

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

First Appeal No. 1969 of 2018

District : Aurangabad

1. Daulat Sonaji Khadke
(Dead) through L.Rs.:

1a. Kusimbai w/o. Daulat Khadke,
Age : 56 years,
Occupation : Household,
R/o. Itkheda, Paithan Road,
Taluka & Dist. Aurangabad.

1b. Santosh Daulat Khadke,
Age : 38 years,
Occupation : Agriculture,
R/o. Itkheda, Paithan Road,
Taluka & Dist. Aurangabad.

1c. Bhagwan Daulat Khadke,
Age : 32 years,
Occupation : Agriculture,
R/o. Itkheda, Paithan Road,
Taluka & Dist. Aurangabad.

1d. Rekhabei w/o. Ganesh Narwade,
Age : 36 years,
Occupation : Household,
R/o. Babhulgaon,
Near Chittegaon,
Taluka Paithan,
Dist. Aurangabad.

.. Appellants
(Original
respondent
no.01)

versus

~~1. Sujata w/o. Suresh Deshpande,
Age : 48 years,
Occupation : Household,
R/o. B-1, Kasliwal Garden,
N-2, Mukundwadi, CIDCO,
Aurangabad.~~

.. Respondent no.01
deleted.

2. Sagar s/o. Suresh Deshpande,
Age : 23 years,
Occupation : Education,
R/o. B-1, Kasliwal Garden,
N-2, Mukundwadi, CIDCO,
Aurangabad.

3. Samiksha d/o. Suresh Deshpande,
Age : 20 years,
Occupation : Education,
R/o. B-1, Kasliwal Garden,
N-2, Mukundwadi, CIDCO,
Aurangabad.

4. Ankush Bhimrao Musale,
Age : 47 years,
Occupation : Driver,
R/o. Phule Nagar,
Pandharpur,
Taluka & Dist. Aurangabad.

.. Respondents
(Nos.01 to 03 -
Original
claimants
&
No.05 -
Original
respondent
no.02)

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Mr. Ravindra V. Gore, Advocate, for the appellants.

*Respondent no.01 deleted as per Court's order
dated 05-12-2019.*

*Mr. S.R. Deshpande, Advocate, for respondents
no.02 and 03.*

*Notice not necessary to respondent no.04 as per
Court's order dated 05-12-2018.*

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the judgment : 01st July 2019.**

**Date of pronouncing
the judgment : 05th September 2019.**

JUDGMENT :

01. Present appeal has been filed by original respondent no.01, challenging the judgment and award passed by learned Member of the Motor Accident Claims Tribunal, Aurangabad, in Motor Accident Claim Petition No. 349 of 2011, dated 22-02-2018, whereby the petition filed under Section 166 of the Motor Vehicles Act, 1988 by the present respondents, was partly allowed.

02. Original claimants had filed the said claim petition for getting compensation on account of death of one Suresh Laxman Deshpande in motor vehicle accident. Said Suresh was proceeding towards Waluj, Bajajnagar, by his motorcycle on 23-05-2009 at about 17.00 hours. When he reached in front of gate of Shreya Company, another motorcycle bearing No. MH-20/AV-5927, driven by respondent no.02 came from back side in a negligent manner. The said motorcycle driven by respondent no.02 gave dash to motorcycle driven by Suresh; as a result of which, Suresh sustained multiple injuries. He was admitted to Government Hospital, Aurangabad and then shifted to City Care Super Specialty Hospital. However, he succumbed to his injuries on 27-05-2009. It was contended that Suresh was a businessman getting income of Rs. 1,12,000/- per annum. He was also getting income of Rs. 36,000/- from agriculture. The

claimants had claimed compensation of Rs. 14,50,000/- together with interest from respondent respondents no.01 and 02. Respondent no.01 is the owner of the motorcycle. *[Parties are referred as per their nomenclature before the Tribunal.]*

03. Respondent no.01 expired during the pendency of the petition and his legal heirs have been brought on record. By filing written statement, they had contended that no such accident had occurred though police had lodged report against respondent no.02. It is stated that the respondent no.02 has been wrongly prosecuted and thereafter he was discharged by the concerned Court. It was denied that the accident had taken place due to the sole negligence of the deceased who was under the influence of liquor at the relevant time. Age, occupation and income of the deceased given in the petition has been challenged.

04. Taking into consideration the rival pleadings, issues were framed. Only claimants had led evidence, oral as well as documentary and taking into consideration the evidence on record, the Tribunal held that deceased Suresh expired in the motor vehicle accident that had taken place on 23-05-2009 and said accident had taken place due to the sole negligence on the part of respondent no.02. Respondents no.1a to 1d and 02 were jointly and severally directed to pay compensation of Rs.

12,28,000/- to the claimants together with interest. The said judgment and award is under challenge in this appeal filed by the legal representatives of original respondent no.01.

05. Heard learned Advocate Mr. R.V. Gore appearing for the appellants. Heard learned Advocate Mr. S.R. Deshpande appearing for respondents no.02 and 03.

06. It has been vehemently submitted on behalf of the appellants, that the record would show that there was failure on the part of the applicants for about 13 months, for not even registering the petition. Thereafter, there were no steps taken as against respondent no.02 i.e. from 09-11-2012 to 25-06-2014. Again there is delay in bringing the legal representatives of original respondent no.01 on record. Taking into consideration all these negligent acts on the part of the claimants, the learned Tribunal ought not to have awarded interest for those periods. He, therefore, prayed for reduction of interest for that period and also submitted that the principal amount has been deposited by respondents no.1a to 1d as per the award. Another submission that has been made on behalf of the appellants is that the learned Tribunal has not taken note of the contributory negligence on the part of the deceased on the basis of police

papers on record. It will not be out of place to mention here, that there was no submission on behalf of the appellants on the point of quantum.

07. Per contra, learned Advocate appearing for respondents no.02 and 03 i.e. original claimants submitted that the perusal of *Roznama* would show that steps were taken from time to time by the claimants to serve the respondents and there was absolutely no delay on their part. Whatever delay has been caused in bringing the legal representatives of respondent no.01 on record has been duly condoned by the Tribunal and therefore, no interference is required or change in the interest rate or duration. It is stated that the amount, including amount towards '*no fault liability*' has not been paid to the claimants uptill now. No evidence was led by respondents no.1a to 1d and therefore, there is no question of holding deceased contributorily liable for the accident.

08. At the outset, it can be said that for contributory negligence, there was no pleading by respondents no.1a to 1d. The written statement that has been filed on record shows that they intended to say that the accident had taken place due to the sole negligence of the deceased and even alternatively it was not pleaded that the deceased had contributed to the accident. Secondly, the position or the manner in which the accident took place, as pleaded by the

claimants, has been proved. The motorcycle driven by respondent no.02 had come from back side. Therefore, how the motorcycle which is going ahead of him would have contributorily liable itself is a question. Thirdly, no independent evidence has been led by examining respondent no.02 or any other eye witness to support this type of contention; even though it was not taken in the written statement. When evidence was led by the claimants, in the form of examining one of the claimants, though not an eye witness but then it was supported by documentary evidence in the form of first information report and other police papers, the onus has shifted on the respondents to disprove the contents of those documents. When it has been tried to be submitted that the learned Tribunal ought to have held deceased contributorily liable to the accident, then the appellants are impliedly accepting the fact about involvement of the motorcycle owned by original respondent no.01 and it was driven by respondent no.02. Under this circumstance, when respondent no.02 was not examined before the Tribunal; the Tribunal was justified in drawing adverse inference against respondent no.02. Therefore, there is no substance in the said point.

09. As regards the alleged delay regarding registration of the petition, steps not taken for serving the driver or bringing the legal

representatives on record is concerned, the *Roznama* speaks for itself. Though the accident had taken place on 23-05-2009 and Suresh expired on 27-05-2009, the petition was filed on 05-05-2011. It has been numbered immediately thereafter and notices have been directed to be issued. The contents of the *Roznama* would show that on an average, steps were taken by the claimants to get the notice issued to the respondent no.02. Even if for some days, the matter was pending for taking steps, that does not mean that there was negligence on the part of the claimants. Thirdly, as regards the legal representatives are concerned, the delay has been condoned by the Tribunal. Therefore, in respect of the said point of interest also, there is absolutely no substance.

10. There is no merit in the present appeal; hence it deserves to be dismissed and accordingly it is dismissed with no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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