

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

FIRST APPEAL NO. 517 OF 2010

ICICI General Insurance
Company Limited,
ICICI Lombard General
Insurance Company,
Zenith House, Keshavrao Khadye
Marg, Mahalaxmi, Mumbai,
Through Its Legal Manager.

**...APPELLANT
(Ori.Resp.No.3)**

VERSUS

1. Leela w/d Raosaheb Navgire,
Age 47 years, Occ.HH.
2. Kapil s/o Raosaheb Navgire,
Age 20 years, Occ: Student.
3. Suvidha d/o Raosaheb Navgire,
Age 22, Occu. Student.

1 to 3 R/o Girner Tanda
Tq. and Dist. Aurangabad.

**(Nos. 1 and 3 are
Orig.Claimants)**

4. Sampat Ganpat Narwade,
Age 49 Occ. Driver
R/o. C51/7 near Maruti temple
Shivaji Nagar, Aurangabad,
Tq. Dist. Aurangabad.
- (5. Tarwade Transport PVT Ltd.
Bajaj nagar Waluj, Aurangabad.)

(Appeal dismissed as against Respondent no.5 as
per order dt.13.4.2010)

(6. Kadubai w/o Ganpat Navgire,
r/o Aurangabad)

(R/6 deleted as per dead .. Dt.3.7.2009)

...RESPONDENTS

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Mr. Swapnil S.Patil, Advocate, for the appellant.

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CORAM: P.R.BORA, J.

DATE : July 14th, 2017

ORAL JUDGMENT:

1. Present appeal is filed challenging the judgment and order passed by the Motor Accident Claims Tribunal, Aurangabad, in MACP No.771/2008 on 25th of June, 2009. The aforesaid claim petition was filed by the present respondent nos. 1 to 3 (hereinafter referred to as 'the claimants'), claiming compensation on account of death of one Raosaheb Navgire alleging the same to have been caused in a vehicular accident happened on 16.9.2008 having involvement of a travel Bus bearing No.MH-20-W-9388, owned by respondent no.5 and insured with appellant Insurance Company. It was the contention of the claimants that deceased Raosaheb, when was

proceeding on his scooter, was dashed by the Travel Bus and in the accident so happened, he suffered death. The claimants had alleged that the accident in question happened because of rash and negligent driving of the driver of the Travel Bus. The claimants had claimed compensation of Rs.18,00,000/- in total but, have restricted the same for Court fee purpose to Rs.10,00,000/-. The claim petition was resisted by the Insurance Company on several grounds. After having assessed the oral and documentary evidence brought before it, learned Tribunal allowed the claim petition, holding the driver, owner and insurer of the Travel Bus responsible for the accident and directed original respondent nos. 1 to 3 to jointly and severally to pay to the claimants Rs.6,65,000/- as compensation. Aggrieved thereby, the Insurance Company has filed the present appeal.

2. Shri Swapnil S.Patil, learned Counsel appearing for the appellant Insurance Company, assailed the impugned judgment mainly on the quantum. Learned Counsel submitted that, there is no convincing evidence as

about income of the deceased. The Tribunal has held the income of the deceased to the tune of Rs.5,500/- per month and has, accordingly, determined the amount of compensation. Learned Counsel submitted that though it was the case of the claimants that deceased was in the employment of Nita Travels, and though it was possible for the claimants to examine the employer to prove the salary income, the said course was not adopted and, thus, the salary income of the deceased was not proved. Learned Counsel further submitted that though there was no evidence about agricultural income, merely relying on the oral statements of the dependents of the deceased, the Tribunal has held the said income to the tune of Rs.1,000/- per month, and considering total income to the tune of Rs.5,500/- has awarded compensation to the claimants. Learned Counsel submitted that the award, therefore, needs to be appropriately modified by applying the criteria of notional income.

3. Shri Bachate, learned Counsel appearing for the original claimants, opposed the submissions made on behalf of the appellant Insurance Company. Learned

Counsel submitted that it was not disputed that the deceased was serving as a Driver with Nita Travels. In the circumstances, according to the learned Counsel, though the claimants did not examine the employer, the Tribunal has not committed any error in holding the income of the deceased from the work he was performing as a driver to the tune of Rs.4,500/- per month. Learned Counsel submitted that the claimant had placed on record the license of the deceased to ply heavy goods vehicles. Learned Counsel submitted that that was sufficient evidence placed on record by the claimants so as to draw the further inference that he was working as a driver on heavy vehicle and, certainly, therefore, be earning salary to the tune of Rs.4,500/-. Learned Counsel submitted that, in so far as the agricultural income is concerned, the necessary documentary evidence was placed on record and the Tribunal has, therefore, rightly held the income of Rs.1,000/- under the said head. Learned Counsel submitted that no interference is warranted in the impugned judgment and order.

4. I have carefully considered the submissions

made on behalf of the learned Counsel appearing for the respective parties. I have perused the impugned judgment and the other material on record. Apparently, it does not appear to me that the Tribunal has awarded compensation without any evidence or on higher side. As has been discussed by the Tribunal, the deceased was holding a valid driving license to drive heavy goods vehicles. Having regard to the aforesaid fact, and further considering that it was not denied or disputed that the deceased was working as a Driver with Nita Travels, merely because nobody from Nita Travels was examined to prove the salary income, the entire said evidence could not have been ignored by the Tribunal. The Tribunal has, therefore, rightly held salary income of the deceased to the tune of Rs.4,500/- per month. In so far as income from agriculture is concerned, the conclusions recorded by the Tribunal do not deserve any interference.

5. After having considered the entire material on record, it does not appear to me that the Tribunal has committed any error in awarding the compensation by holding the income of the deceased to the tune of

Rs.4,500/- per month. No glaring mistake has been brought to my notice in the discretion exercised by the Tribunal which has been exercised on the basis of the evidence brought on record.

The First Appeal, therefore, deserves to be dismissed and, accordingly, it is dismissed without any order as to the costs.

(P.R.BORA)
JUDGE

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AGP/517-10fa