

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

FIRST APPEAL NO. 975 OF 2005

1. Anjanabai W/o Jagan Ahire,
Age: 28 years, Occu. Nil.,
2. Kiran Jagan Ahire,
Age: 10 years, Occu. Nil.,
3. Papi Jagan Ahire,
Age: 8 years, Occu. Nil.
4. Sudhir Jagan Ahire,
Age : 6 years, occu. Nil.
5. Rajaram Narayan Ahire,
Age : 63 years, Occu. Nil.
6. Mrs. Mulibai Rajaram Ahire,
Age: 58 years, occu. Nil.

Appellant Nos. 2 to 4 being
Minor through their natural
Guardian mother the Appellant
No. 1, All R/o Village Jamzira,
Tq. Sakri, Dist. Dhule.

... APPELLANTS
(Ori. Petitioners)

V E R S U S

1. Janmahammadbhai Bandinbhai Sumara
(Khairani) Age : 48 years,
Truck Driver and owner,
R/o : Rajkot, Tal. Rajkot,
Dist. Surendranagar (Gurjarath)
Kalwa Road, Kisanpura,
Near Allabhai Vithbhatti,
2. The Oriental Insurance Co. Ltd.,
Through Branch Manager,
At DDCC Bank, Lane No. 2,
Dhule.

...RESPONDENTS

.. ...

Mr. Chaitnaya Deshpande Advocate holding for
Mr. C.R. Deshpande, Advocate for appellants.
The appeal is dismissed against respondent No. 1
Mr. R.J. Godbole, Advocate for respondent No. 2.

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CORAM : A.M. DHAVALÉ, J.

DATED : 13th AUGUST, 2018.

ORAL JUDGMENT :-

1. In this First Appeal the appellants-original claimants assail the Judgment and Award dated 13-05-2005 passed by the Member, Motor Accident Claims Tribunal, Dhule (for short "Tribunal"), in Motor Accident Claims Petition No. 396 of 2002 on the ground that compensation fixed @ Rs. 1,34,800/- with interest @ 7% p.a. is on lower side.

2. The claimants are wife, three minor children aged 7, 5 and 3 years and parents of the deceased Jagan Rajaram Ahire respectively. On 13-06-2002 at about 1. 30 p.m. while deceased Jagan was going from Pimplaner to Satana road on motor cycle, a truck bearing registration No. GJ-3-V-8433 came from opposite direction and gave him dash, which resulted into his death. A crime bearing No.33 of 2002 came to be registered against the driver of the truck at Pimpalner Police Station. Respondent No. 1 was owner and driver of the offending truck and insured with respondent No. 2. The claimants claimed that the deceased was mason and earning Rs.6000/- per month. They claimed compensation of Rs.4,00,000/-.

3. The claim was contested by respondent No. 2 alone. The learned Tribunal accepted the case of the claimants except regarding occupation of the deceased as Mason and his income of Rs.6000/- per month. The learned Tribunal found that there is no

documentary evidence about the occupation and income, therefore, he assumed the income of the deceased as skilled labourer @ 18,000/- per annum, he deducted 1/3rd amount towards personal expenses applied multiplier of '18' and awarded compensation of Rs.2,16,000/-. In addition, the learned Tribunal awarded Rs. 15,000/- under conventional heads. Thus, total compensation come to Rs. 2,31,000/-. He held that the deceased was negligent to the extent of 20%, therefore, quantum was reduced to Rs.1,84,800/- (inclusive of *No fault liability*) and interest @ 7% p.a.

4. Mr. Deshpande, learned counsel for the appellants argued that income of the deceased should have been at least Rs. 3,000/- per month. It was wrongly held as Rs.1500/- per month. He also submitted that there are six dependents, therefore, deductions should not have been 1/3rd and it should have been 1/5th. He submitted that negligence to the extent of 20% shown on the part of deceased is not supported with evidence. He also argued for reasonable compensation under conventional heads. Thus, he claimed for enhancement to get just and reasonable compensation.

5. Per contra, Mr. Godbole, learned counsel for respondent No. 2 argued that learned Tribunal on the basis of spot panchnama has held that there was opportunity for the deceased to avoid accident. The truck driver has applied urgent brakes. There were brake marks upto 20 feet, still the accident had occurred. The learned Tribunal held that there is 20% negligence on the part of deceased. He argued that learned Tribunal has considered the rates of

minimum wages prevailing at the relevant time and has awarded just and reasonable compensation. Therefore, he prayed that no interference is warranted in the impugned Judgment and Award.

6. The points for my determination and findings thereon are as follows:

Sr. No.	Points	Findings
01.	Whether driver of the truck was only negligent or there is contributory negligence on the part of deceased?	The truck driver was only responsible.
02.	Whether the learned Tribunal has awarded just and reasonable compensation?	In the negative.
03.	What order?	Appeal is partly allowed. Compensation enhanced to Rs.5,29,000/-.

7. The claimants have examined Anjanabai Jagan Ahire (CW-1), widow of the deceased. She has no personal knowledge of the accident. Therefore, it is settled law that the police papers can be looked into to prove the factum of the accident as well as rashness and negligence. The First Information Report (Exhibit-20) lodged by ASI Wagh dated 13-06-2002 shows that the factum of accident, resulting into death of deceased Jagan. The FIR shows that the deceased was proceeding on his motor bike along with one Rajaram Ahire as pillion rider from Pimplaner side towards Satana in north

south direction. The truck was proceeding from Nashik to Pimplaner i.e. in south to north direction. The FIR and spot *panchnama* disclose that road at the relevant time on the spot was 18 feet in width and there were strips of 5 feet on either side. The motor bike was lying on the eastern side i.e. on the left side of bike rider. The truck was not halted. After giving dash the driver had fled away with the truck. The spot *panchnama* shows that the truck must be in the heavy speed as accident could not be avoided in spite of applying urgent brake. There were brake marks upto 20 feet, still the accident had occurred. The learned Tribunal has not properly applied mind while analyzing the spot *panchnama* and FIR. The spot *panchnama* shows that blood spot were found on the eastern edge of the road. It is obviously, in the lane of the persons coming from north – south. In north south direction the motor bike was lying on the eastern side. Place where blood spots were found, is the place was impact. It is on eastern edge. The truck was supposed to be its on left side. It was proceeding south north, it has gone towards wrong side and given dash. The truck was not halted. The evidence, *panchnama* and FIR show that truck driver was rash and negligent.

8. Apart from it, the driver of the truck has not filed written statement nor owner of the truck has examined the driver. The Insurance Company has not examined the truck driver. There was no eye witness to the incident. The driver has not denied factum of rash and negligence. When driver of the vehicle has not examined

himself, adverse inference will have to be drawn against him. The FIR has been lodged against him. Therefore, I hold that truck driver was driving his truck in rash and negligent manner and he is responsible for the accident. The finding that the deceased was having contributory negligence to the extent of 20% is not sustainable.

9. Though the claimants have claimed that the deceased was mason and earning Rs.6000/- per month, there is no documentary evidence whatsoever on record. As per the Apex Court Judgment, in the year 2002, normally, rate of labour would be at the most Rs.100/- per day. The Apex Court in several Judgments awarded compensation on assumption that the daily labourer would earn Rs.3000/- per month and subsequently said rate has been enhanced to Rs.4500/- per month. Considering the date of accident in 2002, I assume that the deceased was earning Rs. 3000/- per month. The age of the deceased in the letter for post mortem and report of Post mortem is shown as 22 years. Even Anjanabai (CW-1) also has not stated that age of deceased Jagan at the relevant time. Considering the fact that the deceased was married with Anjanabai and they are having three children with elder aged 7 years in 2002. In such a case, it would be assumed that the deceased was atleast between the group of 26 to 30 and multiplier applicable would be '17'.

10. The learned Tribunal has not taken into consideration all facts that there were six dependents. As per ratio laid down in case of ***Smt. Sarla Verma Versus Delhi Transport Corporation,***

(AIR 2009 SC 3104), in such a case, personal deductions should be one forth ($\frac{1}{4}$). I, therefore, hold that the deceased was earning Rs.36,000/- per annum and after deductions of one forth ($\frac{1}{4}^{\text{th}}$) the loss of income for the family would be Rs.27,000/- and multiplier applicable would be '17'. Thus, loss comes to Rs. 4,59,000/-. Besides, the learned Tribunal has shown conservative approach while awarding compensation under conventional heads. As per guidelines in **National Insurance Company Limited Versus Pranay Sethi, (2017) 16 SCC 680**'s case, I award compensation to the family on account of death of deceased as follows :

(i)	Towards consortium	...	Rs. 40,000/-
(ii)	Loss of estate	...	Rs. 15,000/-
(iii)	Loss of funeral expenses	...	Rs. 15,000/-
		=====	
		Total	Rs. 70,000/-

Total Rs. 4,59,000 + 70,000 = **Rs. 5,29,000/-**

11. The rate of interest awarded by the learned Tribunal is also on lower side, it should be 9% p.a. I award interest @ 9% p.a. It is just and reasonable compensation. Hence, I answer the points accordingly and proceed to pass following order:

ORDER

(a) The appeal is partly allowed with proportionate cost throughout.

(b) The Judgment and Award dated 13th May, 2005 passed by the learned Member, Motor Accident Claims Tribunal, Dhule, in Motor Accident Claim Petition No. 396 of 2002 is hereby set aside and modified as follows:

(i) Respondents No. 1 and 2 do jointly and severally pay to the appellants - original claimants compensation of Rs. 5,29,000/- inclusive of "*No fault Liability*" already paid along with interest @ 9% p.a. from the date of petition.

(ii) The amount paid earlier will have to be deducted from the dues payable and there shall be similar adjustment of interest payable.

(iii) The appellants-original claimants shall deposit deficit court fees, if any, within a period of one month from today.

(iv) On deposit of deficit Court fees, an award amounting to decree be drawn up accordingly.

Sd/-

[A.M. DHAVAL]
JUDGE