

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2948 OF 2008

National Insurance Company Limited
Through it's Divisional Manager,
Hazari Chambers, Station Road,
Aurangabad

...APPELLANT
(Orig. Resp No.4)

VERSUS

1. Sushila W/o. Babruwan Bedre,
Age: 37 years, Occ: Household,
R/o. Makni, Tq. Omerga,
Dist. Osmanabad
2. Anjali D/o. Babruvan Bedre,
Age: 15 years, Occu: Education,
U/g. Of claimant No.1 real mother
3. Rupali D/o. Babruvan Bedre,
Age: 14 years, Occu.: Education
U/g. Of claimant No.1 real mother
4. Shriram S/o. Babruvan Bedre,
Age: 13 years, Occu: Education,
U/g. Of claimant No.1 real mother

**(Orig. Claimants
Nos. 1 to 4)**

5. Shridhar Namdeo Pawar @ Jadhav,
Age: Major, Occu: Driver & Agri.,
R/o. Nandurga, Tq. Ausa,
Dist. Latur

(Orig. Resp. No. 1)

6. Union Bank of India
Through Manager,
Branch Ahmedabad

(Orig. Resp No.3)

(R.No.6 deleted as per
Court's order dated. 21.7.08)

7. M/s. Araveli Finance Ltd.

Through Its Managing Director,

(Shri. Chandansing Padamsing
Champawat
of Ahmadabad through power
of attorney Vikramsing Padamsing
Khangarot,
Age: Major, Occu.: Business,
R/o. Rajchambers, C-118,
Near Kotla Stand, (Orig. Resp. No.5)
Ahmednagar – 414 001.)

Shri Chandansing s/o. Padamsing
Champawat
R/o. Dr. Kasturba Chambers,
2nd floor, in front of R.B.I.
Quarters, Ashram Road, Ahmedabad

(Amendment carried as per Hon'ble
courts order dated 21.07.2008).

...RESPONDENTS

Mr. S.S. Chapalgaonkar, Advocate for the
appellant.

Mr. V.D. Hon, Senior Counsel for the
Respondent Nos. 1 to 4;

Mr. R.M. Malpani, Adv. h/f. Mr. A.B. Kale,
Advocate h/f. Respondent No.5.

CORAM : P.R.BORA, J.

DATE : 27th July, 2017.

ORAL JUDGMENT:

1) Heard. The present appeal is filed by
the Appellant - insurance company taking

exception to the Judgment and Award passed by Motor Accident Claims Tribunal, Latur (hereinafter referred to as the Tribunal).

2) The aforesaid claim petition was filed by present Respondent Nos.1 to 4 (hereinafter referred to as the original claimants) claiming compensation on account of death of one Babruwahan Bedre, alleging the same to have been caused in a vehicular accident happened on 18th March, 1998 having involvement of a motorcycle bearing Registration No. MHX-R-106 and the jeep bearing registration No. MH-16-C-7118.

3) It was the contention of the claimants that when deceased Babruwahan was proceeding on his motorcycle, it was dashed by the offending jeep and in the accident so happened, Babruwahan died on the spot. It was further alleged by the claimants that the accident in question happened because of sole negligence on part of driver of the jeep. As stated in the claim petition, age

of deceased Babruwahan was 33 years at the time of his death and he was running a pesticide shop in village Makni and was earning around Rs. 4,500/- per month from the said shop. The claimants had, therefore, claimed compensation of Rs. 7,00,000/- from owner and insurer of the offending jeep involved in the accident.

4) The claim petition was resisted by the respondents before the Tribunal mainly on two grounds; contributory negligence of the deceased and the income of the deceased. The Tribunal, after having considered the oral as well as documentary evidence on record, held the claimants entitled for the total compensation of Rs. 7,00,000/- and made it payable from the owner and insurer of the offending jeep involved in the alleged accident. Aggrieved by, the insurance company has preferred the present appeal.

5) Shri Chapalgaonkar, learned Counsel appearing for the appellant – insurance company,

assailed the impugned Judgment and Award on two grounds. The learned Counsel submitted that the Tribunal has erred in not considering the contention of the respondents as about the contributory negligence of the deceased in occurrence of the alleged accident. The learned Counsel submitted that the situation on the spot of occurrence clearly demonstrates that it was head on collision accident and in such circumstances, sole negligence could not have been attributed on part of driver of the offending jeep. The learned Counsel submitted that even if it is admitted that greater negligence was on part of the driver of the jeep, at least some negligence must have been attributed on part of deceased also since it was a head on collision accident. The learned Counsel further submitted that the Tribunal has also erred in holding income of deceased Babruwahan to the tune of Rs. 4,500/- when there was no evidence in that regard. The learned Counsel further submitted that to prove the

income of the deceased, burden was on the claimants and the same has not been properly discharged by the claimants. According to the learned Counsel, the claimants could have placed on record some more convincing evidence as about the income of the deceased, when it was their case that deceased was running the pesticide shop. The learned Counsel submitted that neither account books, nor bank pass book nor purchase or sale orders were produced and without any such evidence, relying on two certificates, which were showing that deceased was carrying out the business of insecticides, his income has been assessed by the Tribunal. The learned Counsel submitted that the law is well settled that in absence of any evidence as about the income, the same has to be assessed on the basis of notional income. The learned Counsel further submitted that, at the relevant time, the notional income used to be held to the tune of Rs.1,500/-, as such in no case, the income of the deceased was liable to be held @ Rs. 4,500/- per month. The

learned Counsel, therefore, prayed for adequate modification in the impugned Judgment and Award on the aforesaid two grounds.

6) Shri V.D.Hon, learned Sr. Counsel appearing for the Respondents – original claimants, supported the impugned Judgment and Award . Taking me through the discussion made by the Tribunal, in paras 20 to 24 of the judgment, the learned Counsel submitted that the evidence as about the income has been properly analyzed by the Tribunal and the ultimate conclusion recorded by the Tribunal as about the income of deceased Babruwahan is based on the evidence and does not require any interference. The learned Sr. Counsel further submitted that deceased Babruwahan was holding an agency of a reputed company and two such certificates are on record. The learned Counsel further submitted that the Agriculture Officer has certified that deceased Babruwahan was a license holder for sale of seeds and insecticides in village Makni. The learned

Counsel submitted that the Tribunal has not committed any error in holding the income of the deceased to the tune of Rs. 4,500/- per month and accordingly assessed the amount of compensation based on the said income.

7) The learned Counsel further submitted that the Tribunal has rightly held the jeep driver to be solely negligent in occurrence of the alleged accident. Taking me through the situation on the spot of occurrence of the alleged accident, as is revealing from the spot panchanama, the learned Counsel submitted that no blame could have been attributed on part of the deceased. The learned Counsel submitted that from the situation on the spot, no such inference can be drawn that it was a head on collision accident. The learned Counsel further submitted that the situation on the spot after the accident reveals that the deceased was on his correct side leading to the inference that the accident did not occur because of any fault on his part. The

learned Counsel submitted that the Tribunal has recorded a correct finding about the negligence and the same need not warrant any interference.

8) I have considered the submissions advanced by learned Counsel appearing for the respective parties. I have perused the impugned judgment, the evidence on record and the other material placed on record. Firstly, I would deal with the aspect of negligence. On perusal of the spot panchanama, it is difficult to accept the contention of the learned Counsel appearing for the appellant that it was a head on collision accident. I agree with the submission made by the learned Sr. Counsel that from the situation of the vehicles on the spot of occurrence, the inference which emerges only leads to the negligence on part of the driver of the offending jeep. Admittedly, the police has also prosecuted only the driver of the jeep for the occurrence of the alleged accident. I, therefore, do not see any reason to take any contrary view. The

Tribunal has rightly held the driver of the jeep solely responsible for occurrence of the alleged accident.

9) In so far as income of the deceased is concerned, the Tribunal, in para 24 of its judgment, has observed that, from the material placed on record, it has reached to the conclusion about the income of the deceased. The discussion made by the Tribunal demonstrates that the Tribunal has considered the certificates on record and also the situation of village Makni and has arrived at the conclusion that deceased Babruwahan may be earning around Rs.4,500/-. Though there was no concrete documentary evidence in the form of accounts, so as to determine the monthly or annual income of the deceased, it appears to me that, on the basis of the evidence, the tribunal has assessed the income of the deceased, which according to me, cannot be said to be arbitrarily determined or cannot be said to be without any evidence. Once the Tribunal has

taken some view and which is a possible view about the income of the deceased, I see no reason to cause interference in the conclusion so recorded by the Tribunal. The appeal, therefore, fails and is accordingly dismissed, however, without any order as to costs. Pending civil application, if any, stands disposed of.

10) While admitting the present appeal, the appellant insurance company was directed to deposit 50% of the amount as awarded by the Tribunal and the record reveals that same was permitted to be withdrawn by the claimants. Considering the fact that the alleged accident had happened in the year 1998, the insurance company is directed to deposit the remaining amount of compensation with interest accrued thereon, in the Executing Court within four months from the date of this order.

(P . R . BORA)
JUDGE

bdv/