

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

**FIRST APPEAL NO. 3343 OF 2015  
WITH  
CA/16302/2015 IN FA/3343/2015  
WITH  
CA/2238/2016 IN FA/3343/2015**

The New India Assurance Co. Ltd.,  
Through its Manager (Legal Hub),  
D.O. No. I, Adalat Road, Aurangabad,  
Through its authorized signatory  
R/o Aurangabad.

...Appellant  
(Orig. Res. No.3)

Versus

1. Shahinbee w/o Shalik Rauf,  
Age 41 years, Occ. Household,  
R/o Tanda Bazar, Tq. Sillod,  
District Aurangabad.
2. Shaikh Rauf Shaikh Kankar,  
Age 43 years, Occ. Labour,  
R/o Tanda Bazar, Tq. Sillod,  
District Aurangabad.
3. Shahnurkha Noorkha Pathan,  
Age 48 years, Occ. Driver,  
R/o Phulambri, Tq. Phulambri,  
District Aurangabad.
4. Sandu s/o Punjaba Warkad,  
Age Major, Occ. Business,  
R/o Lasurgaon, Tq. Vaijapur,  
District Aurangabad.

...Respondents  
(R.1&2 Ori.Claimants  
R.3&4 Ori. R.1&2)

...

Advocate for Appellant : Mr M M Ambhore  
Advocate for Respondent Nos. 1 & 2 : Mr P C Mayure  
Advocate for Respondent Nos. 3 & 4 : Mr P S Pande and  
Mr. K K Choudhry

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**CORAM : V.K. JADHAV, J.**

**Dated: June 16, 2016**

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**ORAL JUDGMENT :-**

1. With the consent of learned counsel for respective parties, heard finally.

2. Being aggrieved by the Judgment and Award passed by the Member, Motor Accident Claims Tribunal, Aurangabad dated 15.7.2015 in MACP No.527/2012, original respondent no.3/Insurer has preferred this appeal.

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

a] On 20.1.2012 deceased Shaikh Naveed and one Shaikh Abdul Rauf were proceeding by motorcycle bearing registration No. MH-20/BE-8311 towards village Tanda (Bazar) on Khultabad-Phulambri road. At that time, Shaikh Abdul Rauf was driving the motorcycle and

deceased Shaikh Naveed was the pillion rider. On way, near Wadod Bazar, their motorcycle slipped due to bricks scattered on the road. One tempo bearing registration No.MH-20/BT-4485 was turned turtled some hours prior to this accident and the rider of the motorcycle could not see the bricks scattered on the road due to night time. In consequence of which, both of them fell down on the ground and deceased Shaikh Naveed sustained injuries on his head, both legs, backbone and other parts of the body. He was immediately taken to the Primary Health Center, Sillod and thereafter shifted to Dunakhe Hospital at Aurangabad. He was hospitalized and remained under treatment till 11.2.2012. Even thereafter, he had taken treatment at MGM Hospital, Aurangabad and also in Government Hospital till 17.3.2012. However, on 28.5.2012 he died at PHC, Sillod while under treatment. The claimants have incurred huge expenses towards treatment of deceased Naveed. The accident said to have been occurred on account of the negligence of respondent no.1 who had not taken care to remove the bricks scattered on the road, nor marked any sign etc.

on the road indicating that bricks are scattered on the road. It is further contended that respondent no.1 was solely responsible for the accident. Respondents-claimants preferred claim petition before the Motor Accident Claims Tribunal, Aurangabad for grant of compensation under various heads. It is also contended in the claim petition that prior to the accident, deceased Naveed was serving as a supervisor in one Jay Bhadra Traders, Sillod on monthly salary of Rs.6,000/- and claimants (present respondent nos. 1 and 2) were entirely depending on his income.

b] Original respondent nos.1 and 2 have strongly resisted the claim petition by filing their written statement. According to them, accident had taken place on account of negligence of the motorcycle rider Sk. Abdul Rauf and he was not holding valid and effective driving licence at the relevant time. It is further contended that, offending tempo was going from Lonar to Phulambri loaded with bricks and at about 03.30 p.m., as one small boy suddenly came on road, respondent no.1 applied brakes to the tempo, however,

said tempo turned turtled and bricks loaded on the said tempo scattered on the road. It is also contended that, respondent no.1, with the help of labours present in the tempo, removed the bricks scattered on the road and made the road clear for traffic on 4.00 pm onwards.

c] Appellant/insurer (original respondent no.3) has strongly resisted the claim petition by filing written statement. It is contended that Abdul Rauf, who was riding the motorcycle at the time of accident, alone was responsible for the accident. He was not holding valid and effective driving licence. It is also contended that, while driving the motorcycle, Abdul Rauf did not take care and he tried to drive the motor cycle on bricks and therefore, accident had taken place. It is also contended that, claimants have claimed exorbitant amount of compensation.

d] In the light of the pleadings of the parties, learned Member of the Tribunal framed issues. The respondents, in support of their rival contentions adduced oral as well as documentary evidence. Learned

Member of the Tribunal Aurangabad, by its impugned judgment and award dated 15.07.2015, partly allowed the claim petition with proportionate costs and thereby held respondent nos.1 to 3 jointly and severally liable to pay an amount of Rs.13,72,000/- towards compensation to the claimants. Being aggrieved by the same, original respondent no.3/insurer has preferred this appeal.

4. The learned counsel for the appellant/insurer submits that said accident involving the tempo bearing registration No. MH-20/BT-4485 occurred at about 03.30 p.m./04.00 p.m. on 20.1.2012 and the accident giving rise to the present claim petition occurred at about 07.15 p.m. Learned counsel submits that if the proximity test is applied, then there is no nexus between the earlier accident and later accident which is the subject matter of the present appeal/claim. Learned counsel submits that claimants have not impleaded the owner and insurer of the said motor cycle involved in the accident. Learned counsel submits that rider of the motorcycle is responsible for the accident and said accident has not taken place out of the use of the motor

vehicle tempo. Learned counsel submits that the claimants have failed to prove income of deceased Shaikh Naveed. Learned counsel submits that, deceased Shaikh Naveed was 20 years of age at the time of his accident and it is difficult to believe that at such young age, he was serving as supervisor in Jai Bhadra Traders, Sillod. Learned counsel submits that, the claimants have examined employer of the deceased, who has admitted in his cross examination that at the request of the claimants, he had appeared before the Tribunal for giving his evidence. Learned counsel submits that claimants have produced on record false salary certificate and in fact, deceased was not serving as supervisor in the said private trading company. Learned counsel submits that even though employer of the deceased has not deposed anything about future prospects of the deceased Naveed, the Tribunal has made addition of income by considering future prospects and awarded exorbitant amount of compensation under the heads of loss of future income. Learned counsel submits that, even the Tribunal has awarded Rs.75,000/- towards loss of love and affection

and Rs.50,000/- towards mental agony and pains and sufferings, erroneously.

5. Learned counsel for the appellant, in order to substantiate his contentions, places reliance on the decision of this Court in the case of ***The New India Assurance Co. Ltd. vs. Smt. Alpa Rajesh Shah & Ors.***, reported in **2014(4) ALL MR 172**.

6] Learned counsel appearing for the respondents/original claimants submits that FIR Exh.33 and Crime Details Report at Exh.34, unmistakably point out that even at about 8/8.30 p.m., number of bricks were found scattered everywhere at the spot of accident. There is no substance in the evidence of respondent no.1 that he alongwith others removed bricks from the road and made the road clear for traffic from 4.00 p.m. onward. Learned counsel submits that subsequent accident, which is the subject matter of the present appeal, occurred in between 7.15 p.m. to 8.00 p.m. It was almost a night time and in

absence of any sign, marks placed on road, it was not possible for rider of the motor cycle to notice the bricks lying on the road. Learned counsel submits that, it cannot be expected from the rider of the motor cycle to anticipate without any signal or indicator that bricks are lying on the road and the vehicle is required to be driven carefully. Learned counsel submits that the claimants have established the casual relation between the initial accident occurred to the tempo and the subsequent accident to the motorcycle. Learned counsel submits that the Tribunal has rightly come to the conclusion that the accident, which is subject matter of the present claim, occurred out of the use of the motor vehicle tempo bearing registration No. No.MH-20/BT-4485. Learned counsel submits that, deceased Shaikh Naveed was 20 years old at the time of his accidental death. He was working as a supervisor in the trading company since two years prior to his death.

7. Learned counsel for the respondents/original claimants submits that PW5-Gavande, who was the employer of deceased Shaikh Naveed, has deposed that

deceased Naveed was working in his shop as supervisor since 2 years on monthly salary of Rs.6,000/-. Salary certificate is placed on record and the same is marked as Exh.82. Learned counsel submits that, considering the young age of deceased Shaikh Naveed, Tribunal has rightly made addition of income by considering his future prospects. Learned counsel submits that, by considering the age and income of deceased, Tribunal has awarded just and reasonable compensation. There is no substance in the appeal and thus, the appeal is liable to be dismissed.

8. Learned counsel for respondents/original claimants, in order to substantiate his contentions, placed reliance on a judgment delivered by the Supreme Court in the case of ***New India Assurance Co. Ltd. vs. Yadu Sambhaji More & Ors.***, reported in **2011 (2) SCC 416**.

9. I have also heard learned counsel for respondents No.3 and 4.

10. On careful perusal of the contents of the FIR Exh.33, it appears that after the accident, API has lodged the complaint on behalf of the State in the concerned police station. He himself has drawn spot panchnama. It is specifically mentioned in the spot panchnama that in the after noon time, at the spot of accident, one tempo bearing registration No.MH-20/BT-4485 turned turtled and bricks loaded in the said tempo were scattered on road. It is further mentioned in the FIR that, said bricks were scattered on the road and driver of the said tempo has not bothered to remove the bricks in order to clear the road for traffic. On the basis of said complaint, crime came to be registered against the respondent driver of the tempo. Furthermore, on perusal of the contents of the spot panchnama Exh.34, which was drawn in between 8.00 to 8.30 p.m. on the same day, it appears that there is specific mention that number of bricks were lying on the road in scattered condition. It further appears from the boundaries of the spot of accident that, there is no village or any other residential or commercial complex near the spot and even the street lights were also not there on the road

near the spot of accident. Even said tempo was found there near the spot in damaged condition. It thus appears that respondents had not removed scattered bricks from the spot.

11. In light of the above evidence, in my considered opinion, respondents-claimants have established the casual relation between the earlier accident to the tempo and subsequent accident involving the motorcycle. Motorcycle rider was not in a position to notice in the night time, the bricks lying on the road and consequently, the motorcycle slipped on road. In consequence of which, deceased Shaikh Naveed had sustained injuries and succumbed to the said injuries after taking treatment in various hospitals. The learned Member of the Tribunal has therefore, rightly recorded findings in the affirmative to issue no.1 that said accident occurred on account of rash and negligent driving of the tempo bearing registration No.MH-20/BT-4485 by its driver, and as a consequence of which, Shaikh Naveed sustained injuries and died.

12. So far as quantum of compensation is concerned, I do not find any fault in the finding recorded by the Tribunal. The respondents-claimants have duly proved the salary certificate Exh.82. PW 5-Anil Gavande, who was the employer of the deceased, has stated in his cross examination that he is having a shop and deals in the business of selling building materials. He has further stated in cross examination that, he is having registration certificate and further he is maintaining books of accounts and also paying income tax. Simply because he has admitted that entry was not taken in account book about the salary being paid to deceased Shaikh Naveed, his oral evidence cannot be discarded. Deceased Naveed was his employee till his accidental death. In view of the same, at the request of the claimants-parents, PW 5-Anil Gavande has appeared before the Tribunal to prove contents of salary certificate issued by him. I do not think that only on that count his oral evidence is liable to be discarded.

13. The learned Judge of the Tribunal has rightly considered young age of deceased Shaikh Naveed and

accordingly made addition of income by considering his future prospects. Deceased Shaikh Naveed was 20 years old at the time of his accidental death. At such a young age, he was working as a Supervisor in the said Trading Company and maintaining his family consisting of his old aged parents. This Court, in a case ***The New India Assurance Co. Ltd. vs. Smt. Alpa Rajesh Shah*** (supra), in paragraph no.12 of the Judgment, has made following observations :-

*“12. Thus, there is no prohibition on considering the future prospects of increase in the earning of the deceased who was self employed. However, the claimants must produce satisfactory evidence to show that there were genuine prospects of increase or enhancement in the earnings of the deceased. The observation of the Apex Court in case of **Reshma Kumari, [2013(3) ALL MR 460 (S.C.)]** (supra) means that normally in case of a deceased who was self employed, the Tribunal cannot take into account the future prospects of increase in earnings of the deceased. However, only when there is strong and positive evidence on record to show that there were definite prospects of increase in the income of the deceased in future, such a case*

*can be treated as an exceptional case in which future prospects of increase in the earning can be considered by the Tribunal.”*

14. Thus there is no prohibition for considering the increase in the earning capacity of deceased. In the case in hand, considering the young age of deceased Shaikh Naveed and the fact that he was working as a Supervisor in the said trading company at such young age, itself indicates genuine prospects of increase or increment of his earnings in future. Tribunal has rightly considered this case as an exceptional case and accordingly made addition in income by considering the future prospects.

15. It further appears from the impugned judgment and award that the tribunal has considered medical expenses. Respondents-claimants have proved medical bills, etc., by examining the accountant in Dunakhe Hospital and one shop keeper of a medical shop. However, it appears that, Tribunal has erroneously awarded compensation under the heads of love and affection and towards mental agony and pains and

sufferings. The Tribunal has not awarded compensation under the head of loss of estate. Instead of awarding Rs.75,000/- under the head of love and affection, Rs.25,000/- can be awarded to the claimants as a compensation towards loss of estate. It is well settled that in case of death claim, compensation towards mental agony and pains and sufferings of the claimants cannot be assessed and compensation cannot be awarded under the same. In view of the same, compensation of Rs.50,000/- awarded by the Tribunal under that head is quashed and set aside.

16. In view of the above, re-calculation of the compensation is therefore necessary. Thus, the break up of compensation which can be broadly categorized is as under :-

|    |                                      |                                     |
|----|--------------------------------------|-------------------------------------|
| 1. | Loss of future income<br>/dependency | Rs.9,72,000/- (awarded by tribunal) |
| 2. | Loss of Estate                       | Rs.0,25,000/-                       |
| 3. | Medical and incentives               | Rs.2,50,000/- (awarded by tribunal) |
| 4. | Funeral expenses                     | Rs.0,25,000/- (awarded by tribunal) |
|    |                                      | =====                               |
|    |                                      | Rs.12,72,000/-                      |

In view of the above discussion, I proceed to pass the following order.

**O R D E R**

I. Appeal is hereby partly allowed with proportionate costs.

II. The impugned Judgment and Award passed by the Member, Motor Accident Claims Tribunal, Aurangabad dated 15.07.2015 in MACP No.527/2012 is hereby modified in the following manner :-

“The claimants are entitled for the compensation of Rs.12,72,000/- (Rs Twelve Lacs seventy two thousand only) and respondents No.1 to 3 are jointly and severally liable to pay the same with interest as awarded by the Tribunal.”

III. Rest of the Judgment and Award passed by the Tribunal stands confirmed.

IV. Award be drawn up in tune with the above modification.

V. Needless to say that the respondents-claimants are at liberty to withdraw the compensation amount deposited by the appellant-insurer before this Court.

VI. Appeal is accordingly disposed of. Pending civil applications also stand disposed of.

sd/-

**( V.K. JADHAV, J. )**

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aaa/-