

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

First Appeal No.3097 of 2013

* Bajaj Allianz General Insurance
Co. Ltd. Through its Branch
Manager, 2nd Floor, Rajendra
Chamber, Adalat Road,
Aurangabad. **.. Appellant.**

Versus

- 1) Karbhari S/o Dagadu Tarak,
Age 53 years,
Occupation : Nil,
R/o Mumbapurwadi,
Taluka Khultabad,
District Aurangabad.
- 2) Sangitabai W/o Karbhari Tarak,
Age 45 years,
Occupation : Household,
R/o As above.
- 3) Vaishali D/o Karbhari Tarak,
Age 22 years,
Occupation: Education,
R/o As above.
- 4) Nitin S/o Karbhari Tarak,
Age 20 years,
Occupation : Education,
R/o As above.
- 5) Syed Jafar Syed Gaffar,
Age 55 years,
Occupation: Business,
R/o Phulambri,
Taluka Phulambri,
District Aurangabad.

- 6) Sardarkhan Yousufkhan Pathan,
Age 50 years,
Occupation: Driver,
R/o Aland, Taluka Phulambri,
District Aurangabad,
Now R/o Maheshnagar, Jinsi,
Aurangabad.

.. Respondents.

Shri. S.G. Chapalgaonkar, Advocate, for appellant.

Shri. Amol P. Khedkar, Advocate, for respondents 1 to 4.

Shri. G.O. Wattamwar, Advocate, for respondents 5 and 6.

CORAM: T.V. NALAWADE, J.

DATE : 18th FEBRUARY 2016

JUDGMENT:

1) The appeal is filed against the judgment and award of Claim Petition No.559 of 2008 which was pending before the Claims Tribunal Aurangabad. The insurance company has challenged the decision as it is made liable to pay compensation. It is the case of the insurance company that the truck shown to be involved in the accident was not involved in the accident. Both the sides are heard.

2) The accident took place on 17-3-2008 at about 8.p.m. within local jurisdiction of Khultabad Police Station, District Aurangabad. It is contended that deceased Ganesh Tarak was on his bicycle and the truck bearing No. MH-20-AT-4170 owned by respondent No.1 and which was driven by respondent No.2 gave dash to the bicycle of the deceased and the deceased was virtually crushed under the wheels of the truck. He died on the spot. It is contended that after the accident the driver did not stop the truck, he did not give report to police but he ran away. It is contended that subsequently the truck was traced by police and case is filed against the truck driver by police out of this accident.

3) The claim was filed by the parents of the deceased. It is their case that age of the deceased was around 20 years and by doing milk business he was earning annually Rs.1.5 lakh. It is their case that they were totally dependent on the deceased for their livelihood. Under various heads they had claimed total compensation of Rs.5,00,000/-.

4) The insurance company of the truck filed written statement and it denied everything. It contended that initially report was given that one bus of the MSRTC was involved in the accident. It is contended that a relative of the deceased is working in police department and in collusion with the owner, the truck is shown to be involved in the accident and false record is created.

5) The owner and driver of the truck did not file written statement but the driver of the truck is examined as witness. To prove the claim, father has examined himself but he has no personal knowledge regarding the accident. The claimants have relied on police papers which include copy of charge sheet. It is not disputed that after making investigation of the case, police filed charge sheet against respondent No.2 driver of the truck.

6) The claimant examined Laxman Tarak, uncle of the deceased. On 18-3-2008 he had given report to police that he had learnt that one bus of the MSRTC was involved in the accident. Supplementary statement was recorded on 24-5-2008 that he learnt that one truck was

involved in the accident. On that basis investigation was made and the truck was traced and charge sheet came to be filed against the respondent No.2.

7) Sardar Pathan, driver is examined as witness by the claimant and he has admitted the involvement of his vehicle in the accident. Owner of the vehicle Syed Jafar is also examined and he also admitted that his truck was involved in the accident and on the date of the accident itself the driver had informed him about the accident.

8) Much was argued by the learned counsel for the insurance company on the circumstance that initially report was given against the driver of the bus of the MSRTC and after about 2 months, number of the truck was given and the case was filed against the truck driver. It appears that the aforesaid uncle of the deceased was working as head constable in a police station from Aurangabad and he had taken initiative in giving report and supplying information to the police. But only due to this circumstance inference is not possible and to hold that entire false record was made. Another circumstance

was argued that in the cross examination, owner of the truck has admitted that at the relevant time his truck was handed over to workshop for repairing. Such admission in isolation cannot be considered and the evidence as a whole of both the driver and the owner need to be considered. Evidence is given by aforesaid Tarak that he had no personal knowledge about the accident but he learnt about the involvement of the vehicle from the persons who were doing business in the vicinity. Statement of one of such persons namely Syed Asif was recorded by police. He is running hotel situated near the spot of accident. This Court has seen the map of the scene of accident and it shows that the accident did not take place at the T-Point or at the square but it took place at some distance from the square. So there was no opportunity to the persons who were doing business in that square to witness accident. From the police papers it can be said that heavy vehicle was involved in the accident as the deceased was virtually crushed under the wheels of the vehicle. After the incident the truck was taken to Gujarat. The driver did not stop and he ran away with the vehicle. The persons of the vicinity must have

rushed to the spot after accident, after impact. So on the basis of the admission, inference cannot be drawn that the owner and driver are falsely admitting that their vehicle was involved in the accident. There was no reason for taking such blame as police case was also filed against the respondent No.1 out of this accident. In view of these circumstances, this Court holds that the Tribunal has not committed any error in holding that the aforesaid truck was involved in the accident.

9) The Tribunal has awarded compensation of Rs.5.65 lakh. Age of the deceased was around 20 years. Oral evidence is given that he was in milk business. One owner of hotel is examined to prove that deceased was supplying milk to the hotel. 7/12 extract is produced to show that in the names of father and the deceased there was agricultural land in which there was a well. In view of this unrebutted material the Tribunal has presumed that the monthly income of the deceased was at least Rs.5000/-. As he was unmarried, 50% amount is deducted towards personal expenses and the loss of dependency is calculated. The amount of Rs.20,000/- is given under the

head of loss of love and affection and Rs.5000/- is given under the head of funeral expenses. In view of the age of the deceased no prospective increase of the income is considered and meagre amount of Rs.20,000/- is given under the head of loss of love and affection. In view of these circumstances this Court holds that compensation awarded is on lower side and it is not possible to interfere in the decision of the Tribunal on the point of quantum of compensation also.

10) In the result, the appeal stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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