

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

FIRST APPEAL NO.3521 OF 2011

Iffco Tokio General Insurance Co. Ltd.
Commerce House, First Floor,
7th Race Course Road, Indore (M.P.),
through C.S.E. Head

... APPELLANT

VERSUS

1. Subhash Arjun Bhadane
Age 47 years, Occu. Agriculturist

2. Sau Ashabai Subhash Bhadane,
age 47 years, Occu. Household,

Both R/o Samode, Taluka Sakri,
District Dhule

3. Ajgar Asmat Shaikh,
Age 26 years, Occu. Vehicle owner,
R/o Safai Mohalla, Chinchni (Khadinaka)
Taluka Dahanu, Dist. Thane

... RESPONDENTS

.....

Shri V.N. Upadhye, Advocate for appellant

Shri A.D. Pawar, Advocate for respondents No.1 and 2

.....

WITH

**CIVIL APPLICATION NO.9154 OF 2021 IN
FIRST APPEAL NO.3521 OF 2011**

1. Subhash Arjun Bhadane
Age 66 years, Occu. Agriculturist

2. Sau Ashabai Subhash Bhadane,
age 61 years, Occu. Household,

Both R/o Samode, Taluka Sakri,
District Dhule

... **APPLICANTS**

VERSUS

1. Iffco Tokio General Insurance Co. Ltd.
A.F.L. House, Second Floor,
Lok Bharti Complex, Marol Maroshi road,
Andheri East, Mumbai – 400 059

3. Ajgar Asmat Shaikh,
Age 26 years, Occu. Vehicle owner,
R/o Safai Mohalla, Chinchni (Khadinaka)
Taluka Dahanu, Dist. Thane ... **RESPONDENTS**

.....
Shri A.D. Pawar, Advocate for applicants
Shri V.N. Upadhye, Advocate for respondents No.1 and 2
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CORAM : R. G. AVACHAT, J.

DATE : 30th September, 2021

ORAL JUDGMENT :

This is an appeal filed by the Insurance Company, taking exception to the judgment and award dated 4/12/2010, passed by Member, Motor Accident Claims Tribunal, Dhule in Motor Accident Claim Petition 746/2008. Under the impugned award, the compensation of Rs.7,00,000/- has been awarded to the parents of the deceased on account of death in a vehicular accident. The appellant – Insurance Company has filed this appeal mainly on the ground of contributory negligence on the part of the deceased.

2. Heard. Learned counsel for the appellant – Insurance Company would submit that, the scene of accident panchanama indicates that there was ample space for the deceased to pass with his motorbike. It is a case of head on collision. He, therefore, urged for holding it to be a case of contributory negligence in equal proportion.

3. Learned counsel for the respondents claimants would, on the other hand, submit that, the Tribunal has rightly appreciated the factual matrix and there is no reason to interfere with the impugned award.

4. Considered the rival submissions. Perused the impugned award and the evidence relied on. It is true that, it may appear to be a case of contributory negligence. The fact is that, the rider of the offending vehicle has been prosecuted for being responsible for the accident. True, the said fact may not be conclusive to determine the negligence in civil matter. The evidence on record, however, indicates that, the vehicle of the deceased has suffered severe damage. There was no eye witness to the incident. In the factual backdrop, this Court is not inclined to interfere with the impugned judgment and

award. The facts are that, the deceased was the only child of his parents, who are age old and thereby unable to earn their living. Since there being no reason to make interference with the impugned award, the appeal is dismissed. Consequently, Civil Application is disposed of.

The respondents No.1 and 2 claimants are permitted to withdraw the amount deposited in this Court along with interest accrued thereon.

(R. G. AVACHAT)
JUDGE

fmp/-