

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**BENCH AT AURANGABAD****FIRST APPAL NO. 1426 OF 2011**

- 1) Dipali w/o Dinkarrao Kulkarni,
Age; 36 years, Occupation; Household,
Resident of Lahuri, Taluka; Kaij,
District; Beed,
At present resident of Ambajogai,
Taluka Ambajogai, District; Aurangabad.
- 2) Darshan s/o Dinkarrao Kulkarni,
Age; 17 years, Minor,
- 3) Shubham s/o Dinkarrao Kulkarni,
Age; 12 years, Minor

Appellant Nos. 2 & 3 Under
Guardianship of Appellant No. 1.

APPELLANT
(Original Claimants)

VERSUS

- 1) Sharad s/o Marutirao Kagane,
Age; Major, Occupation; Business,
Resident of Gurukul Housing Society,
Ahmedpur, Taluka Ahmedpur,
District; Latur.
- 2) National Insurance Company Ltd.
Hazari Chambers, Station Road,
Aurangabad, District; Aurangabad.

RESPONDENTS
(Original Respondents.)

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Shri. S.G. Chapalgaonkar, Advocate for Appellants
Shri. V.M. Kagne, Advocate for Respondent No. 1
Shri S.V. Kulkarni, Advocate for Respondent No. 2
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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 15.10.2018

Date of Pronouncing Judgment : 23.10.2018

J U D G M E N T :

This appeal is directed by original claimants against the judgment and award passed by Motor Accident Claims Tribunal Ambejogai in MACP No. 68 of 2006 where total compensation Rs. 8,25,416/- was awarded. However, 25% liability was saddled on deceased holding that contributory negligence on the part of deceased was proved. Respondent No. 1 is owner of offending Maruti Alto Car No. MH-24-C-4163 and respondent No. 2 is the insurer of offending vehicle.

2. Facts in nut shell are that the claimants are wife and children of deceased Dinkar Govindrao Kulkarni who used to work as R.T.O. Inspector at Latur. On 25/03/2005 at about 7.00 a.m. when the deceased was proceeding towards Latur from Ambejogai; while driving by Indica Car No. MH-20-Y-3001 that time near the field of Dhondiram Shinde, near Latur City, the offending car which was coming from opposite direction, in high speed, while over taking one Auto Rickshaw dashed against the Indica Car of deceased. In that accident, driver of the offending car as well as deceased Dinkar died

on the spot. Police registered crime No. 68 of 2005 against the driver of offending car. According to claimants the accident occurred due to rash and negligent driving by the driver of offending car. Therefore claim petition for compensation was filed under Section 166 of the M.V. Act.

3. Respondents filed written statement and contended that the accident occurred due to rash and negligent driving by the deceased.

4. After considering the evidence placed on record by the parties, Tribunal held that the deceased died in motor vehicular accident due to rash and negligent driving by the driver of the offending vehicle. However, Tribunal saddled only 75% liability on respondent nos. 1 and 2. Therefore, this appeal arises.

5. Heard Shri S.D. Chapalgaonkar, learned counsel for appellant Shri V.M. Kagne for respondent no. 1 and Shri S.,V. Kulkarni for respondent No.2.

6. Learned counsel for appellants submits that no evidence has been led by respondents to prove contributory negligence on the part of the deceased. He submits that only because there was head on collision in between offending vehicle and Car of the deceased,

inference cannot be drawn that the accident occurred due to contributory negligence on the part of the deceased. Relying on copy of FIR and spot panchanama he submits that these two documents indicate that at the time of accident the offending vehicle came on the wrong side of the road while overtaking one Auto Rickshaw and dashed against the car of the deceased which was on correct side of the road.

7. Next submission of learned counsel for appellant is that compensation of Rs. 3,000/- per month needs to be awarded on account of loss of supervision on 22 acres agricultural land held by the deceased. His next submission is that from the monthly salary of the deceased only taxes can be deducted and not other allowances.

8. Learned counsel for appellant has pointed out that in view of principle laid down in by the Larger Bench of Apex Court in **“National Insurance Company Ltd. vs Pranay Sethi and others” [2018 (3) Mh.L.J. 70]**, 30% income is to be added in the monthly income of the deceased while determining loss of dependency. He has also pointed out that under conventional head total compensation of Rs. 70,000/- deserves to be awarded. He placed reliance on **“Jiju Kuruvila and Others vs Kunjuamma Mohan and Others” [(2013) 9 Supreme Court Cases 166]**, **“National Insurance Company Ltd. Vs Indira Shrivastava and**

Others.” [(2008) 2 Supreme Court Cases 763].

9. Learned counsel for respondent no. 2 supported the judgment passed by the Tribunal and submits that head on collision on the middle part of the road in between two vehicles is sufficient to hold that there was contributory negligence on the part of the deceased also. He placed reliance on **“Bijoy Kumar Dugar vs Bidyadhar Dutta and others” [2006 (4) Mh. L.J. 178].**

10. Next submission of learned counsel for respondent No. 2 is that even after the death of deceased the claimants are cultivating the land held by the deceased and no evidence is available to hold that due to death of the deceased the income from agricultural land is reduced. Therefore, no compensation can be awarded for loss of supervision, due to death of the deceased.

11. In the wake of above arguments, the only points for consideration before me are that whether the respondents prove that at the time of accident there was contributory negligence on the part of the deceased and whether the compensation awarded by Tribunal is just and fair or inadequate.

12. After going through the judgment passed by the Tribunal it emerges that only because claimant (PW 1) has admitted in her

cross examination that there was head on collision in between Car of the deceased and offending vehicle, and because as per spot panchanama glasses of the both vehicles were broken and both the vehicles were standing at one side of mid line of the road, there was contributory negligence on the part of the deceased and negligence on the part of driver of the offending vehicle.

13. I have gone through **“Bijoy Kumar Dugar Vs Bidyadhar Dutta”** (supra). In **“Bijoy Kumar”** (supra) the Apex Court only declined to interfere the finding on fact given by the Tribunal. On the other hand, in **“Jiju Kuruvila and Ors. Vs Kunjujama Mohan and Ors.”** (supra) the Apex Court observed that :

“ 20.5 The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual. ”

14. In view of this legal position, only because there was head on collision in between offending Car and the Car of the deceased, inference cannot be drawn that there was contributory

negligence on the part of the deceased. On the other hand, admission given by Dipali Kulkarni (PW 1) that there was head on collusion in between both the Cars does not carry any importance because admittedly she is not eye witness of the occurrence. On the other hand, the certified copy of the FIR (Exh. 30) which is part of the pleading of the claimants, can be read in evidence without its formal proof in view of verdict of the Apex Court in “**National Insurance Company Limited vs Rattani and Others**” [2009 (3) Mh.L.J. 754], This court has also taken similar view in the case of “**United India Insurance Company Limited vs Sayaji Shinde**” [2009 (3) Mh.L.J. 539] that certified copy of the first information report and spot panchanama can be read in evidence without its formal proof for the purpose of determining as to how and under what circumstances the accident occurred.

15. The copy of FIR (Exh. 30) lodged by the Investigating Officer clearly indicates that when deceased Dinkar was proceeding towards Latur by his Car that time while over taking one auto rickshaw, the offending car came in the high speed and collided with car of the deceased. In the FIR it is specially mentioned that the accident occurred due to rash and negligent driving by the driver of the offending car. Even the spot panchanama (Exh. 29) recites that on the spot of accident the width of the tar road was 22 feet and on both sides of tar road there was clay road of width 10 feet. There is

mid line on tar road demarcated by white paint. From this mid point at the distance of 5 feet on northern side the Indica Car of the deceased was standing facing towards East and on the East -- Northern side of the Car of the deceased on clay road, the offending Alto Car was standing at the distance of 15 feet from the center point i.e. white line on the tar road, facing towards the East. The tyre marks on the spot also indicate that Car of the deceased was pushed towards its back side upto the distance of 10 feet due to dash given by offending Car. This situation visible on the spot of the accident clearly indicates that the offending Car which was coming from opposite direction, while overtaking the Auto Rickshaw came to the wrong side of the road, by crossing mid white center point line on the road and with great force dashed against the Car of the deceased and pushed it upto 10 feet towards back side, resulting into death of the deceased and driver of the offending car on the spot. Obviously the spot of the accident is not on the middle portion of the road but the spot is on the left portion of the road by which the Car of the deceased was passing on its correct side of the road. The observation of the Tribunal is absolutely wrong that the spot of the accident is on the middle portion of the road. So also, standing position of Car of the deceased and position of the offending Car clearly indicates that the accident occurred only because while overtaking the Auto Rickshaw the offending vehicle came towards wrong side of the road and dashed on the front portion of Car of the

deceased pushing it towards back side upto the distance of 10 feet. This situation also indicates the extreme high speed of the offending vehicle at the time of accident.

16. This spot situation is sufficient to hold that the motor vehicular accident occurred only due to rash and negligent driving by the driver of the offending Car and there was no contributory negligence on the part of the deceased. The finding of Tribunal is absolutely wrong that the accident occurred due to contributory negligence on the part of the deceased. Therefore, no liability can be saddled on the deceased or on the claimants. The entire joint and several liability to pay the compensation lies on respondent Nos. 1 and 2.

17. For considering just and fair compensation, the age of deceased at the time of accident and his monthly income is relevant. The driving license of the deceased shows that his date of birth was 15.8.1959. Therefore, on the date of accident and death, the deceased was 46 years old. In accordance with guidelines issued by the Apex Court in **"Smt. Sarla Verma and Ors Vs Delhi Transport Corporation and Anr"** [AIR 2009 Supreme Court **3104**], the multiplier of '13' shall be applicable in the case at hand.

18. The salary certificate of the deceased (Exh. 35) and pay

particulars with allowances and deductions of the year 2004 – 2005 issued by Deputy R.T.O. Office, Latur indicates that the gross monthly salary of the deceased at the time of the death was Rs. 10,069/-. From this salary in every month towards professional tax Rs. 200/-, towards income tax Rs. 240/- are deducted. So also, washing allowance of Rs. 40/- per month and conveyance allowance of Rs. 75/- per month which are personal allowances of the deceased and are not for the benefit of the family, needs to be deducted from the monthly salary of the deceased, in view of law laid down by the Apex Court in “**National Insurance Company Ltd. Vs Indira Shrivastava and Others.**” (cited supra). However, deduction towards GPF or house rent allowance, Dearness allowance and deputation allowance which are granted and which are available for the benefit of family members of the deceased cannot be deducted while calculating the contribution by deceased to his family. Therefore, on deduction of only taxes and personal allowances of the deceased the monthly income of the deceased is assessed as Rs. 9,514/-.

19. In view of law laid down in “**National Insurance Company Ltd. vs Pranay Sethi and others**” (supra) as deceased was in permanent Government Job and in between age of 40 to 50 years 30% of actual salary is to be added in the monthly income of the deceased. Thus, total monthly income of the

deceased is assessed as Rs. 12,368/-. It follows that annual income of the deceased comes to Rs. 1,48,416/-. As the dependents are three in the family of the deceased, one third income is to be deducted towards personal expenses of the deceased. Therefore, after deducting Rs. 49,472/-, towards personal expenses of the deceased from annual income, the annual contribution of deceased to his family is assessed as Rs. 98,944/-. On applying multiplier of '13' the loss of dependency is assessed as Rs. 98,944 x 13 = 12,86,272/-.

20. In addition to this in view of verdict of Apex Court in **"National Insurance Company Ltd. vs Pranay Sethi and others"** (supra) compensation of Rs. 40,000/- is to be awarded towards loss of consortium and Rs. 15,000/- each to be awarded towards loss of estate and funeral expenses respectively. Thus, the claimants are entitled to total following compensation under different heads :

1)	Loss of dependency	Rs. 12,86,272/-
2)	Loss of consortium	Rs. 40,000/-
3)	Loss of estate	Rs. 15,000/-
4)	Funeral expenses	Rs. 15,000/-

Total : Rs. 13,56,272/-

(Rs. Thirteen Lacs Fifty
Six Thousand Two Hundred
and Seventy Two Only).

21. On this compensation amount, claimants are entitled to interest @ 9 % per annum from the date of filing of petition till realization of compensation amount. It shall be inclusive of compensation received under no fault liability.

22. Before parting with the judgment, I must make it clear that no evidence is available on record to show that due to death of deceased and due to loss of supervision by deceased the agricultural income was reduced. Otherwise also considering the duty of deceased as Inspector of R.T.O. working at Latur, it is hard to believe that he would supervise the agricultural operations of the land at village Sarni Tq. Kaij. Therefore, no compensation can be awarded for loss of supervision on agricultural land.

23. In the result, the appeal preferred by claimants deserves to be allowed. Accordingly, First Appeal No. 1426 of 2011 is allowed. The award passed by MACT Tribunal Ambejogai in MACP No. 68 of 2006 is modified as under :

“A) MACP No. 68 of 2006 is allowed with cost.

B) Respondent Nos. 1 and 2 do jointly and severally pay compensation of Rs. 13,56,272/- (Rs. Thirteen Lacs Fifty Six Thousand Two Hundred Seventy Two Only), inclusive of No Fault Liability compensation, to the Claimant Nos. 1 to 3 with interest thereon @ 9% p.a.

from the date of filing of petition till realization of this amount.

C) The compensation amount shall be equally paid to the Claimant Nos. 1 to 3 through Tribunal by separate account payee cheques.

D) Out of this compensation, 50% amount shall be invested in fixed deposit in any nationalized bank of the choice of the claimants for the period of three years, and the fix deposit receipts shall be filed before the Tribunal within 15 days from the date of receipt of compensation amount.

E) Pre maturity withdrawal of the invested amount is not permissible.

F) Concerned bank be informed accordingly.

G) Deficit court fees be recovered from the claimants.

H) Award be drawn accordingly".

24. Parties to bear their respective costs of the appeal.

(SUNIL K. KOTWAL)
JUDGE

mahajansb/