

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

**FIRST APPEAL NO.585 OF 2019**

- 1 Ujwala w/o Hanmantrao Deshmukh,  
Age 45 yrs., Occ. Household,
- 2 Kallyani d/o Hanmantrao Deshmukh,  
Age 23 yrs., Occ. Education,
- 3 Rohan Hanmantrao Deshmukh,  
Age 21 yrs., Occ. Education,
- 4 Manikrao Balasaheb Deshmukh,  
Age 75 yrs., Occ. Nil.

All are r/o Nandura (Kh),  
Tq. Ahmedpur, Dist. Latur.

... **Appellants.**

... **Versus** ...

- 1 Shivshankar Ananda Londhe,  
Age – Major, Occ. Driver,  
R/o Londhe Sangvi, Tq. Loha,  
Dist. Nanded.
- 2 Dharoji Gunjaji Hambarde,  
Age – Major, Occ. Business,  
R/o Vishnupuri, Tq. & Dist. Nanded.
- 3 I.C.I.C.I. Lombard General Insurance Company Ltd.,  
Through its Branch Manager,  
Branch Office, Parijat Mangal Karyalaya,  
Latur.

... **Respondents.**

...

Mr. R.B. Deshpande, Advocate for the appellants  
Mr. G.R. Syed, Advocate for the respondent Nos.1 and 2  
Mr. V.N. Upadhye, Advocate for the respondent No.3

...

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

**RESERVED ON : 02<sup>nd</sup> JULY, 2019**

**PRONOUNCED ON : 01<sup>st</sup> AUGUST, 2019**

**JUDGMENT :**

1 Present appeal has been filed by the original claimants challenging findings by learned Member, Motor Accident Claims Tribunal, Latur in M.A.C.P. No.256/2013 dated 23.03.2017, thereby holding the deceased negligent to the extent of 30% and then deducting amount from the total compensation amount.

2 The present appellants-original claimants had filed said petition under Section 166 of the Motor Vehicles Act, 1988 to claim compensation of Rs.90,96,700/- on account of accidental death of Hanmantrao Manikrao Deshmukh. Said Hanmantrao had gone to Latur along with his friend Bhalchandra Rathod on 16.09.2013. After completion of their work, they were returning on motorcycle bearing No.MH 24/X-3631. Deceased was driving the said motorcycle in slow speed and from the extreme left side of

his side of the road on Latur-Chakur road. When they reached near Chakur, one Tata Pick up vehicle bearing registration No.MH 26/AD-6283 driven by respondent No.1 came from opposite direction in high speed as well as rash and negligent manner. It gave dash to the motorcycle driven by deceased. Both the riders fell down and Hanmantrao died on the spot. Report regarding the accident was lodged with Chakur Police Station against respondent No.1. It is contended that the said accident took place due to the negligent of respondent No.1. The said vehicle was owned by respondent No.2 and insured with respondent No.3 on the date of the accident. Hanmantrao was serving as Junior Clerk in Vimalbai Deshmukh Girls School. He was getting salary of Rs.25,420/- per month. On the basis of these contentions, claimants had claimed compensation.

3            Respondent No.1 failed to file written statement. Respondent No.2 filed written statement, so also respondent No.3 has filed separate written statement. Both of them have denied all the averments in the claim petition. It is denied that the accident took place due to the rashness and negligence on the part of the Tata Pick up vehicle. Both of them have contended that there was contributory negligence on the part of the deceased. The insurance company has raised statutory defences also.

4            Taking into consideration the rival contentions, issues were

framed. The learned Tribunal after taking note of the evidence as well as hearing both sides held that respondent No.1 was negligent to the extent of 70%, whereas deceased was responsible for the accident to the extent of 30%. The claim petition was partly allowed. Total compensation was held to be Rs.22,44,560/- inclusive of No Fault Liability amount. However, it is stated that since deceased was responsible to the extent of 30%, the claimants are not entitled to get Rs.9,61,954/- out of the said total amount of compensation. Hence, this appeal.

5            Heard learned Advocate Mr. R.B. Deshpande for the appellants, learned Advocate Mr. G.R. Syed for the respondent Nos.1 and 2 and learned Advocate Mr. V.N. Upadhye for the respondent No.3. It has been vehemently submitted on behalf of appellants that respondents, though contended that there was contributory negligence on the part of the deceased, did not lead any evidence. Respondent No.1 was not examined. Under such circumstance, the learned Tribunal ought not to have held that deceased was responsible to the extent of 30%. The deduction, therefore, ought not to have made from the total amount of compensation. He has also submitted that the learned Tribunal erred in awarding interest @ 6% per annum only. It ought to have been 9% per annum.

6            Per contra, the learned Advocate for the respondent Nos.1 and 2

supported the reasons given by the learned Tribunal and learned Advocate appearing for respondent No.3 relied on the decision of this Court in First Appeal No.705 of 2004 dated 08.03.2019, wherein also this Court had come to the conclusion that there was contributory negligence on the part of deceased.

7 Respondents have not filed any appeal challenging the findings given by learned Tribunal which have gone against them. Therefore, the scope of this appeal is very much limited and therefore, taking into consideration the limited question involved in the appeal, following points arise for determination. Findings and reasons for the same are as follows.

1 Whether the learned Trial Court was justified in holding deceased responsible to the accident to the extent of 30% ?

2 Whether the rate of interest granted by the Tribunal deserves modification ?

### **REASONS**

8 The claimants have examined claimant No.1 and relied on the police papers to prove the negligence. Admittedly CW 1 Ujwala was not an eye witness to the accident and therefore, she was deposing on the basis of information gathered by her. Under such circumstance, the police papers are

required to be considered. Here, in this case, both the respondents, though taken contention about contributory negligence, yet, did not adduce any evidence. Definitely, they could have relied on the police papers also to support their contention about contributory negligence. The contents of the First Information Report Exh.40 shows that there was head on collision between the two vehicles, however, the spot panchnama Exh.41 does not say that head on collision was in the middle of the road. The contents of the spot panchnama only speaks about the conditions of the vehicles after collision. The exact place of impact has not been stated. The spot panchnama shows that glass of head light of motorcycle was broken. The indicator, right handle and the right side of fuel tank was also damaged. The front glass, driver side head light, door and other front side of the Tata Pick up was also damaged. On the basis of these averments, the learned Tribunal has come to the conclusion that the accident occurred due to the rashness and negligence on the part of the respondent No.1 as well as deceased to the extent of 70:30 percent. When, even the claimants had not examined Bhalchandra Baburao Rathod who was travelling along with Hanmantrao and the respondent Nos.2 and 3 had not examined respondent No.1, it cannot be said that adverse inference is required to be drawn only against the respondent Nos.1 to 3. There is no other explanation coming on record from the applicants as to in what manner the accident had taken place. Though in

petition they have tried to say that deceased was travelling from extreme left of the road, yet, the spot panchnama, on which even they want to rely, is not supporting their contention. Therefore, on the basis of available documents on record the learned Tribunal was justified in holding that even deceased is responsible to the extent of 30% to the accident.

9           Taking into consideration the salary of the deceased which has been proved by the claimants, the learned Tribunal has come to the conclusion that total compensation, to which the claimants are entitled, is Rs.32,06,516/-. However, the 30% of the said amount i.e. Rs.9,61,954/- has been deducted as negligence of deceased and therefore, the award has been passed to the extent of Rs.22,44,562/-. The total amount of compensation has not been challenged by the claimants. As aforesaid, the challenge was only to the extent of deduction of 30% which has been already addressed. Now, the question is only in respect of interest. 6% interest per annum has been awarded from the date of petition till the date of realization of entire amount. This appears to be on lower side, taking into consideration the catena of Judgments of Apex Court as well as this Court. Therefore, the percentage of interest deserves to be increased. Taking into consideration the decrease in interest i.e. awarded by any Nationalized Bank in 2013 to 2017 appropriate rate of interest in this case would be 7.5% per annum.

10           Therefore, for the reasons stated above, the appeal deserves to be partly allowed to the extent of modification in the rate of interest only. Hence, following order.

**ORDER**

1           Appeal is hereby partly allowed.

2           The Judgment and Award passed in M.A.C.P. No.256/2013 by learned Ex-Officio Member, Motor Accident Claims Tribunal, Latur dated 23.03.2017 is hereby set aside and modified to the extent of rate of interest only.

3           The amount of compensation Rs.21,94,562/-, which is exclusive of No Fault Liability amount, to carry interest @ 7.5 % per annum from the date of the petition till actual realization of entire amount. The amount thereby increased (after the adjustment of interest amount already awarded and deposited) be given to the claimants equally.

4           Under such circumstance, no order as to costs.

( Smt. Vibha Kankanwadi, J. )