

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL STAMP NO. 1209 OF 2013**

The New India Assurance Co. Ltd.)
L.I.C. Building, Sardarbazar, Satara)Appellant

Versus

- | | | | |
|---|-----------------------------------|---|-----------------|
| 1 | Ramesh Bhau Kadam, |) | |
| | Age 54 years, Occ : Agriculture & |) | |
| | Labourer |) | |
| 2 | Rahul Ramesh Kadam, |) | |
| | Age 22 years, Occ.: Nil, |) | |
| | Both R/o. At Post – Malgaon, |) | |
| | Tal and District, Satara. |) | |
| 3 | Jafar Babusaheb Shaikh |) | |
| | Aged 41 years, Occ: Business, |) | |
| | Address : House No.604, E Ward, |) | |
| | Thombare Galli, K. Bawada, |) | |
| | Kolhapur. |) |Respondents |

Mr. Shrikant Madhukar Dange, Advocate for the Appellant.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th DECEMBER, 2023.

Oral Judgment :

- Learned counsel for the appellant submitted that considering the issue involved in the appeal, notice to respondents be dispensed with and matter be heard finally. Considering his request, issuance of notice to respondents is dispensed with and matter is heard finally.

2. The issues involved in this appeal are that there was contributory negligence of the deceased in the said accident, the driver of the offending vehicle was not holding valid and effective driving license, the income of the deceased is considered on higher side and claimants cannot be considered as dependents of deceased.

3. It is the contention of learned counsel for the appellant that there was collision between Tata Sumo Jeep and motorcycle of deceased. The said accident was caused due to the negligence of the deceased but this fact is not considered by the Tribunal. Learned counsel further submitted that there was head-on collision between two vehicles, hence, there was 50% contributory negligence of the deceased. Learned counsel submitted that the Tribunal has considered Rs.5000/- as monthly income of the deceased without any evidence on record. Learned counsel further submitted that the claim petition was filed by the father and brother of the deceased, they cannot be called as dependents of deceased. Learned counsel further submitted that the driver of the offending jeep was not holding any valid and effective driving license at the time of the accident, therefore, there was breach of terms and conditions of the insurance policy but these facts are not considered by the Tribunal, hence, requested to allow the appeal.

3. I have heard learned counsel for the appellant, perused the judgment and order passed by the Motor Accident Claims Tribunal, Satara, (for short "the Tribunal").

4. It is claimant's case that on 8th February 2011 at about 6.00 p.m., deceased was riding motorcycle bearing No.MH-02-AW-1310 and was going to Malgaon from Satara. He was driving his motorcycle in moderate speed and was proceeding by observing traffic rules. When the deceased reached near Village Vaduth, one Tata Sumo bearing No.MH-23-9114 came from the opposite side in high and excessive speed and in rash and negligent manner and forcefully dashed the front right side of the motorcycle, due to which, the deceased was thrown on the road and received multiple injuries. He was shifted to the hospital but he died while taking treatment. An offence was registered against the driver of the offending jeep.

5. It is the contention of learned counsel for the appellant that there was head-on collusion between two vehicles. Hence, there was 50% contributory negligence of the deceased in the said accident. It appears from the record that the Tata Sumo Jeep came from opposite direction and due to burst of its tyres, it came on the wrong side and gave dash to the right side of the motorcycle of the deceased. There were brake marks at the distance of 50 feet from the spot of the incident towards southern side. The Tata Sumo Jeep was at the distance of 60 feet from the spot of the incident. It shows that the accident occurred due to sole negligence of the driver of the jeep. Moreover, the appellant-Insurance Company has not examined any witness to prove that there was negligence of the deceased. Hence, I do not find merit in it.

6. It is the claimants' case that deceased was doing agricultural labour and he was getting salary of Rs.6,000/- per month and he was in permanent service and both claimants were dependent on his income. To prove the income of the deceased, his employer – Hanumant was examined. He has stated that deceased was his servant and he was paying him salary of Rs.6,000/- per month. The salary slip is at Exhibit-43. The Tribunal has considered Rs.5,000/- as monthly income of the deceased. I do not find any infirmity in it.

7. It is contention of learned counsel for the appellant that claimant No.1 was the father of the deceased and claimant No.2 is the younger brother of the deceased, they cannot be considered his dependents. The claimant No.2, brother of deceased examined himself and he has stated that claimant No.1 and he were dependent on the income of deceased. Considering this fact, I do not find merit in the contention of learned counsel for the appellant that they cannot be considered as dependents.

8. In view of above, the appeal is devoid of merit and I pass the following order:

ORDER

1. The appeal is dismissed. No order as to cost.
2. The respondent Nos.1 and 2/claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

3. The statutory amount be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
9. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)