

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CIVIL APPLICATION (CAF) NO.1968 OF 2017

IN

FIRST APPEAL (STAMP) NO.6745 OF 2017

(The New India Assurance Co. Ltd., Nagpur ..vs.. Lata wd/o Ramesh Patil and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.J. Kamble, Advocate for the appellant.

CORAM : N.W. SAMBRE, J.

DATED : 19-04-2017

For the reasons disclosed in the application, the delay of 52 days caused in filing the appeal is condoned.

The civil application is allowed accordingly.

First Appeal (Stamp) No.6745/2017.

Heard Shri S.J. Kamble, learned Counsel for the appellant/original respondent No.3/Insurance Company.

The appeal is against the award delivered by the Motor Accident Claims Tribunal on 05-10-2016 awarding compensation of Rs.22,16,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of recovery. Amongst other grounds which are emphasized are the monthly income of the claimant considered for calculating the annual income is at exorbitant rate and without any basis. Second submission is in view of the accident between the truck

and the bus, it is offending truck which gave dash to the deceased and as such the Insurance Company cannot be held liable with whom the bus in question was insured. He would then urge that it is the truck owner who should be held responsible i.e. respondent No.1 to the claim petition.

With the assistance of the learned Counsel for the appellant, I have perused the proceedings. The accident in question took place on 24-06-2006 when the bus No.AP-09/X-0299 insured with the appellant dashed with truck No.MH-12/AR-1586, which in turn gave dash to the deceased Ramesh Patil resulting into his death and offences punishable under Sections 279, 337, 304(A) and 427 of the Indian Penal Code came to be registered against the owners of the offending vehicles. It is then to be noted that the offence as such is also registered against the driver of the bus, which was insured with the appellant.

It is then to be noted that the issues were framed at Exhibit No.29. Amongst other the issue as regards the negligent driving on the part of the driver of the offending vehicle and the entitlement of the compensation were duly framed.

The claimants have examined at Exhibit 31 and has produced on record the copy of first information

report at Exhibit No.50, spot panchanama at Exhibit No.51, post-mortem report at Exhibit No.53 and Form AA at Exhibit No.40. From the said documents, it can be inferred that the accident took place in between the vehicles owned by the original respondent Nos.1 and 2 and deceased Ramesh was not a party or have not actually participated in the said accident. It is the truck which gave dash to Ramesh when he was standing by the side of the road. As such the case as put forth of composite or contributory negligence thereby submitting that the claimant was not entitled for the compensation is liable to be rejected. This takes me to the submission of learned Counsel Shri Kamble as regards the exorbitant award of the compensation and the calculation of the monthly income.

In addition to claimant No.1 the brother of deceased Ramesh, Suresh Patil is examined at Exhibit No.62. It is brought on record that the last earning of deceased in the year 2005 was Rs.8,48,401/-. Apart from above, the only details as regards the income of deceased Ramesh was brought on record for a period from 1996 to 2006, which prima facie depicts that the net annual income of deceased Ramesh was around Rs.10,00,000/-.

The source of such income if to be analysed, it is to be noted that from the record the deceased was

holding only land to the extent of 29.55 hectares, which was completely irrigated land. The 7/12 extract to that effect supports the claim. In addition there appears to be an agreement to purchase the additional land to the tune of about 10.52 hectares as could be demonstrated from the agreement dated 23-07-2004 i.e. Article E-1.

Apart from above, it is to be noted that deceased Ramesh was an advanced agriculturist who was carrying out the agricultural operations by doing organic farming. He was also doing the business of nursery and plants. He was also in the business of milk and underwent the training at Israil. All these aspects are duly taken into account by the learned Tribunal while considering the monthly income of the deceased to the tune of Rs.18,000/- per month.

The consideration for the monthly income, compensation ordered is based on the documentary and oral evidence.

The appellant/Insurance Company has neither examined any witness nor during the cross-examination of the witness of the claimant has extracted any material so as to demolish the claim as was put forth by the claimant. As there is cogent evidence brought in support of the claim, same was granted by the Tribunal. No case for interference is made out. As such the appeal fails

and is dismissed.

JUDGE

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