

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

FIRST APPEAL NO. 1266 OF 2004.

New India Assurance Company Ltd.
Branch Beed, Through its
Divisional Manager, Divisional
Office, Adalat Road, Aurangabad.

Appellant.

Versus

1. Ramdas Bapu Jagtap
Age : 50 years, occu.: agri.,
R/o Loni (Warul), Tal.Shirpur,
District Beed
2. Kamalbai w/o Ramdas Jagtap
Age : 46 years, occu.: agri.,
R/o as above.
3. Balu Shahadeo Wanve
Deleted as per the order
Dated 02.09.2000.

Respondents.

Mr. S.G. Chapalgaonkar, Advocate for the appellant.

Mr. N.L. Jadhav, Advocate for respondent Nos.1 and 2.

CORAM : SUNIL K. KOTWAL, J.

Dated : 2 April 2019.

ORDER JUDGMENT :-

. This appeal is directed against judgment and award passed by the Motor Accident Claims Tribunal (hereinafter referred to as the “Tribunal”), Beed in Motor Accident Claim Petition (M.A.C.P.) No. 161/2001.

2. Appellant is respondent No.2 in original proceeding and respondent Nos.1 and 2 are the original claimants. Respondent No.3 in the appeal who was the original owner and driver of the offending vehicle, could not served and his name is deleted on 02.09.2000. Hereinafter the parties are referred to in accordance with their status in the original proceeding.

3. The facts leading to institution of this appeal are that on 13.11.2000 the deceased Ashok was travelling by jeep bearing registration No. MH-20-E-8715 (hereinafter referred as the “offending vehicle”) as a passengers with his newly wedded wife Rekha. Due to rash and negligent driving by the driver of jeep it turned turtle, resulting into the death of Ashok and his wife Rekha. Therefore, the claimants, who are the parents of deceased Ashok, filed this claim petition for compensation.

4. Insurance Company resisted the claim petition by taking all possible pleas and denied the averments made in the petition in its entirety.

5. After considering the evidence placed on record, the learned Tribunal awarded compensation of Rs. 1,59,720/- with interest thereon at the rate of Rs. 9 % per annum from the date of filing of petition till realization of the amount. That award is under challenge in the present appeal.

6. Heard Mr. S.G. Chapalgaonkar, learned Counsel for the appellant and learned Counsel for the respondent/claimants.

7. Learned Counsel for the appellant / Insurance Company fairly concedes that in view of the settled law in the case of **“Ramrao Lala Borse & anr. Vs. New India Assurance Co.Ltd.”** [(2018) 3 SCC 204], multiplier is to be ascertained on the basis of the age of deceased and not on the basis of the age of the claimants. His next objection is regarding user of hired vehicle for transportation of passengers.

8. However, as the owner as well as driver of the offending jeep is not on record, the objection raised by Insurance Company regarding breach of condition of policy of insurance

cannot be considered. Right of the claimants cannot be affected due to breach of condition of policy, alleged to be committed by the owner of offending vehicle. In the result, this appeal being devoid of merits, deserves to be dismissed.

9. Accordingly, First Appeal No.1266 of 2004 is dismissed. Parties to bear their respective costs of the appeal.

(SUNIL K. KOTWAL)
JUDGE

vdd/