

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

FIRST APPEAL NO. 1049 OF 2012

1. Halimabi W/o Akbar Pathan,
Age: 56 years, occu: Household,
R/o Manjansumba, Taluka &
District Beed.
 2. Mohammad S/o Akbar Pathan,
Age: 28 years, Occ. Service,
R/o : as above.
-APPELLANTS.
(Ori. Claimants)

V E R S U S.

1. Shaikh Rafiq S/o Shaik Majed,
Age: 35, Occ: Driver,
R/o: Galapur, Taluka Erandol,
District : Jalgaon.
 2. Abdul Rahim s/o Abdul Majeed Salar,
Age: Major Occup. :Truck Owner,
R/o H. No. 387, Shanipeth Jalgaon.
 3. National Insurance Company Ltd.,
Through its Branch Manager,
Nashikkr Shopping Centre Maharana
Pratap Chowk, Dhule Taluka &
District Dhule.
 4. Punjab S/o Ashruba Gharat,
Age: Major; Occup. Jeep Owner,
R/o : Sakhare Borgaon, Tq. Dist. Beed.
 5. The Branch Manager,
Oriental Insurance Company Ltd.,
Subhash Road, Beed.
- ...RESPONDENTS**
(Original Opponents)

Mr. P.D. Kale, Advocate for appellant
Respondents No. 1 and 2 Dismissed.
Mr. P.P. Bafna, Advocate for respondent No. 3
Mr. H.V. Tungar, Advocate for respondent No. 4
Mr. M.K. Goyanka Advocate for respondent No. 5

WITH
CROSS OBJECTION NO. 4824 OF 2014
IN
FIRST APPEAL NO. 1044 OF 2012

National Insurance Co. Ltd.,
 Branch Dhule Now through its
 Divisional Office at Hazari
 Chambers, Station Road, Aurangabad

CROSS OBJECTIONER
 (Ori. Respdt. No. 3)

V E R S U S.

1. Halimabi W/o Akbar Pathan,
 Age: 56 years, occu: Household,
 R/o Manjansumba, Taluka & Dist. Beed.
2. Mohammad S/o Akbar Pathan,
 Age: 28 years, Occ. Service,
 R/o : as above.APPELLANTS.
 (Ori. Claimants)
3. Shaikh Rafiq S/o Shaikh Majed,
 Age: 35 years; Occ: Driver,
 R/o: Galapur, Taluka Erandol,
 District ; Jalgaon. (Ori. Respdt. No. 1)
4. Abdul Rahim s/o Abdul Majeed Salar,
 Age: Major Occup. :Truck Owner,
 R/o : H. No. 387, Shanipeth Jalgaon.(Ori. Respdt. No. 2)
5. Punjab S/o Ashruba Gharat,
 Age; Major; Occup. Jeep Owner,
 R/o Sakhare Borgaon, Tq. Dist. Beed. (Ori. Respdt. No. 4)
6. The Branch Manager,
 Oriental Insurance Company Ltd., (Ori. Respdt. No. 5)
 Subhash Road, Beed. ...**RESPONDENTS**

Mr. P.P. Bafna, Advocate for Cross-Objectitioner
 Mr. P.D. Kale, Advocate for Respondents No.1 and 2 (Absent)
 Respondents No. 3 and 4 Dismissed.
 Mr. H.V. Tungar, Advocate for respondent No. 5
 Mr. M.K. Goyanka Advocate for respondent No. 6

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CORAM : K.K. SONAWANE, J.

RESERVED ON : 25th SEPTEMBER, 2017.

PRONOUNCED ON : 12th DECEMBER, 2017.

JUDGMENT :-

1. Being dissatisfied by the impugned judgment and award dated 13-12-2010 passed by Motor Accident Claims Tribunal, Beed (for short "Tribunal") in Motor Accident Claim Petition No. 29 of 2008, the appellants-original claimants by resorting to remedy under section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") preferred present appeal to redress their grievances.

2. Genesis of the appeal culled out in brief is that, the appellants -original claimants are the mother and brother of deceased Imran s/o Akbar Pathan. According to appellants, on 11-01-2008 at about 2.00 a.m. the deceased accompanied with one Laxman Devidas Chavan was proceeding towards village Manjarsumbha from Beed in his own vehicle jeep bearing No. MH-23/E-1806. The deceased Imran was himself driving the jeep and when they reached near Kanhayya Dhaba on Manjarsumbha - Beed highway the truck bearing registration No MH-19/Z-0932 came speedily from opposite direction and gave dash to the vehicle-jeep of the deceased Imran from its front side. The collision of both vehicles resulted into serious injuries to deceased Imran. He was escorted to the Hospital at Beed. The concerned Medical Expert made endeavour to resuscitate the injured Imran, but he breathed his last.

3. It has been alleged that the alleged mishap occurred due to rash

and negligent driving of the vehicle-truck by its driver, resulting into death of deceased Imran. The offending vehicle truck was being driven on the wrong side in excessive speed. The driver could not control the vehicle truck and gave dash to the vehicle jeep of the deceased Imran. The First Information Report of accident came to be lodged against driver of the truck by one Munir Maheboob Shaikh. Investigating Officer carried out investigation and filed charge-sheet for the offence punishable under sections 304-A, 279, 338, 427 of the Indian Penal Code (for short "IPC"). The appellants-original claimants i.e. mother and brother of deceased Imran, blamed the driver of the truck for accidental death of deceased Imran. Therefore, they preferred the claim petition under section 166 of the Act of 1988 for compensation against owner, driver and insurer of the offending vehicle truck. The claimants also impleaded the driver, owner and insurer of the vehicle jeep as party respondents in the claim petition. The jeep was driven by deceased Imran at the relevant time of accident.

4. According to claimants, the deceased Imran was 25 years old youngster. He was healthy and hard worker. He used to earn Rs.5000/- per month. He was the bread winner of the family. Therefore, the claimants claim Rs.5,00,000/- as compensation for the loss caused to them following accidental death of deceased Imran.

5. In response to notice, respondents No. 1 and 2 driver and owner of the offending vehicle -truck filed written statement and denied allegations. It has been contended that the alleged accident was caused due rash and negligent act on the part of jeep driver i.e.

deceased Imran himself. He did not take care while driving the vehicle. It was a case of contributory negligence.

6. Respondent No. 3 - Insurance company also denied the allegation that accident occurred due to actionable negligence on the part of driver of vehicle truck. It was denied that claimants were dependents on the income of the deceased Imran. Respondent No. 5 - Insurer of the jeep denied monetary liability following death of deceased Imran, who was driving the vehicle at the relevant time of accident. Respondent No. 4 previous owner of the the vehicle-jeep also appeared before the Tribunal and contended that the ownership of the vehicle jeep was already alienated in favour of deceased Imran and he has no concerned at all with vehicle jeep.

7. In view of rival pleadings on behalf of both sides, learned Member of the Motor Accident Claims Tribunal at Beed, framed the requisite issues and proceeded further to determine the claim on the basis of evidence adduced on record. In order to establish the claim, appellant No. 1-original claimant, Halimabi stepped into the witness box and adduced her evidence. She also produced relevant documents from the police record comprising spot panchnama, inquest panchnama, post mortem report, document of Insurance Policy of the offending vehicle - truck etc. After appreciation of attending circumstances on record, the learned Tribunal pleased to allow the claim partly and granted amount of Rs. 1,74,000/- as an compensation with interest to claimant No. 1 mother Halimabi of the deceased Imran. However, claim of respondent No. 2 brother of the deceased

came to be dismissed as he was found not dependent on the income of deceased Imran. Being aggrieved by the inadequate quantum of compensation determined by the Tribunal as well as dismissal of the claim of appellant No. 2, brother of the deceased Imran, the appellants filed the present appeal.

8. Mr. Kale, learned counsel for the appellants assailed that the Tribunal did not appreciate the facts and circumstances of the case in its proper perspective. It was specifically contended that the deceased used earn Rs.5000/- per month, but the Tribunal failed to consider the same and arrived at wrong conclusion while determining the quantum of compensation in this case. The order of dismissal of the claim of brother of the deceased Imran is also illegal, imperfect and not as per the provisions of law. The appellant - brother, being legal representative of the deceased Imran has an right to get compensation for the loss caused to him. According to learned counsel, manner in which the accident occurred itself demonstrate that respondent No. 5 - Oriental Insurance Company being insurer of the vehicle jeep was also liable to pay compensation to the claimants. The deceased was travelling in the said jeep, therefore, respondent No. 5 Insurer is liable to indemnify the insured in this case.

9. Learned counsel for respondent No. 3 National Insurance Company of the offending vehicle truck has raised objection to the contentions put forth on behalf of appellants/original claimants and submits that the deceased Imran was driving the vehicle -jeep at the relevant time in rash and negligent manner and it was a case of

contributory negligence. Therefore, sole liability cannot be fastened on respondent no.3. The respondent - National Insurance Company also filed cross-objection on record and put into controversy the negative findings expressed by the Tribunal in regard to contributory negligence of the deceased Imran, while driving the Jeep at the time of alleged accident. According to learned counsel for respondent No. 3-National Insurance Company, there was head on collision between two vehicles involved in the accident, but the learned Tribunal did not appreciate these circumstance and committed error while imposing entire liability on the driver of the truck for the alleged mishap.

10. Having heard the arguments canvassed on behalf of both sides. It reveals that appellants - claimants raised two folds objection for deliberation in this appeal;

(i) Whether quantum of compensation determined by the Tribunal is inadequate as well as not just and proper compensation for the loss caused following accidental death of deceased Imran?

(ii) Whether brother of the deceased Imran is entitled to get compensation under section 166 of the Act of 1988 in this case?

11. As referred supra, respondent No. 3-National Insurance Company also preferred cross-objection and raised issue in regard to contributory negligence on the part of deceased Imran being driver of the vehicle-jeep involved in the accident.

12. Intense scrutiny of the factual scenario of alleged accident as well as contentions propounded on behalf of both sides, reflects that the arguments advanced on behalf of appellants and respondent No. 3-National Insurance Company relating to cross-objection appears not sustainable and considerable one.

13. It is not put into controversy that the offending vehicle-truck as well as vehicle jeep, driven by the deceased Imran himself were involved in the vehicular accident. It is also admitted fact that in the mishap deceased Imran received fatal injuries and while medical treatment in the hospital, he succumbed to injuries. The learned Tribunal arrived at the conclusion that alleged vehicular accident occurred only due to rash and negligent driving of the Truck driver. The circumstances on record buttress the conclusion drawn by the Tribunal. The attending circumstances available on the spot of incident would categorically negate the allegations of contributory negligence on the part of deceased Imran. In contrast, it would point out needle of suspicion towards the driver of the vehicle truck involved in the accident. The learned Tribunal has correctly appreciated the circumstances on record and cast the liability on the truck driver. The document of spot Panchnama (Exhibit-28) came to be produced on record. There was a sketch map of the scene of occurrence appended with the panchnama of the spot. The sketch was drawn by the police immediately after the alleged mishap. The panchnama demonstrate that alleged vehicle truck at the relevant time of accident crossed the entire road, came on the wrong side and then collided with the vehicle jeep of deceased Imran, which was coming from the opposite direction.

The vehicle-truck was driven by the driver on its wrong side, however, vehicle jeep of deceased Imran was coming from its right direction. It seems that the driver of the alleged truck could not control the vehicle as it was driven on wrong side by crossing the road. In the result, the truck gave dash to the jeep of the deceased Imran.

14. In view of doctrine of "*res-ipsa loquitur*" the inference can be drawn that actionable negligence on the part of driver of the vehicle truck was itself the factor for occurrence of alleged accident in this case. The factual aspect indicate that the deceased Imran was driving the vehicle jeep not in negligent manner. The alleged accident might be happened in manner, which do not connote negligence on his part. The manner in which accident occurred speaks itself that driver of the alleged truck was at fault and no one else would be blamed for the same. Therefore, allegation of contributory negligence in this case appears to be preposterous and incomparable one. The approach of Tribunal while appreciating the circumstance on record was just and proper. The Tribunal has rightly discarded the possibility of any sort of negligence on the part of deceased Imran, driver of the jeep for occurrence of mishap as alleged in this case.

15. Now, turning to determination of quantum of compensation amount, it reveals that there were no infirmities in the findings expressed by the Tribunal. No doubt, deceased Imran was the 25 years old and bachelor at the time of accident. According to claimants, the deceased Imran was earning Rs.5000/- per month and he was the only earning male member of the family. But, due to his sudden demise,

family suffered financial loss. The claimants were completely depend upon the income of deceased Imran, therefore, they claimed compensation for the loss of earning. Obviously, except bare version of the claimant -Halimabi, there was no any evidence on record to show that income of the deceased Imran was of Rs.5000/- per month. The learned Tribunal has correctly considered the circumstances and instead of appreciating the bare version of the claimant for income of Rs. 5000/- per month of deceased Imran, preferred to calculate the loss of dependency, on the basis of notional income of Rs.3000/- per month. The mode and manner, in which the learned Tribunal determined the quantum of compensation amount seems to be just, proper and reasonable one. The Multiplier of "8" applied in view of age of the mother of deceased Imran and the compensation amount calculated to the tune of Rs.1,74,000/- found adequate and appropriate one. There is no need to cause any interference in the findings expressed by the Tribunal for determination of quantum of compensation for the loss caused to the claimants in this case.

16. Admittedly, the deceased was bachelor at the time of accident resulting into his death. The present case is relating to the Muslim family. The legal representative of deceased Imran in this case would be his mother as well as brother as they would represent his estate. The expression legal representative used in section 166 of the Act of 1988 is to be construed in terms of its definition given under section 2(11) of the Civil Procedure Code and under section (1)(g) of the Arbitration and Conciliation Act 1996. However, liability in terms of section 166 of the Act of 1988 is pertains to strict liability and it

depends on the various factors. But, it does not arise in case of lack of dependency. In the instant case, claimant- Mohammad Akbar Pathan appears to be elder brother of deceased Imran. The Tribunal found reluctant to accept contentions that elder brother would be one of the dependent on the income of younger brother deceased Imran. There is no any evidence on record to show that there was financial loss to brother -claimant No. 2. In absence of such evidence, it would difficult to hold that he is entitled to claim compensation under section 166 of the Act of 1988. The Tribunal has rightly rejected the claim of respondent No.2 herein-original claimant No. 2.

17. In the above premise, there is no impediment to arrive at the conclusion that there were no circumstances on record to show contributory negligence on the part of deceased Imran while driving the vehicle Jeep involved in the accident. The Tribunal committed no error while exonerating the insurer of the vehicle Jeep. In contrast, it is evident that the driver of offending vehicle-truck was the sole person responsible for alleged accident resulting into death of deceased Imran. Therefore, the liability to indemnify the insured-the owner of offending vehicle-truck is required to be fastened on the respondent – National Insurance Company. The findings of Tribunal are justifiable and deserves to be upheld. The deceased, Imran was the youngster of 25 years old and he was bachelor at the time of his death following vehicular accident. In such peculiar circumstances, the mode and manners adopted by the Tribunal for determination of quantum of compensation appear just, proper and reasonable one. No fault is noticeable while calculating the compensation by applying the multiplier

of "8" on the basis of age of the mother-claimant Halima. The conclusion of notional income of Rs.3,000/- p.m. also found reasonable and considerable one. In regard to the locus of brother of deceased Imran to claim loss of dependency, the conclusion drawn by the Tribunal also found based on the settled principle of law. The term "legal representative" occurred in Section 166 of the Act, 1988 is to be construed in the context with strict liability and not under "no fault liability" as envisaged under Section 140 of the Act. The liability under Section 166 of the Act does not arise in the cases where there is an lack of dependency. Therefore, no interference warrants in the findings expressed by the learned Tribunal.

18. In view of the aforesaid discussion, the appeal as well as cross-objection stand dismissed. No order as to costs.

Sd/-
[K. K. SONAWANE]
JUDGE

MTK.
