

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

CROSS APPEAL NO. 2 OF 2013

Rajiya w/o Batubhai @ Nasir Shaikh
Age: 50 years, Occ: Household,
R/o. Market yard, Newasa road,
Shrirampur.

...Appellant

Versus

Dhanraj Kachardas Lalwani (Died)
through legal heirs.

1a. Smt. Rajani Dhanraj Lalwani
Age: 52 Years, Occ: Household.

1b. Nitin Dhanraj Lalwani
Age: 32 Years, Occ: Business.

1c. Pankaj Dhanraj Lalwani
Age: 32 Years, Occ: Business.

All R/o. Shiwaji Cross Road, Matruchaya
Building, Ward No.4, Shrirampur, Tq.
Shrirampur, Dist. Ahmednagar.

1d. Sou. Komal Jitendra Ranwal
Age: 31 Years, Occ: Household,
R/o. Malprabha Colony,
Opposite Engineering College, B.L.O
Road, Bijapur, Tq. & Dist. Bijapur
(Karnataka State).

2. Anil Ganeshmal Chopada
Age: 44 Years, Occ: Business,
R/o. Bajathan, Tal. Vaijapur,
Dist. Aurangabad.

...Respondents

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Mr. K.M. Nagarkar, Advocate for Appellant.
Mr. V.R. Autade h/f Mr. K.B. Autade, Advocate for
Respondent No.2.
Mr. Deelip Bankar Patil, Advocate for Respondent
Nos. 1a to 1d.

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**WITH
FIRST APPEAL NO.1911 OF 2010**

Dhanraj Kachardas Lalwani (Died)
through legal heirs.

- 1a. Smt. Rajani Dhanraj Lalwani
Age: 52 Years, Occ: Household.
- 1b. Nitin Dhanraj Lalwani
Age: 32 Years, Occ: Business.
- 1c. Pankaj Dhanraj Lalwani
Age: 31 Years, Occ: Business.

All R/o. Shivaji Cross Road, Matruchaya
Building, Ward No.4, Shrirampur, Tq.
Shrirampur, Dist. Ahmednagar.

- 1d. Sou. Komal Jitendra Ranwal
Age: 31 Years, Occ: Household,
R/o. Malprabha Colony,
Opposite Engineering College, B.L.O
Road, Bijapur, Tq. & Dist. Bijapur
(Karnataka State). ...Appellants

Versus

- 1. Rajiya w/o Batubhai @ Nasir Shaikh
Age: 50 years, Occ: Household,
R/o. Market yard, Newasa road,
Shrirampur, Dist. Ahmednagar
- 2. Anil Ganeshmal Chopada
Age: 44 Years, Occ: Business,
R/o. Bajathan, Tal. Vaijapur,
Dist. Aurangabad. ...Respondents

...

Mr. Deelip Bankar Patil, Advocate for Appellant
Nos. 1a to 1d.

Mr. V.R. Autade h/f Mr. K.B. Autade, Advocate for
Respondent No.2.

Mr. K.M. Nagarkar, Advocate for Respondent No.1.

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**WITH
FIRST APPEAL NO.1963 OF 2011**

Anil Ganeshmal Chopada
Age: 44 Years, Occ: Business,
R/o. Bazarthan, Tal. Vaijapur,
Dist. Aurangabad. ...Appellant

Versus

1. Rajiya w/o Batubhai @ Nasir Shaikh
Age: 50 years, Occ: Household,
R/o. Market yard, Newasa road,
Shrirampur, Dist. Ahmednagar
2. Dhanraj S/o Kachardas Lalwani,
Age: 53 years, Occ.Driver & Business,
R/o Main Road, Shrirampur,
Dist. Ahmednagar. ...Respondents

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Mr. V.R. Autade h/f Mr. K.B. Autade, Advocate for Appellant.

Mr. Deelip Bankar Patil, Advocate for Respondent No.2.

Mr. K.M. Nagarkar, Advocate for Respondent No.1.

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CORAM : P.R. BORA, J.

DATED : 25th FEBRUARY, 2019.

ORAL JUDGMENT:-

. Advocate Shri V.R. Autade holding for Shri K.B. Autade submits that he has instructions to appear for appellant in First Appeal No.1963 of 2011 and he will be filing his vakalatnama within a week.

2. Since these appeals are arising out of the common judgment and award passed by the Motor Accident Claims Tribunal at Shrirampur in Motor Accident Claim Petition No.164 of 2000 decided on

29.01.2010, I heard the common arguments in all these appeals and I deem it appropriate to decide all these appeals by common reasoning.

3. The claim petition was filed by the mother of a ten years old child who was alleged to have suffered death in an accident happened on 26.08.1994 having involvement of a tractor bearing registration no.MXM-2343 with trolley no.MHQ-6828 owned by opponent no.1 Anil Ganeshmal Chopada, the appellant in First Appeal No.1963 of 2011. Shri Dhanraj Kachardas Lalwani was stated to be driving the said tractor who is the appellant in First Appeal No.1911 of 2010. In the claim application, the claimants had claimed compensation of Rs.1,00,000/-. The claim petition was resisted on various grounds.

4. It was the contention of the respondents that in an attempt to run away after committing theft, the deceased fell down before the tractor and in the accident so happened suffered death. The Tribunal, however, seems to have turned down these objections and held the accident to have been happened because of the negligence on part of the

appellant in First Appeal No.1911 of 2010 and held the said appellant as well as the appellant in First Appeal No.1963 of 2011 jointly and severally liable to pay the amount of compensation of Rs.1,07,000/- inclusive of NFL compensation to the mother of the deceased.

5. The mother of the deceased has filed cross appeal seeking enhancement in the amount of compensation. It is the contention of Shri Nagarkar, the learned counsel appearing for the said appellant that the Tribunal has not awarded the just and fair amount of compensation. The learned counsel submitted that considering the fact that deceased Firoz would have been the support for claimant Rajiya in future, the amount of compensation as has been awarded by the Tribunal is unjust and inadequate. The learned counsel submitted that in no case the Tribunal should have awarded the compensation less than Rs.2,00,000/-.

6. As against it, Advocate Shri Bankar Patil, appearing for the appellant in First Appeal No.1911 of 2010 submitted that the said appellant has been unnecessarily involved in the claim petition. The

learned counsel submitted that the Tribunal has failed in appreciating the evidence on record and has recorded an erroneous conclusion holding the appellant responsible in causing the alleged accident.

7. The learned counsel further submitted that the amount of compensation as has been awarded by the Tribunal is in fact more amount than was claimed by the claimants. The learned counsel submitted that the claim was for Rs.1,00,000/- whereas the Tribunal has awarded the amount of Rs.1,07,000/-. The learned counsel submitted that once the application was allowed in toto, the original claimant was estopped from challenging the order passed by the Tribunal. The learned counsel in the circumstances, submitted for dismissal of the cross appeal and prayed for allowing First Appeal No.1911 of 2010 and to dismiss the Motor Accident Claim Petition No.164 of 2000 against the appellant therein and further prayed for refund of statutory amount which he has deposited at the time of filing of the appeal.

8. I have carefully considered the

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submissions advanced by the learned counsel appearing for the parties. I have perused the impugned judgment as well as the evidence on record. After having gone through the evidence and the analysis made by the Tribunal of the said evidence, it appears to me that the present appeals can be disposed of by giving some adequate enhancement in the amount of compensation awarded by the Tribunal. The evidence which is available on record is revealing the involvement of tractor as well as negligence on part of the appellant in First Appeal No.1911 of 2010 in occurrence of the alleged accident. It is true that the appellant herself claimed the compensation of Rs.1,00,000/- and the Tribunal has in fact awarded more amount than claimed. It is not in dispute that the age of deceased Firoz was 10 years. As has been deposed by the appellant-claimant, deceased Firoz was her support in future. Considering the facts as aforesaid, it appears to me that there is some scope for enhancement in the amount of compensation. After having considered the entire evidence on record and the over all circumstances involved in the matter, it appears to me that in

addition to the amount of Rs.1,07,000/- awarded by the Tribunal if, a lump sum amount of more Rs.50,000/- is awarded to the appellant-claimant including the cost, interest etc., the same would meet the ends of justice. For the reasons stated above, the following order is passed:

ORDER

- i) The appellant-claimant in Cross Appeal No.2 of 2013 is held entitled for the enhanced compensation of Rs.50,000/- in lump sum including cost, interest etc., in addition to the amount awarded by the Tribunal to the tune of Rs.1,07,000/-.
- ii) The respondents in Cross Appeal No.2 of 2013 shall jointly and severally deposit the aforesaid enhanced amount of compensation within six weeks before the Motor Accident Claims Tribunal at Shrirampur.
- iii) If the enhanced amount of compensation is not deposited within six weeks, it shall carry the interest at the rate of 9% p.a. from the said date onwards till realization of the said amount.
- iv) The Cross Appeal No.2 of 2013 thus stands partly allowed in the aforesaid terms.
- v) First Appeal No.1911 of 2010 and First Appeal

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No.1963 of 2011 stand dismissed without any order
as to costs.

vi) Pending civil applications, if any, stand
disposed of.

(P.R. BORA, J.)

Mujaheed//