

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 4270 OF 2008

National Insurance Company Ltd.
Through its Divisional Office,
Divisional Manager, Hazari
Chambers, Station Road,
Aurangabad.

....Appellant.

Versus

1. Ruksana w/o. Amiroddin,
Age 38 years, Occu. Household,
R/o. Followers Quarters,
Ambajogai, Dist. Beed.
2. Kalimoddin s/o. Amiroddin,
Age 19 years, Occu. Student,
R/o. As above.
3. Salimodin s/o. Amiroddin,
Age 12 years, Occu. Student,
4. Ajamiloddin s/o. Amiroddin,
Age 10 years, Occu. Student,
5. Sharin d/o. Amiroddi,
Age 8 years,
6. Afrin d/o. Amiroddin,
Age 5 years,

Respondent Nos. 3 to 6 are
minor and u/g. of their real
mother respondent No. 1
Ruksana w/o. Amiroddin
R/o. Followers Quarters,
Ambajogai, Dist. Beed.

7. Sudhakar s/o. Subrao Gallal,
Age 30 years, Occu. Jeep owner,
R/o. Ratnagiri, Tq. & Dist. Beed.

....Respondents.

Mr. S.V. Kulkarni, Advocate for appellant.

Mr. S.G. Chapalgaonkar, Advocate for respondent Nos. 1 to 6.

WITH
FIRST APPEAL NO. 304 OF 2008

National Insurance Company Ltd.
Through its Divisional Office,
Divisional Manager, Hazari
Chambers, Station Road,
Aurangabad.

....Appellant.

Versus

1. Smt. Chanda w/o. Premsukh Jaju,
Age 45 years, Occu. Household,
R/o. Jajuwadi, Parli Vajinath,
Dist. Beed.
2. Shrikant s/o. Premsukh Jaju,
Age 23 years, Occu. Nil,
R/o. Jajuwadi, Parli Vajinath,
Dist. Beed.
3. Jujarsingh s/o. Mohansingh
Bharani, Age 39 years,
Occu. Business, R/o. 99/864,
Maharshi Nagar, Pune -37
(Maharashtra State)
4. New India Assurance Co. Ltd.,
Pune, through it's Branch
Manager, Sadashiv Peth, Pune 30.
5. New India Assurance Co. Ltd.,
Through it's Branch Manager,
R/o. Beed.
6. Sudhakar s/o. Subberao Ghattad,
R/o. Ratnagiri, Dist. Beed.

....Respondents.

Mr. S.V. Kulkarni, Advocate for appellant.

Mr. M.M. Ambhore, Advocate for respondent Nos. 4 to 5.

CORAM : T.V. NALAWADE, J.
DATED : 11th February, 2016.

JUDGMENT :

1) First Appeal No. 4270/08 is filed against the judgment and award of Claim Petition No. 168/2000 (New No. 294/2000), which was pending before the Claims Tribunal, Ambajogai, District Beed. The claim was filed in respect of death of one Amiroddin by his widow and minor issues. The age of the deceased was around 45 years and the compensation of Rs. 3.03 lakh is granted. Interest at the rate of 7.5% is granted on this amount. First Appeal No. 304/2008 is filed against judgment and award of Claim Petition No. 52/2001 and it was filed in respect of death of one Premsukh Jaju by his widow and son. His age was 52 years and the compensation of Rs. 8.95 lakh is awarded with interest at the rate of 7.5% p.a. Both the sides are heard.

2) The main grievance of the Insurance Company is that in Claim Petition No. 168/2000 (New No. 294/2000), the owner of other offending vehicle like truck was not made party. However, in second matter, the owner of truck was made party, respondent and the Tribunal came to the conclusion that the accident took place due to fault of jeep driver only. In any case, both the deceased were present in the jeep and they had not

contributed in the accident. If at all there was some material, it could have been case of composite negligence and in that case also, the claimants could have proceeded against one of the two joint tort feasons.

3) The claimants in the two proceedings have placed reliance on the police papers, which include F.I.R., spot panchanama etc. It appears that both the vehicles had dashed against each other from front side and police had registered the crime against drivers of both the vehicles. The truck was fully loaded with the goods and it was facing towards eastern side towards Ambajogai. The front portion of jeep was touching to the front portion of truck, when the spot panchanama was drawn. The truck was present on the correct side of the road, but the jeep had gone towards northern side. To the south of the jeep, there was the road having width of 10 ft. and beyond that there was Kaccha portion, wing of the road. On the basis of these contents of spot panchanama, the Tribunal came to the conclusion that accident had taken place due to fault of jeep driver. In view of these circumstances, it was necessary for the owner of the jeep or Insurance Company of the jeep to examine the jeep driver or some eye witnesses to show that there was some negligence on the part of truck driver and as that was not

done, this Court sees no reason to interfere in the finding given by the Tribunal as against jeep driver.

4) On the point of quantum of compensation, there is not much grievance. Meager amount of compensation is granted by the Tribunal when there was the record of salary of deceased Amiroddin and when there was the record of income tax return filed right from the year 1997-98 in respect of Premsukh. The Tribunal presumed that the annual income was around Rs. 1.05 lakh of Premsukh and 1/3rd amount from that amount is deducted. Thus, it is not possible to interfere in the findings given on the quantum of compensation also.

5) In the result, both the appeals are dismissed.

[T.V. NALAWADE, J.]

SSC/