

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

FIRST APPEAL NO.198 OF 2006

The New India Assurance
Company Ltd. Through It's
Divisional Manager,
Adalat Road, Aurangabad.

...APPELLANT

VERSUS

1. Smt. Kirti @ Vijaya W/o.
Vijaykumar Giram,
Age: 27 years,
Occu.: Household,
R/o. Sangam,
Tq. Parli (Vaijnath),
Dist. Beed.
2. Chaitanya S/o. Vijaykumar
Giram, Age: 7 years,
Occu. Minor, Under Guardianship
of his real natural mother,
Smt. Kirti @ Vijaya
W/o. Vijaykumar Giram,
R/o. Sangam, Tq. Parli (Vaijnath),
Dist. Beed,
3. Vaijnathrao S/o. Ramji Giram,
Aged: 64 years, Occu. Agril,
R/o. Sangam Tq. Parli (Vaijnath),
Dist. Beed,
4. Sow. Gajarabai W/o.
Vaijnathrao Giram,
Aged : 59 years,
Occu. Household,
R/o. Sangam,
Tq. Parli (Vaijnath),
Dist. Beed,

5. Sudarshan S/o. Vijaykumar Giram,
Age: 7 years, Occu. Minor,
Under Guardianship of his
real natural mother,
Smt. Kirti @ Vijaya W/o.
Vijaykumar Giram,
R/o. Sangam, Tq. Parli (Vaijanth),
Dist. Beed,
6. Mr. Kunda Swami C. Pandian,
R/o. Nehru Nagar, RXX-105/113,
Holy Cross Road,
Poinsur, Kandivali West,
Mumbai – 4000670.

**...RESPONDENTS
(Resp. No. 1 to 5
Orig. Claimants &
Resp. No. 6 Org.
Resp. No.1)**

Mr. Mandar Deshmukh, Adv. h/f. Mr. S.G.Chapalgaonkar,
Advocate for Appellant;
Mr. S.K. Adkine, Advocate for Resp. Nos. 1,2,3 & 5.

**WITH
FIRST APPEAL NO.1169 OF 2014**

1. Smt. Kirti alias Vijaya w/o. Vijaykumar Giram,
Age: 29 yeras, Occu.: Household,
R/o. Sangam Tq. Parli (Vaijnath)
Dist. Beed.
2. Chaitanya s/o. Vijaykumar Giram
Age: 10 years, Occu. Minor u/g. of real
natural mother Applicant No.1
Kirti w/o. Vijaykumar Giram
R/o. As above
3. Sudarshan s/o. Vijaykumar Giram,

Age:9 years, Occu.: Minor u/g. Of real natural mother applicant No.1 Kirti w/o. Vijaykumar Giram R/o. As above.

4. Vaijnath s/o. Ramji Giram,
Age: 65 years Occu. Agril,
R/o. Sangam Tq. Parli (Vaijnath)
Dist. Beed.

5. Gajarabai w/o. Vaijanathrao Giram,
died L.Rs. Applicant/Appellant
No.1 to 4.

**...APPELLANT
(Orig.Claimant)**

VERSUS

1. The New India Assurance Company Ltd.
Through its Divisional Manager,
Adalat Road, Aurangabad
- (2. Mr. Kunda Swami C. Pandia,
Age: Major, Occu. Business,
R/o. Nehru Nagar, RXX-105/113
Holy Cross Road, Poimsur, Kandivali,
West, Mumbai – 400 670.)

(Respondent No.2 deleted as per
Court's order dated 23/04/2014.)

Mr. S.K. Adkine, Advocate for Appellants.

CORAM : P.R.BORA, J.

DATE : JULY 25th 2017

ORAL JUDGMENT:

1. Since both these appeals are arising out of one

judgment, both the appeals are heard commonly and I deem it appropriate to decide these appeals by common reasoning.

2. In First Appeal No.198/2006, the office note shows certain objections. It is reported that the Insurance Company has not taken on record the legal representatives of deceased respondent no.4. However, as has been submitted by the learned Counsel appearing for the original claimants, the legal representatives of deceased respondent no.4 are already there on record. The objection so raised, therefore, stands satisfied.

Another objection is that respondent no.6 is not yet served. In view of the fact that the Insurance Company has challenged the impugned judgment and award on the count of quantum and contributory negligence, it makes no difference whether owner is served or not. In no case, liability is going to be shifted to the owner even if amount of compensation is enhanced or decreased. The service on respondent no.6 is, therefore, exempted.

3. With the consent of the learned Counsel

appearing for the parties, both the appeals are taken up for final disposal.

4. First Appeal No.198/2006 is filed by the Insurance Company challenging the impugned judgment and award on the point of quantum as well as alleging contributory negligence on the part of the deceased; whereas, First Appeal No.1169/2014 is filed by the claimants seeking enhancement in the amount of compensation.

5. Heard Mr. Mandar Deshmukh, learned Counsel holding for Shri Chapalgaonkar, learned Counsel appearing for the appellant Insurance Company. Learned Counsel submitted that the Tribunal has erred in not appreciating the fact that, in occurrence of the alleged accident, negligence on the part of the deceased was equally responsible. Learned Counsel submitted that the alleged accident was a head on collision. Deceased was on a motor cycle and he was coming from the opposite direction to which the Mini Bus was proceeding. Learned Counsel submitted that it is the settled law that in case of head on

collision 100 per cent negligence, in no case, can be attributed on the part of driver of one vehicle. The contention so raised is strongly opposed by Shri Adkine, learned Counsel appearing for the claimants.

6. I have carefully perused the impugned judgment as well as the evidence and the other material on record. On having perused the evidence on record, I do not find any substance in the objection raised by the appellant Insurance Company. Learned Tribunal in paragraph no.7 of the judgment has elaborately discussed the said issue. I deem it appropriate to reproduce hereinbelow the observation made by the Tribunal in the said paragraph:

"7. Deceased Vijaykumar was riding a motorcycle towards Pune and Prachi was a pillion rider on the said motorcycle. According to the petitioners, minibus bearing No. MH-02-Y-5388 gave a dash to the motorcycle because of which serious injuries were caused to Vijaykumar and Prachi. A panchanama of the place of incident (Exh.36) shows the relative position of the motorcycle and minibus on the road. The panchnama mentions that these two vehicles were on the road at a distance of about 35 ft. from each other. The panchnama mentions that the motorcycle was lying on the road at a distance of about 15 ft. from the southern side border of the

road, It is mentioned in the panchanama that the width of the tar road at the relevant spot was 35 ft. and on either side of the tar road, there was a kacha road of 5 ft. width. If 15 ft. distance from southern border of the road is counted, it appears that the motorcycle was on the spot which was within the range of 10 ft. width from southern side of the tar road. The minibus was proceeding from Pune side towards nagar, that means, from West to East, whereas motorcycle driven by Vijaykumar was proceeding by the road from east to West. The motor-cyclist, therefore, appears to have been driving the motorcycle by the southern side of the road and the spot where impact took place being within the width of 15 ft from southern border of the said road, he appears to be driving his vehicle by right side. On the contrary, the minibus was expected to be driven from the northern half side of the road. The minibus driver had no reason to come towards southern side. But, he seems to have driven the minibus in a reckless manner and that is why the impact between the two vehicles could not be avoided. The Police have drawn the panchnama of the place of incident and recorded the statements of eye witnesses, and on the basis of that, they have found that the minibus driver was negligent and because of that accident occurred. Accordingly, the crime regarding that incident is registered against the driver of the said minibus. Under these circumstances, I find that the accident in question took place because of the rashness and negligence on the part of the minibus driver. As the respondent No.1 is the owner of the said minibus, he becomes vicariously liable for the rash and negligent driving of his servant i.e. driver of said minibus. As the said minibus was insured with respondent No.2 at the relevant time, it cannot avoid the liability to pay the compensation to the petitioners. It cannot be disputed that deaths of deceased Vijaykumar as also Prachi have occurred because of the serious wounds that they received in the accident. The post mortem report in respect of Vijaykumar is on record at Exh. 41. It's perusal shows that he had sustained fractures

to left humerus, left lower end of shaft femur, fracture to left ribs. The doctor who performed post mortem on vijaykumar has mentioned that his death took place due to shock due to multiple injuries. From this evidence on record, it cannot be doubted that the death of Vijaykumar took place because of the injuries sustained by him in the accident involving minibus bearing No. MH-02-Y-5388. I have, therefore, no doubt in answering issue No.1 and 2 in the affirmative. Naturally, the petitioners who are legal representatives and dependents on deceased Vijaykumar are entitled to get compensation for they have lost their financial support."

7. On perusal of the discussion made by the learned Tribunal as above, there remains no doubt that the accident in question happened because of the sole negligence on the part of the driver of the Mini Bus. I have also perused the spot panchanama. From the averments in the spot panchanama and the situation, as is revealing from the spot panchanama, also no negligence can be attributed on the part of the deceased. The objection raised by the appellant-Insurance Company as about the contributory negligence of the deceased in occurrence of the alleged accident is, therefore, liable to be rejected.

8. Another objection was raised in respect of driving license of the driver of the Mini Bus, however, as

has been observed by the Tribunal, the Insurance Company has not discharged the burden to prove the said fact by adducing positive evidence in that regard. I, hence, do not see any reason to interfere with the findings recorded by the learned Tribunal.

9. The Tribunal has awarded compensation of Rs. 10,08,000/-. As has been alleged by the Insurance Company, the compensation awarded by the Tribunal is un-reasonable and is on higher side, though, no supporting evidence was adduced by the claimants. As against the same, in the appeal filed by the original claimants it is their contention that the Tribunal has not awarded just and fair compensation and that the claimants were entitled to more compensation than awarded by the Tribunal. I have perused the discussion made by the Tribunal in this regard. Deceased Vijay was serving in a Seeds Company, his last drawn salary was Rs. 6,900/-. The claimants had examined the Managing Director of Saicon Seeds Pvt. Ltd., Pune to prove salary income of the deceased and the same was duly proved through the evidence of the said witness. It had also come on record that the deceased was being

paid the bonus and the incentives. Considering the said evidence, the Tribunal has held the income of the deceased to the tune of Rs.7,000/- per month and has accordingly determined the compensation. In view of the evidence on record which has been correctly analysed by the Tribunal, I do not see any merit in the objection raised by the Insurance Company that the compensation, as has been awarded by the Tribunal, is on higher side or unreasonable. Similarly, I do not see any case for enhancement in the compensation as has been claimed by the original claimants.

10. For the reasons stated above, both the appeals are liable to be dismissed and are accordingly dismissed. However, without any order as to the costs.

. Civil Application/s if any, stand disposed of.

(P.R.BORA)
JUDGE

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AGP/198-06FA