

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

First Appeal No. 01800 of 2019

District : Jalgaon

Ravindra Ramkisan Lodhi,
Age : 32 years,
Occupation : Agriculture,
R/o. Shindad,
Taluka Pachora,
Dist. Jalgaon.

.. Appellant

versus

1. The New India Assurance Co. Ltd.,
Having its Divisional Office at
Adalat Road, Aurangabad,
Through its authorized officer.

2. Balu Daulat Patil,
Age : 30 years,
Occupation : Driver,
R/o. Shindad,
Taluka Pachora,
Dist. Jalgaon.

3. Sahebrao Daulat Patil,
Age : 35 years,
Occupation : Tractor Owner,
R/o. Shindad,
Taluka Pachora,
Dist. Jalgaon.

.. Respondents.

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Mr. Harshal P. Randhir, Advocate, for the appellant.

Mr. A.B. Kadethankar, Advocate, for respondent no.01.

Respondents no.02 and 03 served.

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With

First Appeal No. 01801 of 2019

District : Jalgaon

New India Assurance Co. Ltd.,
A company registered under
the Companies Act and a subsidiary
of the General Insurance Co. of
India Ltd.,
having one of its Divisional Office
at Adalat Road, Aurangabad,
Through its authorized signatory.

.. Appellant
(Original
respondent
no.03)

versus

1. Ravindra Ramkisan Lodhi,
Age : 32 years,
Occupation : Agriculture,
R/o. Shindad Tk.,
Taluka Pachora,
Dist. Jalgaon.
2. Balu Daulat Patil,
Age : 30 years,
Occupation : Driver,
R/o. as above.
3. Sahebrao Daulat Patil,
Age : 35 years,
Occupation : Tractor owner
& Agriculture,
R/o. as above.

.. Respondents
(No.01 -
Original
claimant.

No.02 -
Original
respondent
no.01
&
No.03 -
Original
respondent
no.02)

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

*Mr. Harshal P. Randhir, Advocate, for respondent
no.01.*

*Mr. Vijay Y. Patil, Advocate, for respondents
no.02 and 03.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09TH SEPTEMBER 2019

ORDER :

01. Both these appeals are arising out of same judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Jalgaon, in M.A.C.P. No. 0297 of 1998, dated 21-09-2017, whereby the respondents no.01 to 03 therein were jointly and severally directed to pay compensation of Rs. 2,65,000/- under Section 166 of the Motor Vehicles Act, 1988 together with interest at the rate of 6 % per annum. The original claimant has filed First Appeal No. 1800 of 2019 for enhancement; whereas the original respondent no.03 - Insurance Company has filed First Appeal No. 1801 of 2019 challenging the liability as well as the entitlement of the claimant to receive the compensation.

02. The facts giving rise to the present appeal are that the claimant had come with a case that deceased Shobhabai was his wife and she was travelling in a trailer bearing registration no. MH-19/J-2310 to the tractor bearing no. MH-19/C-2504. She expired due to the accidental injuries suffered due to the negligence in driving on the part of the tractor driver i.e. respondent no.01. The said tractor and trolley was owned by respondent no.02 and

it was insured with respondent no.03 on the relevant date. [Parties are referred as per their nomenclature before the Tribunal.]

03. The petition was resisted by the respondents by filing written statement, especially by the Insurance Company. The statutory defence was taken on the ground that a passenger is not allowed to travel in a tractor, that too, which was used for agriculture purpose. The deceased was a gratuitous passenger whose risk was not covered under the terms of the policy.

04. Heard learned Advocate Mr. H.P. Randhir appearing for the appellant in F.A. No.1800 of 2019 as well as respondent no.01 in F.A. No.1801 of 2019. Heard learned Advocate Mr. A.B. Kadethankar appearing for the appellant in F.A. No.1801 of 2019 as well as respondent no.01 in F.A. No.1800 of 2019. So also, heard learned Advocate Mr. V.Y. Patil appearing for respondents no.02 and 03 in F.A. No. 1801 of 2019.

05. It will not be out of place to mention here, that there was earlier round of decisions in the said matter. Initially, said petition was dismissed by the concerned Tribunal on the ground that the claimant has failed to prove that he is the legal representative of deceased Shobhabai. The matter was carried to this Court by filing First Appeal No. 621

of 2002 which was decided by this Court on 06th June 2017. The other points were raised in respect of negligence as well as entitlement of the claimant to receive the compensation. It was observed firstly that *"It is nobody's case that deceased Shobhabai was not the wife of the present appellant. Even if it is accepted that the appellant contacted second marriage, in absence of any evidence to the effect that the appellant obtained divorce from deceased Shobhabai, it cannot be held that there was no relationship between deceased Shobhabai and the appellant."* Thus, it was held that the claimant is entitled to receive the compensation. Thereafter, the point in respect of breach of terms of policy was addressed to and it was held that this Court is unable to accept the submissions made on behalf of the Insurance Company. Under such circumstance, the matter was only remitted for deciding the quantum.

06. Thus, it is to be noted that all the points which were raised by the Insurance Company have already been dealt with. Under such circumstance, straightway First Appeal No. 1801 of 2019 filed by the Insurance Company deserves to be dismissed. The only question is in respect of quantum. After considering the evidence on record, the learned Tribunal has awarded compensation of Rs. 2,65,000/-. However, the claimant says that it is not adequate. Perusal of the evidence would show that deceased Shobhabai was getting Rs.60 to Rs.70/- per day by doing labour work. Her monthly income was taken at

the rate of Rs.15,000/- per annum and definitely since the accident had taken place in the year 1998. So also, it may not be possible for a labour to get work every day. The notional income that was adopted in that period was Rs. 15,000/- per annum. Further, taking into consideration age of the deceased as 29, multiplier of 17 has been rightly used. So also, it was definitely considered by the Tribunal that since accident had occurred in the year 1998, the other non-pecuniary damages have been properly awarded. There is no glaring mistake in arriving at the quantum requiring any interference by this Court.

07. In the light of above, both the first appeals are hereby dismissed. There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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