vehicle truck in the accident. Considering the brake marks on the road and bicycle found lying on the road in the damaged condition, it can be safely inferred that the dash was given from backside. The same is sufficient to draw a conclusion that the driver of the vehicle truck involved in the accident had driven it in rash and negligent manner. Accordingly, I answer the point nos. 1 and 2 in the affirmative.

7. So far as the point of breach of policy condition on

the part of respondent no.1 is concerned, there is no evidence about the breach of policy condition and the learned counsel for the appellant-insurer has also accepted the same.

8. So far as the income proof in this case is concerned, it appears that the claimants have examined one Abdul Shahed Abdul Hamid at Exh.27. According to him, he is working as Government Transport. He has further deposed that deceased Navidulla Khan was working as maintenance incharge in his office on monthly salary of Rs.5,500/-. He was subjected to cross examination by the counsel for respondent no.2 insurer. Said witness has admitted in his cross examination that, he do not have government registration number as the Government Transport Contractor. He maintains the register of employees. He did not sent it to the Labour office. Said certificate is also on letter pad. This witness has not come before the Tribunal alongwith attendance and pay register. If the deceased Navidulla Khan is regular employee then, his name should have been forwarded to the Labour Office

by the employer. Even, it is also not mentioned in the certificate since when and up to what period deceased was working with the said witness as maintenance supervisor. It appears that, the learned Member of the Tribunal has placed reliance on such income proof for assessing the compensation.

9. So far as the age of the deceased and application of the relevant multiplier is concerned, the same is not disputed. I find that the learned Member of the Tribunal has committed mistake while considering the monthly salary of the deceased as Rs.5,000/-. In the absence of any reliable income proof the notional income of the deceased is required to be considered as Rs.3,000/-(Rs. Three Thousand) per month and nothing more than that. So far as the personal deduction is concerned, considering the dependency, the learned Member of the Tribunal has rightly accepted $1/4^{\text{th}}$ deduction towards personal expenses of the deceased. Thus, after deducting $1/4^{\text{th}}$ amount as personal expenses of the deceased, yearly income of the deceased comes to $\text{Rs.}3,000 \times 12 = \text{Rs. } 36,000$ divided by $1/4 = \text{Rs.}9,000/-$

thus, annual income of the deceased would come to Rs.36,000 – 9,000 = Rs.27,000/-. If Rs. 27,000/- is multiplied by the relevant multiplier '16', it comes to Rs.27,000 x 16 = 4,32,000/-. It also appears from the impugned judgment and award that the learned Member of the Tribunal has awarded very meager amount for funeral expenses, loss of consortium and loss of love and affection. It would be appropriate if the funeral expenses are awarded Rs.15,000/-. Thus, break up of compensation, can be as under.

1.	Loss of Dependency	Rs. 4,32,000/-
2.	Funeral expenses	Rs. 15,000/-
3.	Loss of Consortium	Rs. 20,000/-
4.	Love of love and Affection.	Rs. 20,000/-

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TOTAL	Rs. 4,87,000/-
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(Rs. Four lacs eighty seven thousand only)

10. Thus, the respondents/claimants are entitled for the total compensation of Rs. Four lacs eighty seven thousand only and, the respondents no.1 and 2 jointly and severally are liable to pay the compensation amount of Rs.4,87,000/- alongwith proportionate interest @ 9%

p.a. from the date of filing of the application till the realization of the entire amount. This amount is inclusive of "No Fault Liability" amount.

11. So far as apportionment of compensation amount interse made by the learned Member of the Tribunal is concerned, same stands confirmed. I accordingly, answer the points accordingly and proceed to pass the following order.

ORDER

- I. The appeal is hereby partly allowed.
- II. The Judgment and Award dated 19.1.2012 passed by the learned Member, Motor Accident Claims Tribunal, Nanded in M.A.C.P No.285/2008 is hereby modified as under :-
 - a] The appellant and respondent No.5 (original respondent nos.1 and 2) jointly and severally do pay compensation of Rs.4,87,000/- (Rs. Four lac eighty seven thousand only) inclusive of 'No Fault Liability' amount to the applicants alongwith interest @ 9% p.a. from the date of filing of the application till its realization.

- III. The apportionment *interse* as directed by the Tribunal stands confirmed.
- IV. In the circumstances there shall be no order as to costs.
- V. Award be drawn up accordingly.
- VI. In response to the order passed by this Court, the appellant-insurer has deposited the entire amount under the Award. Office to calculate the compensation alongwith interest as per the modified order of this Court and pay the amount to the respondents-claimants 1 to 4. Rest of the amount, if any, be refunded to the Appellant-Insurer.
- VI. Record and Proceeding be sent back to the concerned court.

(V.K. JADHAV)
JUDGE

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aaa/-