

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

FIRST APPEAL NO. 4084 OF 2008

- 1] Trimbak Yeshwant Gore
Age 65 years, Occ-Nil
- 2] Ushabai Ashok Gore
Age 33 years, Occ-Household work
- 3] Pravin Ashok Gore
Age 15 years, Occ-Education
- 4] Priyanka Ashok Gore
Age 13 years, Occ-Education
- 5] Pallavi Ashok Gore
Age 11 years, Occ-Education

No.3 to 5 minor, through their mother
natural guardian Appellant No.2.

All R/o Rui Chattishi, Tal. Nagar
Dist.Ahmednagar

Malanbai Trimbak Gore (deleted)
Ori.Claimant No.2, died during the
pendency of the MACT, hence, her
name has been deleted in the MACT
itself.

.. APPELLANTS

-2-

[ORIG.CLAIMANTS]

VERSUS

- 1] Dattatraya Nathu Jadhav
Age Major, Occ-Business
R/o Ozar, Tal.Junnar,Dist.Pune
- 2] United India Insurance Co. Ltd.
Ahmednagar Divisional Office
Market Yard, Kisan Kranti
Building, At and Post Ahmednagar
Dist.Ahmednagar.

.. RESPONDENTS

[no.1 & 2 ori.opp.no.1&2]

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Mr.S.P.Brahme, Adv. for appellants
Mr.V.D.Hon,Adv. for respondent no.1
Mr. S.V.Kulkarni, Adv. For respondent no.2.

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CORAM : T.V.NALAWADE**DATED : 2ND MARCH,2016****ORAL JUDGMENT :-**

The Appeal is filed to challenge the judgment and award of Claim Petition No.231/2003 which was pending before Claims Tribunal Ahmednagar. Original claimants have challenged the decision on the point of quantum of compensation. Both sides are

heard.

2] The accident took place on 16/5/2003 within local jurisdiction of Ahmednagar Taluka police station. Deceased Ashok was aged about 35 years at the relevant time. The vehicle owned by respondent Dattatraya which was insured with respondent no.2 insurance company was involved in the accident. Ashok died on the spot in the accident.

3] The claim was made by widow aged about 28 years, 3 minor sons and parents of the deceased. During pendency of the proceeding mother of the deceased died and she came to be deleted. It is the case of the claimants that by working as a clerk in State Transport Cooperative Bank Ltd. Mumbai, Branch Ahmednagar and by doing milk business, the deceased was earning atleast Rs.10,000/-per month. It is contended that the deceased was getting Rs.10,000/- per year as bonus from the employer. It is the case of the claimants that they were totally depending for their livelihood on the income of deceased.

4] The claim was contested by insurance company by denying aforesaid contentions.

5] To substantiate the claim, widow gave evidence which is in accordance with the aforesaid contentions. School leaving certificate was produced to show that date of birth of the deceased was 23/6/1975. Copy of appointment order of the deceased in aforesaid bank was produced. One employee of the aforesaid bank was examined to prove the salary certificate for the month of April, 2003. His gross salary was Rs.9678/- and from this amount the professional tax of Rs.175/- could have been deducted as standard

deduction. They examined one employee of milk dairy to prove the certificate given by milk dairy to the effect that per month milk worth Rs.4000/- to 4500/- was being supplied by the deceased and the deceased was member of cooperative milk dairy. However, no record like register maintained by the cooperative society, the payment received by the deceased or even the book of milk supplied which is generally maintained by the suppliers was produced. In respect of this case, the tribunal has presumed that deceased was making some income from milk business.

6] Place of employer of the deceased was Ahmednagar and his family was living at other place like Rui-Chattisi. In view of this circumstance and as nothing is produced on record to show that the deceased was commuting between Rui-Chattisi and Ahmednagar every day, it is not possible to believe that he was personally doing milk business or personally cultivating his land. This Court holds that income from the salary can be considered for ascertaining the loss of dependency.

7] After making standard deductions of professional tax etc. the salary of the deceased comes to Rs.9500/- per month. In view of the age of the deceased, which was below 40 years, 50% increase can be given in the salary income towards future prospects. Thus it can be presumed that at the relevant time, monthly income of deceased was Rs.14,250/-. From this amount 1/3rd amount can be deducted towards personal expenses of the deceased and so the loss of dependency per month comes to Rs.9500/-. In view of the age of the deceased, 15 can be applied as multiplier for calculation of total loss of dependency. This amount comes to Rs.17.10 lakh (9500x12x15). The amount of Rs.50,000/- can be given to the widow under the head of loss of consortium. The amount of Rs.50,000/- can be given to the

minor issues and parents of the deceased under the head of loss of love and affection. The amount of Rs.15,000/- can be given towards funeral expenses and the amount spent on taking the dead body to native place. Thus the total amount of compensation comes to Rs.18.25 lakh.

8] The tribunal has awarded the compensation of Rs.5,20,500/-. The tribunal has not given sufficient amount under the heads of loss of consortium, loss of love and affection etc. Further the tribunal has held that it is the case of contributory negligence and 50% of the amount is reduced by the tribunal.

9] The police papers and the substantive evidence show that deceased was pillion rider on motor cycle and dash was given to the motor cycle by one jeep. Rider of the motor cycle had given information to police and on that basis, report was given by police officer against jeep driver and the crime was registered against jeep driver only. Charge sheet was filed against the jeep driver. Babasaheb the rider of the motor cycle has given evidence before tribunal that the accident took place due to fault of the jeep driver. Thus there is substantive evidence against the jeep driver of eye witness and there are aforesaid circumstances like police blamed jeep driver for the accident. When there is direct evidence, in ordinary circumstances, the doctrine of res-epsa-loquitor cannot be used. Evidence is given that some construction work of the road was going on at the relevant time and due to that there was one diversion. Due to this circumstance, the dash between two vehicles took place on other side of the road. Only due to this circumstance, the tribunal has held that there was contributory negligence of the rider of motor cycle.

10] The claim was made against the owner and insurance company of jeep only. When it is case of composite negligence, the victim can go against one of the two joint tortfeasors. It was not case of contributory negligence of the deceased. The tribunal has however held that it is case of contributory negligence. This finding of the tribunal cannot sustain in law.

11] The learned counsel for appellants placed reliance on many cases as under : **(1) AIR 2003 SC 4182 (Municipal Corporation of Greater Bombay V/s Shri Laxman Iyer and Anr; (2) (2008) 3 SCC 748 (T.O. Anthony V/s Karevarnan & Ors); (3) (2015) 9 SCC 273, (4) AIR 2014 SC 1052 (Syed Sadiq V/s Divisional Manager, United India ; (5) (2013) 9 SCC 54 Rajesh & Ors Vs. Rajbir Singh; (6) AIR 2009 SC 3104 (Sarla Verma V/s Delhi Transport Corporation; (7) AIR 2003 SC 3696 (State of Haryana and Anr V/s Jasbir Kaur and Ors; (8) AIR 2008 SC 845 (National Insurance Co. Ltd. V/s Indira Srivastava and Ors.).**

12] In these cases, Apex Court has discussed right of the victim to proceed against one of the joint tortfeasors. In the case of Sarla Verma, cited supra, the manner of ascertaining loss of dependency is discussed by the Apex Court. The income of the deceased was fixed, which was salary income. The multiplier which can be used for particular age group is also mentioned in this case. All these propositions are considered by this Court while using the multiplier, for giving increase in the salary, loss of future prospects and also more amount is being given now under the heads of loss of consortium and loss of love and affection. In the result, the following order :

13] The tribunal has given interest at the rate of 8% p.a. As

nationalised banks were giving interest at the rate of 9% p.a. in the year 2008, this Court holds that interest at the rate of 9% p.a. needs to be given. So the appeal is allowed. The judgment and award of the tribunal is modified to make total amount of compensation as Rs.18.25 lakhs. Interest at the rate of 9% p.a. is payable on the compensation amount and the interest will be payable from the date of the Petition till realisation of the amount. If any amount is paid on principle of no fault it is to be deducted from total amount and remaining amount is to be paid by respondents jointly and severally.

14] The disbursement of the amount is to be made amongst the claimants in the same proportion in which the tribunal has made the disbursement.

(T.V.NALAWADE,J.)

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