

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.517 OF 2004**

The New India Ass. Co. Ltd.  
Through Deputy Manager,  
Mr.Suhas Gajanan Karve

..Appellant

V/s.

Vasant Anna Dabade & Ors.

..Respondents

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Mr.S.M. Dange for the Appellant.

Mr.N.J. Patil for Respondent Nos.1 & 2.

Mr.Milind Deshmukh for Respondent No.3.

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**CORAM : M. S. SONAK, J.**

**DATE : 09 FEBRUARY 2017.**

**P.C.**

1. The challenge in this appeal is to the judgment and award dated 29 November 2003 made by the Motor Accident Claim Tribunal, Sangli. The operative portion of the award reads thus:-

**AWARD**

*“The claim is partly allowed. Both the opponents to pay both the claimants jointly and severally Rs.1,90,000/- (Rupees one lac Ninety Thousand only) as compensation under Section 166 of the Motor Vehicles Act, 1988. The said amount shall carry interest at the rate of 12% per annum from the date of filing of the*

*petition till the amount is fully realised. The amount of compensation under Section 140 of the Motor Vehicles Act, 1988, if already received by the petitioners, it be deducted from the amount of compensation awarded in this award.*

*On payment of the compensation, the said amount to be paid to the claimants equally.*

*Both the opponents do pay claimants jointly and severally the proportionate costs of this proceeding and shall bear their own. Award accordingly.”*

2. Mr.S.M. Dange, the learned counsel for the appellant has made the following submissions in support of the appeal :-

a) That there was a negligence on the part of Mr.Bhagwan alias Balu Vasant Dabhade on account of whose death, the claim was made and therefore there was no liability to pay compensation or in any case the doctrine of contributory negligence should be applied in the matter;

b) The MACT has erred in treating the said Mr.Bhagwan as being employed in the grape farm of the claimants, who are his parents. Bhagwan was only 15 years old at the time of his demise and therefore, finding with regard to his alleged employment, is perverse and can not be borne out from the material on record. If this finding is varied, then the compensation

amount is required to be reduced substantially.

c) In paragraph No.9 of the impugned judgment there is an arithmetical error. The error is apparent on the face of record and on the basis of the same, the compensation towards loss of dependency could have been Rs.1,44,000/- and not Rs.1,80,000/-.

3. Mr.Dange submits that based upon the aforesaid grounds, the appeal is liable to be allowed and the impugned award needs to be either set aside or modified.

4. On the aspect of negligence, there is, enough material on record to establish that the Tempo No.KA-22-3258 which was responsible for the accident has resulted in the demise of Mr. Bhagwan. Eye witness, has been examined and this witness deposed that the tempo came from the wrong side in the opposite direction in high speed and dashed the bicycle of the deceased Mr.Bhagwan. The bicycle was entangled in the said tempo to the bumper portion and it was dragged for a distance of about 500 ft from the point of impact. This resulted in the death of Mr.Bhagwan. In the light of the evidence placed on record, there is no reason to accept the first ground raised by Mr.Dange in this appeal.

5. On the aspect of income and employment, it cannot be said that a 15 years old boy was not helping their parents in their grape farm and such help, can always be computed in monetary terms. That a part, the MACT, has taken his income as only Rs.1,000/- per month. Even in terms of the Second Scheduled appended to the Motor Vehicles Act, 1988 in terms of Section 163A of the said Act, the notional income in the minimum, would have to be taken at Rs.15,000/- per annum or thereabouts. Mr.Dange is however right, that there is an arithmetic error. However, the error, is really not of the consequence taking into consideration the circumstance that an amount of only Rs.10,000/- has been awarded cumulatively towards mental shock and funeral expenses. Besides, there is no award made towards loss of love and affection to the claimant-parents on account of demise of their son Bhagwan. In fact, rightfully, compensation of Rs.25,000/- should have been made towards funeral expenses and further, compensation of Rs.2 lakhs, towards loss of love and affection. The compensation under these heads would have itself come to Rs.2,50,000/- leave aside, the issue of loss of dependency. The impugned award is for Rs.1,90,000/-. In these circumstances, there is no case made out to interfere with the impugned award.

6. The appeal is accordingly dismissed. There shall be no order as to costs.

7. The amount of Rs.25,000/- deposited by the appellant in this Court to be transferred to the MACT, Sangli within two weeks from today. If the awarded amount is deposited at MACT, Sangli, the MACT, Sangli is directed to permit the respondent-claimants to withdraw the same unconditionally, together with accrued interest, if any, thereof. The MACT is requested to issue notice to the claimants, since, they have not appeared before this Court. It is clarified that if the amounts have already been withdrawn, then, there is no question of permitting any further withdrawal except perhaps to the extent of Rs.25,000/- which is now to be transferred to the MACT.

8. All concerned to act on the basis of the authenticated copy of this order.

**(M. S. SONAK, J.)**