

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

First Appeal No. 0586 of 2019

District : Latur

1. Smt. Mangal w/o. Arun
@ Arvind Tidke,
Age : 36 years,
Occupation : Household.
2. Vishal s/o. Arun @ Arvind Tidke,
Age : 22 years,
Occupation : Education.
3. Vaibhav s/o. Arun @ Arvind Tidke,
Age : 21 years,
Occupation : Education.
4. Radhabai w/o. Vithal Tidke,
Age : 55 years,
Occupation : Household.
5. Vithal s/o. Madhavrao Tidke,
Age : 60 years,
Occupation : Nil.

All R/o. Ganjur,
Taluka & Dist. Latur.

.. Appellants
(Original
claimants)

versus

1. Sharad s/o. Badamrao Pankhede,
Age : Major,
Occupation : Driver,
R/o. Kesapuri Camp, Majalgaon,
Taluka Majalgaon,
Dist. Beed
(Driver of Jeep
No. MH-23/E-6360).
2. Suryabhan s/o. Gyanba Tarkase,
Age : Major,
Occupation : Business &
Agriculture,

R/o. Chinchgavan,
Taluka Majalgaon,
District Beed
(Owner of Jeep
No.MH-23/E-6360).

3. New India Insurance Company
Ltd.,
Through its Branch Manager,
Branch Office,
Near S.T. Bus Stand,
In front of Shahu College,
Latur.

.. Respondents
(Original
respondents)

.....

Mr. Ram B. Deshpande, Advocate, for the appellants.

*Mr. V.H. Solanke, Advocate, for respondents
no.01 and 02.*

Mr. M.M. Ambhore, Advocate, for respondent no.03.

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 02ND JULY 2019

ORDER :

01. Present appeal has been filed by the original claimants, challenging the finding of the learned Member of the Motor Accident Claims Tribunal, Latur, in M.A.C.P. No.59 of 2013, dated 01-12-2016, thereby holding the deceased negligent to the extent of 30 % and then deducting the amount of compensation.

02. Taking into consideration the limited scope in this appeal, it is required to be seen as to

whether the said finding by the learned Tribunal is correct or not. It will not be then out of place to mention that the respondents have not challenged the said judgment and award in respect of those findings which have gone against them, including the quantum of compensation. Herein also, the appellants are not challenging the quantum of compensation arrived at, but the dispute is only to the extent of holding the deceased negligent to the extent of 30 %.

03. Heard learned Advocate Mr. R.B. Deshpande for the appellants. Heard learned Advocate Mr. V.H. Solanke for respondents no.01 and 02. So also, heard learned Advocate Mr. M.M. Ambhore for respondent no.03.

04. It has been vehemently submitted on behalf of the appellants, that the learned Tribunal did not consider the evidence of CW 02 Bharat Thalkar who has been examined as eye witness to the incident. He had seen the accident taken place ahead of him. He has categorically stated that the deceased was proceeding on motorcycle in front of him from left side of the road. It was stated that the Mahindra Max jeep, which had come from opposite direction, was driven in rash and negligent manner and then it was hit on the motorcycle driven by the deceased. The said witness ought not to have been disbelieved by the learned Tribunal. The learned Tribunal also failed to

consider that respondent no.01, who was driving the said offending vehicle, was not at all examined by the respondents for the reasons best known to them and therefore, adverse inference ought to have been drawn against the respondents. When there was no evidence led by the respondents on the plea of contributory negligence, then it ought not to have been considered by the learned Tribunal that there is 30 % negligence on the part of the deceased. He relied on the decision of the Hon'ble Apex Court, in *Syed Sadiq, etc. Vs. Divisional Manager, United India Insurance Company in Civil Appeal Nos.662-664 of 2014 (Arising out of SLP(C) Nos. 16739-16741 of 2012)*, wherein it has been held thus :-

"28. We find it pertinent to observe that both the Tribunal and the High Court erred in holding the appellants / claimants in these appeals liable for contributory negligence. The Tribunal arrived at the above conclusion only on the basis of the fact that the accident took place in the middle of the road in the absence of any evidence to prove the same. Therefore, we are inclined to hold that the contribution of the appellants / claimants in the accident is not proved by the respondents by producing evidence and therefore, the finding of the Tribunal regarding contributory negligence, which has been upheld by the High Court, is set aside. "

05. Per contra, learned Advocates appearing for

the respondents supported the reasons given by the learned Tribunal holding the deceased responsible for the accident to the extent of 30 %.

06. At the outset, it can be seen that the respondents no.01 and 02 i.e. driver and owner, though appeared, had failed to file written statement. The written statement was filed by respondent no.03 on all points. The fact of accident itself was denied, so also, involvement of the vehicle insured with it in the said accident was denied. Alternative defences have been raised wherein one of the defence says that the accident had occurred due to the negligence of the deceased himself. Further plea of contributory negligence was also taken. Therefore, it was for the claimants to prove that the accident had taken place due to the sole negligence of the respondent no.01.

07. In order to discharge the burden on them, they had examined said CW 02 Bharat Thalkar and also relied on the police papers. The certified copy of charge-sheet Exhibit 29 would show that Bharat Thalkar was cited as witness by the prosecution. He had deposed that when he was proceeding from the road on his vehicle, the motorcycle driver was going ahead of him from the left side of the road and then he was hit by Mahindra Max jeep. He has, in fact, stated that he identified respondent no.01 at the spot. In

his cross examination, he has stated that there was head on collusion in between two vehicles. He says that he went and had seen the person who had fell down from the motorcycle; but then he was not knowing that person. After the accident, few persons gathered at the spot and he was at the spot for about 15 to 20 minutes. He says that there was talk in between him and one Rudrawar who had identified the injured. He says that from the spot, he went to home. He did not feel it necessary to disclose vehicle number to the police. He also did not feel it necessary to disclose the said fact to the family members of the deceased. This was in the backdrop of the fact that in the FIR, though the jeep number is stated, yet, the name of the driver was not disclosed. The statement of this witness appears to have been taken by police at a much belated period.

08. When except bards of CW 02 Bharat Thalkar, there is nothing to show that he was present at the spot even after the accident, the learned Tribunal has rightly disbelieved him. The spot of the accident has been shown by the informant who is the brother of the deceased and if we consider the spot *panchanama* Exhibit 31, it can be seen that the blood was on the ground in the middle of the road. There is no explanation on behalf of the claimants as to how the blood could have been seen in the middle of the road. When CW 02 Bharat Thalkar did not feel

it necessary to inform the said fact to the police as well as to the family of the deceased, though he came to know about name of the deceased through said Rudrawar, then definitely his testimony cannot be believed. The claimants have not examined the brother of the deceased / informant to explain as to from whom he had gathered the information and then had shown the spot of accident to police at the time of drawing the spot *panchanama*. No objection appears to have been taken by either the claimants or by the informant to challenge the spot *panchanama* Exhibit 31. Under such circumstance, the learned Tribunal was justified in holding the deceased responsible for the accident to the extent of 30 %. The situation shown in the spot *panchanama* was considered by the learned Tribunal while arriving at the said conclusion.

09. The ratio laid down in *Syed Sadiq, etc. (supra)* cannot be denied. However, it is to be noted that on the facts before the Hon'ble Apex Court, wherein there was no question of disbelieving the eye witness. When some other evidence has not been led and the evidence which has been produced on record is not believable, then further contents of the spot *panchanama* have been relied by the learned Tribunal. The position of the motorcycle, the position of the blood on the road and damage caused to motorcycle were the factors which were considered by the learned

Tribunal and therefore, no fault can be found in respect of the said conclusion.

10. There is no merit in the present appeal. It deserves to be dismissed. Hence, the appeal is hereby dismissed. There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

.....