

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

FIRST APPEAL NO. 2805 OF 2009

1. Latabai W/o Avinash Chavan
Age: 37 years, Occu. Service
2. Akanksha D/o Avinash Chavan
Age: 15 years, Occu. Education,
3. Rishikesh s/o Avinash Chavan
Age: 11 years, Occu. Education,
Minor under Guardhanship of real
mother Latabai W/o Avinash Chavan
4. Manikrao s/o Munjaji Chavan
Age: 57 years, Occu. Agriculture
5. Sumanbai w/o Manikrao Chavan
Age: 55 years, Occu. Household,
All above appellants are R/o Parbhani,
Tq. & Dist. Parbhani

... Appellants

Versus

1. Shivaji Shriram Shewale
Age: 48 years, Occu. Business,
R/o. Paheni, Taluka Hingoli,
Dist. Hingoli
2. United India Insurance Co. Ltd.,
Through its Branch Manager,
Dayawan Complex, Station,
Station Road, Parbhani

... Respondents

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Mr. Mahesh Patil, Advocate h/f Shri P. R. Katneshwarkar, Advocate
for appellants

Mr. S. G. Chapalgaonkar, Advocate for respondent No.2

....

CORAM : R. G. AVACHAT, J.

DATED : 09th DECEMBER, 2021

J U D G M E N T :-

. The challenge in this appeal is to the judgment and award dated 16.09.2008, passed by the learned Member, Motor Accident Claims Tribunal, in Motor Accident Claim Petition No.219 of 2005, granting compensation of Rs.4,00,000/- (Rupees Four Lakh) on account of death in vehicular accident. The Tribunal held the deceased to have been equally responsible for the accident. The original claimants are therefore in appeal.

2. Heard.

Learned Advocate for the appellants – claimants would submit that the Tribunal misread the evidence. It was an accident between the two vehicles proceeding in opposite direction. The sketch of the site of the accident has specifically been misread to observe the motorcycle ridden by the deceased dashed Minidor Rickshaw from behind. Such was nobody's case before the Tribunal. Although it was head on collision, the same took place after the Minidor Rickshaw left its track and went to the wrong side of the

road. On the question of quantum of compensation, the learned Advocate would submit that wrong multiplier has been applied. The appellants – claimants are entitled for compensation in terms of the Apex Court judgments in case of *National Insurance Company Limited Vs Pranay Sethi and others – (2017) 16 SCC 680* and *Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others – (2018) 18 SCC 130*. He, therefore, urged for allowing the appeal.

3. Learned Advocate for the respondent – Insurance Company would, on the other hand, submit that the deceased was riding motorcycle in high speed. It is he who dashed against the Minidor Rickshaw. Learned Advocate invited attention to the evidence of the witnesses examined on behalf of the appellants themselves. According to the learned Advocate, the amount of compensation awarded by the Tribunal is just and reasonable, warranting no interference therewith.

4. The Tribunal misread the evidence in the matter. It was a specific case of the appellants that the deceased was proceeding towards Hingoli. The Minidor Rickshaw was coming from opposite

side. Same is the case of the respondent – Insurance Company in its written statement. The Tribunal misread the sketch of the site of the accident to observe the motorcycle ridden by the deceased to have dashed the Minidoor Rickshaw from behind. It being a new found case without there being support in the evidence, therefore, needs to be ignored. The report of the accident was lodged by the brother of the deceased very next day. Both the vehicles were at the site. The scene of the accident panchanama indicate the Minidor Rickshaw went to the extreme wrong side and dashed against the motorcycle. The damage suffered by the motorcycle would speak for itself to suggest it to have received dash. As such, finding recorded by the Tribunal holding the deceased contributory negligent is hereby set aside.

5. QUANTUM:-

The deceased was serving as a Primary Teacher. His salary certificate Exh-25 indicates his gross salary to be Rs.10,369/-. A sum of Rs.200/- needs to be deducted therefrom towards professional tax. Thus, his monthly salary would be Rs.10,169/-. As the deceased was in permanent service and died at the age of below 40 years, 50% of his salary is added towards future prospects. It

comes to Rs.15,254/-. Thus his annual income would come Rs.1,83,048/- (15254 x 12). Since the claimants were five in number (widow, two children and parents), 1/4th thereof is deducted towards his personal and living expenses. Thus, annual loss of dependency would come Rs. 1,37,286/-. Applying the multiplier of 15, the amount of compensation on account of loss of dependency comes to Rs.20,59,290/-. Under conventional heads, each of the appellant is granted Rs.40,000/- towards loss of consortium, love and affection, besides a sum of Rs.30,000/- towards funeral expenses and loss of estate. Thus, the total amount of compensation comes to Rs.22,89,290/- (20,59,290 + 2,30000). The amount of compensation under conventional head, not to carry interest *pendente lite*.

6. With the above observations, the appeal is allowed in terms of following order.

ORDER

- (i) The appeal is allowed.
- (ii) The amount of compensation awarded by the Tribunal is enhanced from Rs.4,00,000/- (Rupees Four Lakh) to Rs. 22,89,290/-.

- (iii) No interest *pandente lite* (from the date of petition to the date of this order) is awarded on the amount of Rs.2,30,000/-.
- (iv) Rest of the terms of the impugned award to stand unaltered.

[R. G. AVACHAT, J.]

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