

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

First Appeal No. 0421 of 2014

District : Parbhani

Sopan s/o. Laxmanrao Gaikwad,
Age 55 years,
Occupation : Service,
R/o. Adarsh Colony, Jintur,
Taluka Jintur,
Dist. Parbhani.

.. Appellant
(Original
respondent
no.01)

versus

1. Smt. Panchasheela
w/o. Dattarao Sabane,
Age : 53 years,
Occupation : Household.
2. Nagorao s/o. Dattarao Sabane,
Age : 20 years,
Occupation : Education.
3. Jivan s/o. Dattarao Sabane,
Age : 19 years,
Occupation : Education.
4. Vinod s/o. Dattarao Sabane,
Age : 19 years,
Occupation : Education.

All R/o. Chatori,
Taluka Gangakhed,
Dist. Parbhani.

5. Milind s/o. Shankarrao Salve,
Age : 23 years,
Occupation : Driver,
R/o. Ambedkar Nagar,
Gangakhed,
Taluka Gangakhed,
Dist. Parbhani.

.. Respondents
(Nos.01 to 04 -
Original
petitioners/
claimants
&
No.05 -
Original
respondent
no.02)

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Mr. N.D. Kendre, Advocate, for the appellant.

*Mr. M.P. Kale, Advocate, for respondents
no.01 to 04 (Absent).*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 22ND AUGUST 2019

ORAL ORDER :

01. Present appeal has been filed by the original respondent no.01, challenging the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Gangakhed, District Parbhani, in M.A.C.P. No.61 of 2011, dated 03-07-2013. Present appellant is the original respondent no.01 who was the owner of the offending vehicle. *[Parties are hereinafter referred as per their nomenclature before the Tribunal.]*

02. Present respondents no.01 to 04 are the original claimants who had filed the said petition under Section 166 of the Motor Vehicles Act, 1988, for getting compensation on account of accidental death of one Datta Nagorao Sabne, who was the husband of claimant no.01 and father of claimants no.02 to 04. Deceased Datta was travelling from auto-rickshaw bearing no. MH-22/H-4379 on 08-12-2010. The said vehicle was driven at the relevant time by respondent no.02. The said auto-rickshaw was stated to be in

high speed and was driven in a negligent manner near village Padegaon. When the driver took sharp turn in excessive speed, as a result of which, the deceased, who was passenger in the rickshaw, was thrown out and he sustained serious injuries. He was shifted to hospital; however, succumbed to the injuries. Respondent no.02 has been prosecuted by police. It appears that the auto-rickshaw was not insured. Under such circumstance, the petition was filed for claiming compensation against owner and driver of the offending vehicle. It was claimed by the claimants, that the deceased was 55 years old labour earning Rs. 4,500/- per month.

03. Both the respondents were duly served but they failed to file their written statement and therefore, the matter had proceeded against them, without written statement. Claimants adduced evidence and on the basis of the said evidence, the learned Tribunal has partly allowed the petition. Respondents no.01 and 02 were directed to pay compensation of Rs. 1,27,500/- jointly and severally, together with interest at the rate of 7.5 % per annum from the date of petition till actual realization of the entire amount. This order is challenged in this appeal.

04. Heard learned Advocate Mr. N.D. Kendre appearing for the appellant - original respondent

no.01. Respondents no.01 to 04 are represented by Advocate. However, learned Advocate for them is absent.

05. It has been vehemently submitted on behalf of the appellant, that the learned Tribunal failed to consider that there was absolutely no evidence which can be said that the deceased was earning and therefore, no amount ought to have been awarded towards loss of income; only non-pecuniary damages ought to have been awarded.

06. At the outset, it can be seen that though the claimants had contended that the deceased was 55 years old labour earning Rs. 4,500/- per month, yet, the Tribunal after taking note of the documentary evidence, had come to the conclusion that the deceased was 70 years old person and since there was no evidence for his income, notional income of Rs. 3,000/- per month was taken as base. I do not find any error on the part of the Tribunal in holding so. After deducting necessary amount towards personal expenditure, proper multiplier of '05' only has been applied in view of the decision in *Sarla Verma & others Vs. Delhi Transport Corporation & another* [(2009) 6 SCC 121]. Further, towards loss of consortium, amount of Rs. 5,000/- and funeral expenses of Rs. 2,500/- have been awarded. There is no cross appeal or cross objection by the respondents - original claimants.

Under such circumstance, the said amount which has been granted under those heads will have to be upheld, though they are on lesser side. Therefore, whatever amount of compensation has been granted by the Tribunal does not deserve any change.

07. As regards negligence on the part of respondent no.02 is concerned, police papers were perused by the Tribunal, in which respondent no.02 has been prosecuted by police. Further, no other vehicle was involved in the accident. Respondents had not challenged the contents of the petition as well as contents of the affidavit in chief of CW 01. Under such circumstance, the said finding regarding negligence on the part of respondent no.02 deserves to be confirmed. Present respondent no.01, being owner of the offending vehicle, is vicariously liable for the torturous act committed by respondent no.02.

08. Under such circumstance, the appeal has no merits. Hence, the appeal is dismissed. Since the respondents - original claimants are absent, there shall be no order as to costs.

09. As per orders passed by this Court, the appellant has deposited, in all, Rs. 75,000/-. Under such circumstance, the appellant to deposit

the remaining i.e. balance amount, in this Court, within a period of one month, together with accrued interest. After the amount is deposited, the claimants would be at liberty to withdraw the same.

(Smt. Vibha Kankanwadi)
JUDGE

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