

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

FIRST APPEAL NO.591 OF 2014

1. Anisabee Shaikh Javid @ Javed Patve
Age : 26 years, Occu : Household,
2. Tanveer Shaikh Javid @ Javed Patve
Age : 10 years, Occu : Education,
3. Mohsin Shaikh Javid @ Javed Patve
Age : 7 years, Occu : Education,
4. Sahil Shaikh Javid @ Javed Patve,
Age : 5 years, Occu : Nil
5. Ayan Shaikh Javid @ Javed Patve,
Age : 3.5 years, Occu : Nil,

All R/o. Bagwan Galli, Nandurbar,
Taluka & District – Nandurbar

.. **Appellants**
(Orig. Claimants)

Versus

1. Suresh Dhirsing Padvi
Age : Major, Occu: Driver,
R/o. Navapada, Taluka Navapur,
District Nandurbar
2. Shankarrao Gajmal More
Age : Major, Occu : Dumper Owner,
R/o. Giriji, Vrundavan Nagar, Nandurbar,
Taluka & District Nandurbar
3. The United India Insurance Co. Ltd.,
3rd Floor, Mansing Market,
Station Road, Jalgaon
Taluka & District Jalgaon

..Deleted as per Courts
order dtd.07.03.2014

.. **Respondents**

.....

Shri P.C. Mayure - Advocate for Appellants;
Respondent No.1 – Deleted;
Shri S.S. Jadhav, Advocate for Respondent No.2;
Shri S.R. Bagal, Advocate for Respondent No.3.

...

CORAM : PR. BORA, J.

Dated: October 05, 2018

ORAL JUDGMENT :

1. The appellants - original claimants in Motor Accident Claim Petition No.26 of 2011 decided by Motor Accident Claims Tribunal at Nandurbar on 23.10.2012 have preferred the present appeal challenging the said Judgment and Award.

2. The appellants, who are hereinafter referred to as the claimants, had preferred the aforesaid claim petition claiming compensation on account of death of Shaikh Javid @ Javed Patve alleging the same to be caused in a vehicular accident happened on 23.06.2011 having involvement of a dumper bearing registration No.MH-39/E-992 owned by present respondent no.2 and insured with present respondent no.3. It was the case of the claimants before the Tribunal that, on 23.06.2011 when deceased Javid along with his brother-in-law Jakir were proceeding on motorcycle from Dhule Chaufuli side

to Railway over bridge side, their motorcycle was dashed by the offending dumper and in the accident so happened, deceased was severely injured and ultimately succumbed to the accidental injuries on the same day while under treatment in the Civil Hospital at Dhule. The claimants had alleged that, the accident in question happened because of the sole negligence of the driver of the offending dumper. The claimants had, therefore, claimed the compensation of Rs.20,00,000/- jointly and severally from the owner and insurer of the said dumper.

3. The owner and the driver of the said dumper though appeared before the Tribunal, did not file their written-statement and the petition was proceeded without their written-statement.

4. Respondent No.3 – Insurance Company had filed its written-statement and had resisted the petition on various grounds. Insurance Company had taken the defence of negligence on part of the deceased in occurrence of the alleged accident. The income, age and the dependency etc., were also

disputed by the Insurance Company.

5. In order to substantiate the contentions raised in the claim petition, claimant No.1 – Anisabee deposed before the Tribunal. In addition to the oral evidence of Claimant No.1 - Anisabee, the claimants had placed on record the copy of the appointment letter issued in the name of deceased Javid @ Javed from the Railway Department and had also placed on record the certified copies of the police papers pertaining to the alleged accident. None of the respondents adduced any oral or documentary evidence before the Tribunal. The learned Tribunal after having assessed the oral and documentary evidence brought on record though determined the amount of compensation payable to the claimants to the tune of Rs.16,75,000/-, held the claimants entitled for the amount of Rs.5,05,000/- only from the owner and insurer of the offending dumper recording a finding that, in occurrence of the alleged accident, the negligence on part of deceased Javed was to the extent of 70% and as such, the claimants were entitled to receive only 30% of the amount from the owner and insurer of the offending dumper. Aggrieved by the order so passed by the

Tribunal, the claimants have preferred the present appeal.

6. The learned Counsel appearing for the claimants assailed the impugned Judgment on various grounds. The learned Counsel submitted that, deceased Javid was a pillion rider on the motorcycle of Jakir, when the alleged accident happened. The learned Counsel submitted that, in no case, it can be said that there was any contribution of deceased Javid in occurrence of the alleged accident. In the circumstances, according to the learned Counsel, the Tribunal has manifestly erred in holding the negligence to the extent of 70% on the part of deceased Javid. The learned Counsel further submitted that, it was the specific case of the claimants that, in occurrence of the alleged accident, there was absolutely no negligence of the motorcycle rider and the entire negligence was of the dumper driver. The learned Counsel further submitted that, even if it is assumed that there was some negligence on part of the motorcyclist also, even in that circumstance, it would be a case of composite negligence and in that eventuality also, the Tribunal could not have deducted the amount of 70% while awarding the amount of compensation to the present claimants.

7. Relying on the Full Bench Judgment of the Hon'ble Apex Court in the case of **Khenyei Vs. New India Assurance Co. Limited & Others, 2015 AIR SCW 3169** and also placing on record the earlier Judgments of the Hon'ble Apex Court in the case of **Pawan Kumar and Another Vs. Harkishan Dass Mohan Lal and Others, [2014 (4) Mh.L.J. 548]**, and in the case of **T.O. Anthony Vs. Karvarnan - 2008 (5) Mh.L.J. 7**, the learned Counsel submitted that, in the case of composite negligence the claimant is entitled to sue both or any one of the joint tort feasons and to recover the entire compensation from any one of tort feasons since their liability is joint and several. In the circumstances, according to the learned Counsel, the claimants were entitled to receive the entire amount of compensation from the owner and insurer of the offending dumper.

8. The learned Counsel further submitted that, non-wearing of helmet by deceased Javid is also held to be contributory negligence by the learned Tribunal. The learned Counsel relying upon the Judgment of the Hon'ble Kerala High

Court in the case of **P.J. Jose Vs. Niyas (2016) AAC 1148** submitted that, the finding recorded by the Tribunal cannot be sustained and no negligence can be attributed on account of non-wearing of helmet by deceased pillion rider. The learned Counsel, therefore, prayed for setting aside the impugned Judgment and Award and to pass the further orders holding the owner and insurer of the offending dumper to be liable to pay the entire amount of compensation jointly and severally as has been determined by the Tribunal.

9. Shri Bagal the learned Counsel appearing for the respondent – Insurance Company supported the impugned Judgment and order. Inviting my attention to Section 129 of the Motor Vehicles Act, 1988 the learned Counsel submitted that, not only the rider of the motorcycle but the pillion rider is also under an obligation to wear a helmet and non-wearing of helmet will amount to contribute the occurrence of the accident. The learned Counsel submitted that, in the circumstances, no fault can be found in the finding recorded by the Tribunal holding deceased Javid also responsible for his negligence in

occurrence of the alleged accident. The learned Counsel further submitted that, elaborate discussion has been made by the Tribunal on the basis of the documents placed on record by the claimants themselves how the accident happened because of the major negligence on part of the motorcyclist. The learned Counsel submitted that, the motorcyclist had entered on a wrong side and at his own dashed to the dumper and in such circumstances the Tribunal has rightly held the negligence of the motorcyclist in occurrence of the alleged accident to the extent of 70%. The learned Counsel submitted that, in fact, it was the case wherein the driver of the offending dumper must have been given a clean chit since no negligence can be attributed on his part. The learned Counsel submitted that, the finding of fact as has been recorded by the Tribunal cannot be in any way said to be contrary to the evidence on record or perverse and there is no reason for causing any interference in the finding so recorded.

10. The learned Counsel further submitted that, the Tribunal has also erred in determining the amount of dependency compensation. The learned Counsel submitted that,

the primary burden to prove the letter of appointment received in the name of the deceased was on the claimants. Mere placing on record the document was not enough and since the contents of the said document are not proved, the said document cannot be read in the evidence. The learned Counsel submitted that, in the circumstances, the salary of the deceased held by the Tribunal on the basis of the said document cannot be accepted and amount of compensation must have been assessed by holding the income of the deceased by applying the criteria of notional income. The learned Counsel further submitted that, when the basic document itself was not proved, the further calculations made by the Tribunal holding the future prospects of the deceased also cannot be sustained. The learned Counsel submitted that, the entire calculation, therefore, has been wrongly made and is apparently on much higher side. The learned Counsel submitted that, even if the document of the offer letter is perused, on the basis of the said document, the salary of deceased cannot be held more than Rs.4400/- per month. The learned Counsel submitted that, the offer letter suggests that, the deceased was offered the appointment in the

pay scale of Rs.4400/- and as such, the salary of the deceased could not have been held by the Tribunal as Rs.7,500/-. The learned Counsel further submitted that, the Tribunal has also erred in deducting only 1/5th of the total income of the deceased towards his personal expenses, whereas having regard to the number of dependent 1/4th amount was liable to be deducted from the total income of the deceased. On all these grounds, the learned Counsel opposed the submissions made on behalf of the claimants and submitted for passing appropriate orders.

11. The learned Counsel relied upon the Judgment of this Court (**Coram : A.V. Nirgude, J.**) in **First Appeal No.150 of 2015 decided on 22.08.2016** to support his contentions as about the wearing of helmet. The learned Counsel also relied upon the Judgment of the Hon'ble Division Bench in the **First Appeal No.1243 of 2016 delivered on 21.07.2017** and referred to para nos.5, 9 and 12 of the said Judgment.

12. The learned Counsel also relied upon the Judgment of the Hon'ble Apex Court in the case of **The Managing Director Kerala State Road Transport Corporation Vs. Animol**

& Others in Civil Appeal No.12321 of 2017 decided on 09.02.2017.

13. I have given due consideration to the submissions made on behalf of the learned Counsel appearing for the respective parties. I have perused the impugned Judgment as well as the evidence on record.

14. It is not in dispute that, deceased Javid was a pillion rider on motorcycle No.MH-39-D-2779, which was being driven at the relevant time by Jakir. It is further not in dispute that, the collusion took place between the said motorcycle and dumper bearing registration no.MH-39-E-992. As is revealing from the pleadings in the claim petition filed by the present appellants, there was absolutely no negligence on part of Jakir who was plying the motorcycle and the alleged accident happened because of the sole negligence of the driver of the offending dumper. Perusal of the impugned Judgment, however, reveals that the Tribunal has held the greater negligence of the deceased motorcyclist in occurrence of the alleged accident. The Tribunal has attributed 70% of the negligence on part of the deceased

motorcyclist along with whom deceased Javid was a pillion rider. In view of the findings so recorded by it, the Tribunal has held the claimants entitled to receive the compensation from the owner and insurer of the offending dumper only to the extent of 30% of the total compensation.

15. Shri Mayure, the learned Counsel for the appellants has assailed the finding so recorded by the Tribunal to be illegal and against the settled principles of law. As was argued by the learned Counsel, in the case of composite negligence, third party can proceed against any one of the tort feors and can recover the entire amount of compensation from the said tort feors. The learned Counsel had relied upon the Full Bench Judgment of the Hon'ble Apex Court in the case of **Khenyei Vs. New India Assurance Co. Limited** (cited supra). My attention was invited to the discussion made by the Hon'ble Apex Court in para 18 of the said Judgment, which I deem it appropriate to reproduce herein below, which reads thus:

“18. This Court in Challa Bharathamma, (AIR 2004 SC 4882) & Nanjappan, (AIR 2004 SC 1630) (supra) has dealt with the breach of policy conditions by the owner when

the insurer was asked to pay the compensation fixed by the tribunal and the right to recover the same was given to the insurer in the executing court concerned if the dispute between the insurer and the owner was the subject-matter of determination for the tribunal and the issue has been decided in favour of the insured. The same analogy can be applied to the instant cases as the liability of the joint tortfeasor is joint and several. In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the vehicle – trailer-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being insurer of the bus after making payment to claimant to recover from the owner of the trailer-truck the amount to the aforesaid extent in the execution proceedings. Had there been no determination of the inter se liability for want of evidence or other joint tortfeasor had not been impleaded, it was not open to settle such a dispute and to recover the amount in execution proceedings but the remedy would be to file another suit or appropriate proceedings in accordance with law.

What emerges from the aforesaid discussion is as follows:

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the

apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.”

16. The learned Counsel had also cited another Judgment of the Hon'ble Apex Court in the case of **Pawan Kumar and Another Vs. Harkishan Dass Mohan Lal** (cited supra) and in the case of **T.O. Anthony Vs. Karvarnan** (cited supra).

17. As against it, the learned Counsel for the Insurance Company had relied upon the Judgment of the learned Single Judge of this Court in the case of **First Appeal No.150 of 2015** and the another Judgment delivered by the Division Bench of this Court in the case of **First Appeal No.1243 of 2016**. Relying on the aforesaid Judgments, it was contended by the learned Counsel that, even the pillion rider cannot be absolved from his liability and when admittedly he was not wearing the helmet, it

has to be held that, by not wearing helmet he contributed the occurrence of the alleged accident and considering the fact as aforesaid some negligence has to be attributed on part of deceased Javid also.

18. The learned Counsel had also further argued that, the claimants must have made the owner and insurer of the motorcycle also as a party respondent since it was involved in the alleged accident and as held by the Tribunal the greater negligence in occurrence of the accident was attributable on part of deceased Jakir, who was riding the said motorcycle at the relevant time. In the aforesaid circumstances, it was the argument of the learned Counsel that, the Tribunal has rightly held the claimants entitled only to the extent of 30% of the total amount of compensation.

19. After having perused the evidence on record, it is difficult to accept the contentions so raised by Shri Bagal the learned Counsel appearing for the Insurance Company. In the Judgments relied upon by the learned Counsel, the facts are quite distinguishable and in both the cases relied upon, the

claimants were the legal heirs of the driver of another vehicle involved in the alleged accident and the Tribunal had held the said deceased driver negligent in occurrence of the alleged accident. In the said cases, therefore, there was scope to say that the driver of the another vehicle also contributed the occurrence of the alleged accident by his negligence. In the present matter as I noted herein above, deceased Javid was admittedly a pillion rider. It cannot be said or it is not even the case pleaded by either of the parties that, non- wearing of helmet by deceased Javid, who was pillion rider can be a cause of the alleged accident. The accident happened not because of the non-wearing of the helmet by deceased Javid, but it happened even as per the conclusion recorded by the Tribunal because of the composite negligence of the person who was rider of the motorcycle and the driver of the dumper. In the circumstances, it was irrelevant whether the pillion rider had worn the helmet or not and it was not the cause for occurrence of the alleged accident.

20. Having considered the situation as above, the finding recorded by the Tribunal cannot be sustained. Once it is

accepted that, the alleged accident was the result of the composite negligence of the two tort feasons, as has been held by Full Bench of Hon'ble Apex Court in the case cited supra, it was the choice of the claimants as to against which of the tort feasons to move for execution of the Award.

21. In the case of **T.O. Anthony Vs. Karvarnan** (cited supra) the Hon'ble Apex Court has interpreted the terms composite negligence and contributory negligence. I deem it appropriate to reproduce herein below the said portion in the said Judgment, which reads thus:

“Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory

negligence.”

22. Having regard to the law laid down as above, the order passed by the Tribunal disentitling the claimants from 70% of the total compensation determined by it cannot be sustained and deserves to be set aside and quashed.

23. It was further argued by Shri Bagal the learned Counsel appearing for the respondent – Insurance Company that, though the Insurance Company may not have preferred a separate appeal against the Judgment and Award, under the provisions of Order 41, Rule – 33 of the Code of Civil Procedure as well as under the provisions of the Motor Vehicles Act itself, it can make submissions and bring to the notice of the Appellate Court, the inherent mistakes committed by the Tribunal in arriving at certain conclusions or even in determining the amount of compensation. The learned Counsel pointed out that, in fact there was no acceptable evidence to reach to a conclusion that, deceased Javid had received an appointment in the Railway in Class-IV on compassionate ground. It was argued by the learned Counsel that, the said document has not been legally proved and in such circumstances, its contents cannot be read in

evidence and cannot be considered for the purposes of determining the amount of compensation.

24. The argument so made also cannot be accepted. The offer letter as has been produced on record clearly demonstrates that, deceased Javid was offered an appointment on compassionate ground by the Western Railway in group 'D' category and was directed to resume duties within two weeks of receiving the said appointment letter. In absence of any contrary evidence on record, merely because the said letter has not been proved by examining any witness or calling the author of the said letter or any Officer from the Western Railway so as to prove the authenticity of the said document, it would be unjust to keep the said document out of consideration. It has to be noted that, in the claim petition itself, the claimants had specifically averred that, within two days after death of Javid in the accident, the appointment letter was received from the Western Railway and the said has been filed on record by the claimants to which claimant no.1 referred in her testimony before the Court. I, therefore, do not see any hurdle in relying

upon the said document and it appears to me that, the Tribunal has also rightly relied upon the said document. The Tribunal, on the basis of the aforesaid letter of appointment, has determined the income of deceased Javid, his future prospects and accordingly has assessed the amount of compensation.

25. The next question which falls for consideration is about the quantum of compensation whether rightly determined by the Tribunal. Perusal of the impugned Judgment reveals that, the Tribunal has held the monthly salary of deceased Javed to the tune of Rs.7500/- and has added into that 50% of the amount by way of future prospects and accordingly has calculated the amount of dependency compensation on the amount of Rs.10,000/-. It was the contention of the learned Counsel appearing for the appellants that, in fact the Tribunal must have held the said income at the rate of Rs.11,250/- and accordingly must have calculated the amount of compensation.

26. As against it, it was the contention of Shri Bagal that, the Tribunal has committed an error in holding the monthly

salary of deceased Javid to the tune of Rs.7500/-. Learned Counsel inviting my attention to the letter of appointment submitted that, deceased Javid was appointed in the pay scale of Rs.4440/- to Rs.7440/- + 1300/- Grade Pay. The learned Counsel had then submitted that, the salary of deceased Javid could have been at the most held as Rs.4440/- and not more than that.

27. There appears substance in the contention so raised by Shri Bagal. The letter of appointment clearly reveals that, the pay scale of deceased Javid was of Rs.4440/- to 7440/-. In no case, therefore, the Tribunal could have held the initial salary of deceased Javid to the tune of Rs.7500/-. His salary must have been held by the Tribunal at the rate of Rs.4440/- and based on that, the further computations must have been made by the Tribunal.

28. Having regard to the age of deceased Javid, it cannot be disputed that, 50% of his said salary was liable to be added in his monthly salary towards future prospects and on that basis the amount of compensation was liable to be determined. If his

salary is held to be Rs.4440/- and if half of the said i.e. Rs.2220/- is added in that, the amount comes to Rs.6660/-.

29. The record shows that, the claimants had placed on record the salary slip for the month of August - 2011 of another employee similarly appointed as deceased Javid. The said pay slip is at Exh.34. It was seriously contended by Shri Bagal that, the xerox copy of the salary slip in no case could have been exhibited by the Tribunal and hence cannot be relied upon. The learned Counsel submitted that, there was no evidence as about the salary for the post to which deceased Javid was appointed. I am, however, not convinced with the submission so made by learned Counsel Shri Bagal. It cannot be forgotten that, while conducting the claim petitions under the provisions of the Motor Vehicles Act, the Tribunal is supposed to follow the summary procedure and may not strictly adhere to the provisions of Code of Civil Procedure or the Evidence Act. I, therefore, do not see any reason for not accepting the pay slip brought on record by the claimants.

30. The Tribunal, on the basis of the said pay slip, has

held the income of deceased Javid to the tune of Rs.7500/-, on perusal of the said salary slip, it is revealed that, Rs.4440/- was the basic pay and the dearness allowance payable on the said amount was of Rs.2264/-. Salary of deceased Javid can, therefore, be held to be Rs.6704/- per month. On the basis of the aforesaid income, the future prospects will have to be considered.

31. It was the contention of learned Counsel Shri Bagal that, future prospects of the employees who are not permanent, cannot be at par with permanent employees. Learned Counsel submitted that, in the present case, there is nothing on record to indicate that, the appointment offered to deceased Javid was permanent appointment. In the circumstances, according to the learned Counsel at the most 30% of his monthly salary can be added by way of future prospects to his existing monthly salary. The contention so raised also is not liable to be considered for the reason that, in the letter of appointment, it is nowhere mentioned that, the appointment so made is of a temporary nature or for a specific period. Moreover, as it appears from the letter of appointment,

the appointment is on compassionate ground. In the circumstances, in the monthly salary, as has been held by me as above of deceased Javed, 50% of the same will have to be added by way of his future prospects, whereupon the salary would be Rs.10,056/-, which annually comes to Rs.1,20,672/-. The Tribunal has assessed the compensation by holding the said income at the rate of Rs.10,000/-. I do not see any reason to cause any interference in the amount so calculated by it.

32. The Tribunal, however, has committed mistake by deducting $1/5^{\text{th}}$ of the total income of the deceased towards his personal expenses, whereas having regard to the number of dependents, the Tribunal must have deducted $1/4^{\text{th}}$ of his total income. After deducting the said amount, the salary of the deceased comes to Rs.7500/-, which annually comes to Rs.90,000/-. The Tribunal has applied the multiplier of 17. The Tribunal has applied the correct multiplier. By applying the said multiplier, the amount of dependency compensation comes to Rs.15,30,000/-. In the aforesaid amount, the claimants are also entitled for additional amount of Rs.70,000/- by way of non-pecuniary damages. The claimants are, thus, found entitled for

the total compensation of Rs.16,00,000/-. In the aforesaid facts and circumstances of the case, it appears to me that, this would be the just and fair compensation payable to the claimants in the present case jointly and severally from respondent nos.2 and 3 inclusive of the amount of NFL compensation.

33. I have already recorded a finding that, no negligence can be attributed on part of deceased Javed in occurrence of the alleged accident since he was a pillion rider on the motorcycle, one of the vehicle involved in the alleged accident. I have also held that, the alleged accident happened as a result of the composite negligence of the driver of both the vehicles involved in the alleged accident. As held by the Hon'ble Apex Court in the case of **Khenyei Vs. New India Assurance Co. Limited** (cited supra) in the case of composite negligence, the claimants are entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation, as liability of joint torts is joint and several. In such a case, each wrongdoer is jointly and severally liable to the injured or to the heirs of the deceased for payment of the entire compensation and the injured or the legal heirs of the deceased, as the case may be, have the choice of

proceeding against all or any of them. As held by the Hon'ble Apex Court in the case of **T.O. Anthony Vs. Karvarnan - 2008 (5) Mh.L.J. 7** in the case of composite negligence, the legal heirs of the deceased need not establish the extent of responsibility of each wrongdoer separately nor it is necessary for the Court to determine the extent of liability of each wrongdoer separately. In view of the law laid down as above, I have already held that, the finding recorded by the Tribunal disentitling the claimants from 70% of the total compensation determined by it on the ground that, in occurrence of the alleged accident only 30% negligence was noticed to be of the driver of the truck, against the owner and insurer of which, the claim petition was filed, cannot be sustained and deserves to be set aside and quashed. In view of the settled legal position and discussion made as above, the owner and insurer of the offending truck are liable to pay to the claimants the entire amount of compensation as has been determined in the present matter.

34. For the reasons stated above, the following order is passed.

ORDER

(i) The Judgment and order passed by Motor Accident Claims Tribunal, at Nandurbar in Motor Accident Claim Petition No.26 of 2011 is quashed and set aside.

(ii) The appellants – claimants are held entitled to the total compensation of Rs.16,00,000/- inclusive of the NFL compensation.

(iii) Respondents No.2 & 3 shall jointly or severally pay the aforesaid amount of compensation to the claimants with interest thereon at the rate of 9% per annum from the date of filing of the petition till its realization.

(iv) After realization of the amount of compensation, 40% of it be paid to appellant – claimant no.1 namely Anisabee Shaikh Javid @ Javed Patve and the balance 60% amount be invested in equal proportion i.e. 15% each in the names of appellants – claimants no.2 to 5 for the period till they attain the age of majority.

(v) Award be drawn accordingly.

(vi) Pending Civil Application, if any, stands disposed of.

(**PR. BORA, J.**)

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