

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

FIRST APPEAL NO.933 OF 2006

M/s. National Insurance Co. Ltd.
Having its Registered and head
office at 3 Middleton Road,
P.B.No.9229, Kolkata-700 071
Branch at Latur, Divisional Office,
at Station Road, Hazari Chambers,
Aurangabad 431 005
Through it's. Divisional Manager &
Constituted Attorney Banabihari
Bidyasingh Patra,
Age: 48 years.

**...Ori. Respondent No.4
(Appellant)**

VERSUS

1. Sangram S/o. Vaijinath Mehtra
Age: 55 years, Occu: Service,
2. Pushpabai W/o. Sangram Mehtre,
Age: 48 years, Occu: Household,
both R/o. Jalkot, Tq. Jalkot,
Dist. Latur

**... Ori. Claimant Nos.
1 and 2.**

3. M/s. Isharika Plywood Pvt. Ltd.
No. 18, 3rd Floom, Narang Chamber,
Bengloor O-2 through its Prop. Cr
Parter (Owner of Container bearing
No. KA-OZ/A-1954 with Trailer No.
KA-OI/A-1956
**(dismissed as per Registrar Court
order dated 28.06.2016)**

**...Ori. Respondent
Nos. 1 to 3**

4. Gorakh S/o. Hiranman Gaikwad
Age: Major, Occu. Business,
R/o. Basirgang Beed,
Dist. Beed
(Owner of Mahindra Jeep bearing
No.Mh23-E2580)
5. United India Insurance Co. Ltd.
Through its Branch Manager Branch
Office, Latur. **...Respondents**

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Mr. U.N. Upadhye, Advocate for Appellant.
Mr. Mandar Deshmukh, Advocate h/f. S.G.
Chapalgaonkar, Advocate for Respondent No.3.

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**WITH
CROSS OBJECTION STAMP NO.1165 OF 2007
IN
FIRST APPEAL NO.933 OF 2006**

1. Sangram S/o. Vaijinath Mehtre,
Age:60 years, Occu.: Service,
2. Pushpabai W/o. Sangram Mehtre,
Age:60 years, Occu.: Household,
both R/o. Jalkot, Tq. Jalkot,
Dist. Latur.

**Objectioner Appellants
(Original Claimants)**

VERSUS

1. M/s. National Insurance Co. Ltd.
Having its Registered & Head Office,
At 3 Middleton Road P.B.No. 9229,
Kolkata-700071,
Branch at Latur, Divisional Office
at Station Road, Hazari

Chambers, Aurangabad 431005
through it's Divisional Manager
& Constituted
Attorney Banabihari Bidyasingh Patra,
Age:48 years.

**(Original Respondent
and Appellant in
F.A. No.933 of 2006)**

2. M/s Isharika Plywood Pvt. Ltd.,
Chamber No.18, 3rd Floor, Narang Chambers,
Bengloor-0-2 through its Prop. Or
Partner (Owner of Container bearing
No.KA-0Z/A-1954 with Trailer No.
KA-01/A-1956)
3. Gorakh S/o. Hiranman Gaikwad,
Age:Major, Occu.: Business,
R/o. Basirgang, Beed, Dist. Beed
(Owner of Mahindra Jeep bearing
No. MH-23-E-2580)
4. United India Insurance Co.Ltd.,
through it's Branch Manager,
Branch Office, Latur.

**Respondents
(Original Respondents)**

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Mr. Mandar Deshmukh, Advocate h/f. S.G.
Chapalgaonkar, Advocate for Respondent No.2.

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**CORAM: P.R. BORA, J.
DATE : 31TH AUGUST, 2016**

ORAL JUDGMENT :

1. Appellant has filed the present Appeal
taking exception to the Judgment and Award

passed by the Ad-hoc Additional District Judge, Udgir, on 19.04.2006 in Motor Accident Claims Petition No.6 of 2003.

2. The aforesaid claim petition was filed by Respondent Nos.1 and 2, seeking compensation being the legal heirs of deceased Vaijanath Sangram Mehatre, who died in a vehicular accident happened on 29th September, 2002 having involvement of Jeep bearing Registration No.MH-23-E-2580 and a Truck Trailer bearing Registration No. KA-01/A-1954 and KA-01/A-1956. The Trailer was insured with the Appellant Insurance Company. Respondent Nos.1 and 2 i.e. original claimants, had claimed the compensation of Rs.5,00,000/-.

3. The Tribunal, after having assessed oral and documentary evidence brought on record

before it, awarded the compensation of Rs.4,12,500/- inclusive of the No Fault Liability amount, to Respondent Nos.1 and 2 jointly and severally from Respondent Nos.1 and 4. Aggrieved thereby, the present Appeal is filed by Respondent No.4 i.e. National Insurance Company Ltd.

4. Shri. U.N. Upadhye, Learned Counsel appearing for the Appellant Insurance Company, submitted that the Tribunal has grossly erred in recording a finding that, in occurrence of the alleged accident, negligence, on part of driver of the Trailer, was solely responsible. The learned counsel further submitted that evidence on record clearly suggests that the occurrence of the alleged accident was a result of composite negligence on part of drivers of both the vehicles i.e. Jeep and the Trailer,

involved in the alleged accident, and as such, the responsibility to pay compensation ought to have been cast upon the owners and insurers of both the vehicles.

5. The learned counsel, inviting my attention to the contentions of the Spot Panchanama, submitted that if the situation on the spot is taken into account, it suggests that the alleged accident had occurred because of negligence on the part of the driver of the offending Jeep.

6. The learned counsel submitted that the tribunal has failed in properly appreciating the evidence on record, which has resulted in passing the impugned order, whereby the owner and insurer of the Trailer are held responsible for payment of entire amount of compensation.

The learned counsel prayed that the finding so recorded by the Tribunal, as about negligence, needs to be quashed and set aside and drivers of the both the vehicles, need to be held responsible for occurrence of the alleged accident.

7. As about the amount of compensation awarded by the Tribunal, the learned counsel submitted that, without their being any evidence, as about income of the deceased, the Tribunal has awarded the amount of compensation, presuming the income of the deceased to the tune of Rs.3,000/- per month. According to learned counsel, such course was not permissible.

8. The learned counsel further submitted that deceased was admittedly a bachelor and as

such while determining the amount of compensation the Tribunal must have deducted 1/2 of the amount towards the personal expenses of the deceased and by applying the appropriate multiplier to the balance amount, must have determined the amount of compensation whereas the Tribunal deducted 1/3 of the total amount towards personal expenses of the deceased. The learned counsel therefore prayed to modify the award and to reduce the amount of compensation.

9. None appeared for Respondent Nos.1 and 2. Shri Chapalgaonkar, the learned counsel appearing for Respondent No.5 Insurance Company, supported the impugned Judgment and submitted that no case is made out for causing interference in the impugned Judgment and Award.

10. I have carefully considered the submissions made on behalf of the respective parties. I have also perused evidence on record and impugned Judgment. In so far as first objection raised by appellant Insurance Company, as about the findings recorded by the Tribunal, in respect of the negligence in occurrence of the alleged accident, is concerned spot Panchanama drawn in relation the alleged accident is the crucial document. I have carefully perused the said Spot Panchanama. Admittedly, the accident had happened on Pune-Ahemadnagar road, width of which, is stated to be 50 feet. After having noted the situation of Trailer and Jeep on the Spot of occurrence, it does not appear to me that the Tribunal has committed any error in holding the driver of the Trailer solely responsible for occurrence of the alleged accident. Moreover, when it was

the contention of the appellant Insurance Company that the negligence on part of driver of the Jeep was a contributing factor in occurrence of the alleged accident, it was incumbent on part of the appellant Insurance Company to adduce necessary evidence to substantiate the said allegation. Admittedly, no evidence in that regard has been adduced by the Appellant Insurance Company.

11. The accident had happened on Pune-Ahemadnagar Road. It is tar road having width of 50 feet. On eastern side of the road, there was a Kaccha road, having width of 10 feet, whereas on western side there was tar road having width of 13 feet and Kaccha road of 5 feet width. The Jeep was found lying on its correct side whereas, the trailer was noticed to have entered on wrong side. The Tin Sheets loaded in the said trailer-truck were noticed to have been fallen on the road and

spread over on the road on both sides. After having noticed the situation of both the vehicles on the scene of occurrence it could be reasonable inferred that the alleged accident had occurred because of the negligence on part of the driver of the truck trailer. Secondly, had it been head on collision, the entire front portion of Maruti Car would have been damaged. Material on record show that left side portion of Maruti Car was damaged. It is thus evident that the Maruti Car suffered dash to its left side. From the evidence on record the only inference emerges that the trailer-truck coming from opposite side entered on wrong side and gave a dash to Maruti Car on its left side. No blame, therefore can be attributed on part of the driver of Maruti. Tribunal has not committed any error in holding the driver of the trailer-truck solely responsible in occurrence of the alleged accident. As such, I do not see any reason for causing any interference in the finding

recorded by the Tribunal on the point of negligence.

12. The other objection, which has been raised by the Appellant Insurance Company, as about the quantum of compensation is concerned, it has come on record that deceased Vaijinath was 21 years old on the date of accident and was a student of Computer Engineering. Considering the said fact in fact, the Tribunal could have assumed the income of deceased Vaijinath on higher side. The Tribunal has however, adopted a conservative approach and has held the income of the deceased on the basis of notional income. In such circumstances though it was sought to be canvased by Mr. Upadhye, learned counsel appearing for Insurance Company, that while determining the amount of dependency compensation, 1/2 of the

total amount was liable to be deducted of the deceased. I do not find it appropriate to cause any interference, having regard to the fact that, even otherwise, income of the deceased, as has been held by the Tribunal, is obviously on lower side, and as such, no interference is required, even in respect of the amount of compensation so awarded. The appeal therefore fails and is accordingly dismissed, however without any order as to costs.

13. The original claimants have filed the Cross-objection seeking enhancement of amount of compensation as awarded by the tribunal. However, no such case is made out for enhancement of the amount of compensation. The Cross-objection also therefore fails and deserves to be dismissed. It is accordingly dismissed without any order as to the costs.

Pending Civil Applications, if any, stand
disposed of.

[P.R. BORA, J.]

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