

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

FIRST APPEAL NO.2876 OF 2008

National Insurance Co. Ltd.,
Having it's Registered Office
at 3, Middleton Street,
Kolkata, through the Sholapur
Divisional Office, NOW
through the Aurangabad
Divisional Office at Hazari
Chambers, Station Road,
Aurangabad

= **APPELLANT**
(orig. Resp.No.3)

VERSUS

1. Namdeo s/o. Kundlik Gardade,
Age : 50 years, Occu. Agriculture
R/o. Village Mugaon, Tq. Paranda
Dist. Osmanabad

2. Kaushalya w/o Namdeo Gardade,
Age: 45 years, Occu. Household,
R/o. Mugaon, Tq. Paranda,
Dist. Osmanabad

= **RESPONDENTS**
(Orig. Claimants
No. 1 & 2)

3. P. Selvan s/o. Palaniswamy,
Age: Adult, Occu. Truck-Owner
R/o. 2-37, Marappanaic
Bommampaty, P.O. Namakkal
(Tamilnadu State)

= **Respondent**
(Orig. Resp. No.1)

4. Kiran s/o. Babanrao Jagtap,
Age: Adult, Occu. Car-Owner
R/o. Flat No.3, C-Wing, Kalagram
Society, Bhusari Colony,
Phad Road, Pune - 411 038.

= **RESPONDENT**
(Orig. Resp. No.2)

5. Royal Sundram Alliance Insurance
Co. Ltd., 1st floor, Rachna Trade
Estate, SNTD Crossing, Plot No.64,

Law College Road, Pune – 411004

= **RESPONDENT**
(Orig. Resp. No.4)

Mr. R.C. Bora, Adv. h/f. Mr. P.P. Bafna, Advocate for Appellant;

Mr.P.S. Chavan, Advocate for Respondent Nos. 1 and 2.

Mr. A.S. Deshpande, Advocate for Respondent No.5.

CORAM : P.R.BORA, J.

DATE : 20th July, 2017.

ORAL JUDGMENT:

1) Heard. The appellant – insurance company has filed the present appeal taking exception to the Judgment and Award passed in MACP No.163/2004 decided by the Motor Accident Claims Tribunal, at Osmanabad (hereinafter referred to as the Tribunal).

2) The aforesaid claim petition was filed by present Respondent Nos.1 and 2 (hereinafter referred to as claimants) seeking compensation on account of death of their son viz. Navnath Namdeo Gardade, alleging to have caused in a vehicular

accident happened on 4th April, 2004 having involvement of a truck bearing Registration No.TN-28/B/0973.

3) Deceased Navnath was travelling, at the relevant time, in an Indica Car bearing registration No. MH-12-BP-8153. It was the contention of the claimants that the truck involved in the accident was being driven rashly and in negligent manner and it gave dash to the Indica car and in the accident so occurred, Navnath died on the spot itself. The claimants had, therefore, claimed compensation of Rs.6,00,000/- from owner and insurer of the truck as well as owner and insurer of the Indica car.

4) The learned Tribunal, after having assessed the evidence on record, recorded a finding that the alleged accident happened only because of the negligence on the part of driver of the truck. The learned Tribunal, considering the evidence, as was produced by the claimants,

held the claimants entitled for the total compensation of Rs.4,80,500/- inclusive of NFL compensation jointly and severally from the owner and insurer of the truck. Aggrieved by, the appellant - insurance company has filed the present appeal.

5) Shri Bora, learned counsel holding for Shri P.P.Bafna, learned Counsel appearing for the appellant insurance company, assailed the impugned Judgment and Award on various grounds. The learned Counsel submitted that though it was a clear case of composite negligence, the Tribunal has wrongly held the accident to have caused because of the sole negligence of driver of the truck. The learned counsel further submitted that the accident happened on National Highway No.9, which is wide enough, from where at a time, four vehicles can pass easily. The learned counsel submitted that the alleged accident was a case of head on collision and in such circumstances, the sole negligence could

not have been attributed on the part of the driver of the truck.

. The learned counsel submitted that the Tribunal has overlooked the evidence on record. The learned Counsel, relying upon the judgment of the Hon'ble Apex court in the case of Bijoy Kumar Dugar Vs. Bidya Dhar Dutta and Ors -(2006) 3 SCC. 242, submitted that in view of the observations made and the law laid down in the aforesaid judgment, the finding recorded by the Tribunal in the present matter, holding the driver of the truck alone responsible for causing the alleged accident, deserves to be quashed and set aside and the driver of the Indica car also needs to be held responsible in equal proportion in occurrence of the alleged accident.

6) In so far as quantum is concerned, learned Counsel for the appellant submitted that though there was no evidence on record, the Tribunal has wrongly held the income of the deceased to the tune of Rs.3,500/- per month.

The learned counsel submitted that it was the case of the claimants that the deceased was running an STD booth and the evidence which was produced on record was summary of the bills of only 15 days and the same could not have been sufficient evidence so as to decide the income of the deceased. In the circumstances, according to the learned Counsel, the Tribunal could not have held the income of the deceased more than the notional income. The learned counsel submitted that the Tribunal has also erred in deducting only $1/3^{\text{rd}}$ of the amount towards avocations of the deceased. The learned Counsel submitted that since the deceased was bachelor and the parents were the only dependents on his income, while determining the amount of compensation, $1/2$ of the amount would have been deducted by the Tribunal towards the personal expenses of the deceased and the dependency compensation must have been assessed on remaining $1/2$ of the total income of the deceased. The learned counsel submitted that the award, therefore, needs to be

modified also in so far as quantum of the compensation is concerned. The learned counsel, therefore, prayed for appropriate orders for modification of the award.

7) Shri Chavan, learned counsel appearing for the respondents, i.e. original claimants supported the impugned Judgment and Award. The learned counsel invited my attention to the discussion made by the Tribunal to the effect that spot panchanama in the matter clearly reveals that the truck driver entered on a wrong side and gave dash to the Indica car. The learned counsel submitted that in such circumstances, no fault can be found in the conclusions recorded by the learned Tribunal holding the truck driver alone responsible for occurrence of the alleged accident. The learned counsel submitted that no evidence was adduced by the appellant insurance company to substantiate the defences raised by it as about the negligence or as about the dispute raised by the insurance company regarding income

of the deceased. The learned Counsel submitted that no interference is, therefore, required in the finding recorded by the Tribunal as about the aspect of negligence.

8) In so far as amount of compensation determined by the Tribunal is concerned, the learned Counsel submitted that the Tribunal has, on the contrary, awarded less compensation than expected by the claimants. The learned Counsel submitted that the Tribunal has, in fact, not awarded just and fair compensation towards non-pecuniary damages and as such, no interference is required in the amount of compensation determined by the tribunal.

9) I have carefully considered the submissions advanced by learned Counsel appearing for the parties. I have perused the impugned judgment and other material placed on record. Though it was vehemently argued by learned Counsel appearing for the appellant insurance

company that, it was the case of head on collision, nothing has been brought to my notice so as to agree with the submission made by the insurance company that the alleged accident was head on collision. On the contrary, as has been observed by the Tribunal in Para 7 of its judgment, the document on record, and more particularly the situation on the spot was revealing that the truck had entered on a wrong side and gave dash to the Indica car. If this may be the situation, it does not appear to me that the Tribunal has committed any error in holding the driver of the truck solely responsible for causing the alleged accident. Moreover, if it was the specific defence of the appellant insurance company that the driver of the Indica car was also negligent in causing the alleged accident, some positive evidence must have been adduced by it to substantiate the said contention. Admittedly, no such evidence has been adduced by the appellant insurance company. The judgment, which has been relied upon by

learned counsel appearing for the appellant, is altogether on different facts and hence cannot be made applicable in the facts of the present case. I, therefore, do not see any reason to cause interference in the finding recorded by the Tribunal on the aspect of negligence.

10) The next point, which falls for my consideration, is quantum of compensation as determined by the Tribunal. As has been argued by learned counsel appearing for the appellant insurance company, the tribunal has erred in holding the income of the deceased to the tune of Rs.3,500/- per month without any evidence there for. The submission so made, however, cannot be accepted in view of the findings recorded by the tribunal and the evidence on record. It has not been disputed that the deceased was running STD booth. Some evidence was also placed by the claimants evidencing that the deceased was running the STD booth. BSNL bills were produced on record, though the said bills may be of 15

days. It does not appear to me that the Tribunal has committed any error in assessing the income of the deceased on the basis of turnover of 15 days of said STD booth. At the relevant time, age of the deceased was 24 years. Apparently, it does not appear to me that the Tribunal has wrongly held the income of the deceased to the tune of Rs.3,500/- and that it should have been held Rs.3,000/- by applying the criterion of notional income.

. The another objection though bears some substance that the Tribunal must have deducted 1/2 of the total income of the deceased while assessing the amount of dependency compensation, having regard to the other facts on record, that the tribunal has committed error in applying the multiplier of 17 and has also erred in not awarding just and fair compensation towards the non-pecuniary damages, no interference is warranted in the amount of compensation determined by the Tribunal. After having considered the entire evidence on record

unhesitatingly it can be said that the amount of compensation determined by the Tribunal is just and fair.

11) For the reasons stated above I do not see any reason to cause interference in the impugned Judgment and Award. The appeal being devoid of any substance, deserves to be dismissed and is accordingly dismissed. Pending civil application, if any, stands disposed of.

(P . R . BORA)
JUDGE

bdv/