

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

**First Appeal No. 02694 of 2017**

District : Latur

The New India Assurance Company  
Ltd.,  
a Subsidiary of the General  
Insurance Corporation of India  
and a company incorporated  
under the Companies Act,  
having one of its Divisional  
office at Adalat Road,  
Aurangabad,  
Through its authorized  
signatory.

.. Appellant  
(Original  
respondent  
no.02)

**versus**

1. Jankabai Babruwan Bhawal,  
Age : 32 years,  
Occupation : Household,  
R/o. Kamalwadi,  
Post Kumtha (Bk.),  
at present Hanuman Tekadi,  
Ahemadpur, Dist. Latur.
2. Vikas Babruwan Bhaval,  
Age : 10 years,  
Occupation : Education  
u/g. R.No.1.
3. Kashinath Datta Bhaval  
(Died - Deleted during trial).
4. Muktabai Kashiram Bhaval,  
Age : 70 years,  
Occupation : Household,  
R/o. as above.
5. Nagu Maruti Tondchire,  
Age : Major,  
Occupation : Driver,  
R/o. Ganganbeed, Tal. Kandhar.

6. Anand Bhaskar Bhange,  
Age : Major,  
Occupation : Business,  
R/o. Indira Gandhi Chowk,  
Mahada, Dist. Solapur.

.. Respondents  
(Nos.1 to 4 -  
Original  
claimants &  
Nos.5 & 6 -  
Original  
respondents  
no.1 & 2)

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*Mr. Ajit B. Kadethankar, Advocate, for the appellant.*

*Mr. Sanjay V. Mundhe, Advocate, for respondents  
no.01, 02 and 04.*

*Respondent no.03 deleted.*

*Respondent no.05 served (Absent).*

*Mr. A.R. Devkate, Advocate, for respondent no.06.*

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**CORAM : SMT. VIBHA KANKANWADI, J.**

**Date of reserving the  
judgment : 09th September 2019**

**Date of pronouncing the  
judgment : 05th November 2019**

**JUDGMENT :**

01. Present appeal has been filed by the Insurance Company - original respondent no.03, challenging the judgment and award passed in M.A.C.P. No. 08 of 2015 by learned District Judge-1 & Member of the Motor Accident Claims Tribunal, Ahmedpur, District Latur, dated 30-12-2016, whereby the petition under Section 166 of the Motor Vehicles Act filed by the present respondents no.01 to 04 came to

be allowed against it.

02. The original claimants - present respondents no.01 to 04 had filed the said petition for getting compensation on account of death of one Babruwan Kashiram Bhaval, who expired in a motor accident dated 15-04-2014 which was caused by respondent no.01. Present claimants are the widow, son and parents of deceased Babruwan. On the date of the accident, Babruwan and one Laxman Ganu were proceeding on motorcycle from Ahmedpur to Shirur Tajband. Babruwan was driving the said vehicle himself and when they were near Thorlewadi, truck bearing no. MXL-7093 driven by respondent no.01 came from opposite direction. Respondent no.01 was driving it rashly and negligently and it dashed the motorcycle driven by Babruwan. Babruwan died on the spot. Respondent no.02 was the owner of the said truck. Offence has been registered against respondent no.01, who was driving the said truck. Babruwan was 38 years old person serving as Naik in Indian Army. He was getting salary of Rs. 32,621/- per month and by agriculture, he used to get additional income of Rs. 40,000/- per year. The said truck was insured with respondent no.03 at the said time. All the applicants had claimed compensation of Rs. 75,00,000/- together with interest from all the opponents jointly and severally. [Parties are referred as per their nomenclature before the Tribunal.]

03. Matter proceeded *ex parte* against respondent no.01. Respondents no.02 and 03 filed separate written statements. They denied all the averments. It was admitted by respondent no.02, that the truck is owned by him and insured with respondent no.03 on the date of the accident. However, he denied those allegations of negligence against respondent no.01. Respondent no.03 - Insurance Company took several statutory defences, including that the driver had no valid and effective driving license to drive the truck on the date of the accident; the truck was plied without permit and fitness certificate; deceased himself was negligent and was not wearing helmet at the relevant time. The Insurance Company alternatively contends that since it was a head on collision, there was contributory negligence on the part of Babruwan.

04. Taking into consideration the rival contentions, issues were framed. It appears that only claimants led the evidence. Respondents no.02 and 03 especially did not lead any evidence either in the nature of oral or documentary. After considering the evidence on record, the learned Tribunal has come to the conclusion that the accident had taken place due to the sold negligence on the part of respondent no.01. There was no breach of terms of policy and therefore, all the respondents were liable to pay compensation to the claimants jointly and severally.

Compensation of Rs. 55,38,260/- was granted together with interest. This award is under challenge in this appeal.

05. Heard learned Advocate Mr. A.B. Kadethankar appearing for the appellant. Heard learned Advocate Mr. S.V. Mundhe appearing for respondents no.01, 02 and 04. So also, heard learned Advocate Mr. A.R. Devakate appearing for respondent no.06.

06. Learned Advocate for the appellant submitted that the learned Tribunal did not consider the evidence on record. The police papers were sufficient to prove that there was head on collusion and therefore, it ought to have been held that Babruwan, who was driving the motorcycle himself, contributed to the extent of 50 % to the accident. The learned Tribunal also failed to consider that Babruwan was not wearing helmet at the relevant time. Further, while calculating the compensation, the non-pecuniary damages have been awarded on the basis of the judgment in *Rajesh & others Vs. Rajbir Singh & others* [(2013) 9 SCC 54], which has been set aside or held to be not a good law by the Hon'ble Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi & others* [AIR 2017 SC 5157]. Therefore, to that extent, the amount of compensation needs to be reduced and it should be made according to the decision in *Pranay Sethi (supra)*.

07. Per contra, learned Advocate appearing for respondents no.01, 02 and 04 supported the reasons given by the learned Tribunal, so also, the calculation of compensation made by the Tribunal. Learned Advocate for respondent no.06 - original respondent no.02 supported the finding given by the learned Tribunal, that the respondent no.03 - Insurance Company is liable to pay compensation jointly and severally together with respondents no.01 and 02.

08. Taking into consideration the submissions made, following points arise for consideration. Findings and reasons for the same are as follows :-

*(I) Whether deceased had contributed to the accident, in any manner ? If yes, to what extent ?*

*(II) Whether the amount of compensation granted by the learned Tribunal needs any alteration or reduction ?*

09. **Point I** : It is to be noted that though the claimant had examined CW 01 Jankabai i.e. claimant no.01 - widow of the deceased, she was not the eye witness. However, claimants had examined CW 03 Laxman Ganpat who was the pillion rider of Babruwan. He was injured in the said accident. His testimony was clear enough to state that the respondent no.01

was rash and negligent while driving the truck. When his oral evidence was available and he was further supported by the contents of the FIR, it was not necessary that any other document ought to have been considered. Learned Advocate appearing for the Insurance Company was very much relying upon the spot *panchanama* Exhibit 32. However, it is to be noted that the said spot was shown by one Maroti Bhingole who had filed the first information report. Perusal of the FIR would show that said Maroti Bhingole was the Police Station Officer who had received the information. That means, he was not an eye witness. Though at the time of spot *panchanama* both the vehicles were at the spot, yet, we cannot say that it was the point of impact. Learned Member of the Tribunal has rightly stated that merely because there is head on collusion, that does not mean that there was contributory negligence on the part of driver of one of the vehicle. Further, the Insurance Company has not examined respondent no.01. Respondent no.01 himself has not taken part in the entire process and has not even taken care to refute allegations of negligence against him. Under such circumstance, merely on the basis of the said spot *panchanama*, it cannot be stated that Babruwan was, in any way, contributed to the accident.

10. Not wearing the helmet cannot be taken as a point for negligence on the part of the motorcycle driver or it cannot be said that it would have

contributed to the accident in any way. No doubt, safety measures are provided for the drivers of vehicles and they are required to be adhered to; however, that does not mean that it would affect the claim petition on the ground that some such traffic rules have not been adhered to. Not wearing helmet and taking other safeguarding measures may amount to a criminal act and make those violators liable to pay penalty or fine but then law has to take its own course without affecting the claim petition.

11. As regards the breach of terms of policy is concerned, no specific evidence has been led by the Insurance Company to prove that the respondent no.01 was not holding valid and effective driving license; it was not having any fitness certificate, etc. Rather many documents including the certified copy of the driving license of both i.e. Babruwan as well as respondent no.01 are on record. When no specific evidence was led by the Insurance Company, it can be said that it has failed to prove the breach of terms of policy. Under such circumstance, the Insurance Company was liable to pay compensation to the claimants jointly and severally with respondent no.02. Hence, the point is answered in the negative.

12. **Point II** : As regards the basic computation of compensation is concerned, the salary which Babruwan was getting has been adduced. Taking into consideration the fact that he was aged 38 years and

was employed as Naik in Indian Army i.e. permanent job, future prospects have been rightly allowed. The only objection raised by the Insurance Company is in respect of the non-pecuniary damages which have been awarded in view of decision in *Rajesh & others Vs. Rajbir Singh & others (supra)*. However, it is to be noted that though in the case of *Pranay Sethi (supra)*, Hon'ble Supreme Court has held that the law laid down in *Rajesh & others Vs. Rajbir Singh & others (supra)*, is no longer a good law, yet, the law on consortium has been further explained by the Hon'ble Supreme Court in *Magma General Insurance Company Ltd. Vs. Nanu Ram Alias Chuhru Ram & others* [2018 STPL 10856 SC] and therefore, no case is made out for reducing the non-pecuniary damages granted by the learned Tribunal. This point is also then answered in the negative.

13. From the discussion above, it can be seen that there is no merit in the present appeal. It deserves to be dismissed and accordingly it is dismissed. There shall be no order as to costs.

( Smt. Vibha Kankanwadi )  
JUDGE

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