

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

**FIRST APPEAL NO.2109 OF 2018**

New India Insurance Company Ltd.  
through Branch Manager,  
Branch Office, Jalna Road, Beed  
through its Divisional Manager/  
Authorised Signatory,  
Mahesh Auto Compound,  
Adalat Road, Aurangabad ... **APPELLANT**

**VERSUS**

1. Devubai w/o Rajendra Gite,  
Age 43 years, Occu. Household,
2. Ravindra Rajendra Gite,  
Age 26 years, Occu. Agriculture,
3. Pawan Rajendra Gite,  
Age 22 years, Occu. Agriculture,
4. Pratiksha d/o Rajendra Gite,  
Age 20 years, Occu. Household,
5. Nilabai Raosaheb Gite, died through L.Rs.  
(Respondent No.5, died,  
her legal representatives are already  
on record as respondents No.1 to 4)

All R/o Rudrapur, Taluka and  
District Latur.

6. Subhash s/o Jagannath Warade,  
Age major, Occu. Business,  
R/o Indraprasth Colony, Beed,  
Taluka and District Beed.
7. Babu s/o Ankush Prabhale,  
Age major, Occu. Driver,

R/o Dhangarpura, Taluka and  
District Beed.

... **RESPONDENTS**

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Shri S.G. Chapalgaonkar, Advocate for appellant

Shri S.R. Shirsat, Advocate for respondents No.1 to 5

Shri V.P. Sawant, Advocate for respondents No.6 and 7

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**CORAM : R. G. AVACHAT, J.**

Date of reserving judgment : 20th September, 2021

Date of pronouncing judgment : 22nd September, 2021

**J U D G M E N T :**

The challenge in this appeal is to the judgment and award dated 7/12/2017, passed by Motor Accident Claims Tribunal (MACT), Beed in Motor Accident Claim Petition (MACP) No.123/2015. By the impugned judgment and award, a sum of Rs.46,27,772/- with interest @ 9% p.a. has been awarded as a compensation on account of death of Rajendra Gite in vehicular accident involving a motorcycle and the tractor. The Insurance Company of the tractor has preferred the present appeal.

2. Heard. Learned counsel for the appellant Insurance Company would submit that, the accident took place on 8/4/2016. The same was, however, not reported to police station until 14/4/2015. The person who gave a report

of the incident was not an eye witness to the incident. Although the deceased was rushed first to Civil Hospital at Beed and then to a hospital at Aurangabad, no M.L.C. was registered with the Police Chowkis at either of the hospitals. The M.L.C. record in respect of admission of the deceased at the hospital in Aurangtabad and cognizance taken by Jinsi Police Station, Aurangabad were not placed on record. The incident took place in a crowded area by 7.30 in the evening. The residence of the deceased was at a distance of 40 – 50 ft. from the scene of the accident. The incident must not have gone unseen. The deceased was accompanied by two persons. None of them made report of the incident. The panchanama of the scene of offence was drawn at police station. Presence of both the vehicles at the site has not been delineated in the panchanama. It is not known as to how both the vehicles could find their way to the police station. Mr. Jairam, who claimed to have had witnessed the accident, failed to make out his presence around the accident spot at the relevant time. He is relative of the claimants. His silence for over 6 days speaks in volumes. There is every reason to infer it to be a case of collusion between the claimants, vehicle owner and the police as well.

3. On the question of quantum, learned counsel would submit that, the deceased was serving as a Peon. His salary certificate indicates, he would draw Rs.22,733/- as a gross salary. The salary certificate is silent to indicate statutory deductions therefrom such as Profession Tax etc. The deceased was said to have been doing agriculture. On his demise, the land has been inherited by the claimants. His both sons are grown up. After doing the job of the Peon all the day, how could the deceased find time to supervise agricultural operations. According to learned counsel, notional agricultural income of the deceased, therefore, needs to be ignored for arriving at just compensation. He, therefore, urged for allowing the appeal setting aside the impugned award.

4. Mr. Shirsat, learned counsel for the claimants would, on the other hand, submit that, the relations of the deceased were engaged in attending him. The deceased was severely injured. He was first rushed to the local hospital. Within hours he was taken to hospital at Aurangabad. The inquest prepared at the hospital does disclose that, it was an accident between a tractor and motorbike. The relations of the deceased could not be said to have had a time to plan

involvement of the tractor in the accident. Only with a view to clear the traffic, both the vehicles were taken to the concerned police station. The learned counsel took me through the relevant evidence on record to submit it to be a case of involvement of the tractor in question. On the question of quantum of compensation, he would submit that, the deceased would also look after his agriculture. On his demise, the family necessarily suffered for want of supervisory services of the deceased. He, therefore, urged for dismissal of the petition. He relied on the judgment of the Apex Court in case of **Sunita and others Vs. Rajasthan State Road Transport Corporation and others [(2020) 13 SCC 486]**.

5. The Apex Court, in case of Sunita and others (supra), held :-

“Motor Vehicles Act, 1988 – Ss. 166 and 173 – Pleading and proof necessary to establish claim under S. 166 – of the M.V. Act, 1988 – Principles summarised .

In terms of S.166 of the MV Act, 1988, Tribunal *stricto sensu* is not bound by pleadings of parties, and its function is to determine amount of fair compensation – Claimants are merely to establish their case on touchstone of preponderance of probability, and standard of proof beyond reasonable doubt cannot be applied by Tribunal

dealing with motor accident cases – It is not an adversarial adjudication between litigating parties to a dispute, but a statutory determination of compensation on occurrence of an accident, after due enquiry, in accordance with the statute.

Non-examination of witness per se cannot be treated as fatal to claim set up before Tribunal – Approach in examining the evidence in accident claim cases is not to find fault with non-examination of some “best” eyewitness in the case, but to analyse the evidence already on record to ascertain whether that is sufficient to answer the matters in issue on the touchstone of preponderance of probability.

Nor is there anything in the MV Act to preclude citing of a witness who has not been named in witness list in the criminal case – What is essential is that the opposite party should get a fair opportunity to cross-examine the witness concerned.

Approach of Tribunal should be holistic analysis of entire pleadings and evidence by applying principles of preponderance of probability – Once, foundational fact, namely, actual occurrence of accident, has been established, then Tribunal’s role would be to calculate quantum of just compensation if accident had taken place by reason of negligence of driver of a motor vehicle and, while doing so, Tribunal would not be strictly bound by pleadings of parties.

6. The deceased met with the accident on 8/4/2015. The accident took place near a bridge, at Balepeer Area. It is a populated area. The deceased was immediately rushed to

Civil Hospital at Beed and then was shifted to a hospital in Aurangabad. On 10<sup>th</sup> April 2015, he breathed his last. His widow Devubai is not a witness to the accident. It is P.W.3 Jairam who claims to have had witnessed the accident. It is in his evidence that he was following the deceased on his motorbike. The tractor bearing No.MH-23/B-3769, driven in rash and negligent manner, came from opposite side. It knocked down the deceased. Jairam claims to have had rushed the deceased first to the hospital at Beed and then shifted to Apex Hospital, at Aurangabad. It is further in his evidence that, he had immediately informed the son of the deceased about the accident.

7. It is true that, Jairam has not reported the accident to the Police Station at Beed or a Police Chowki at either of the hospitals. The appellant Insurance Company has, therefore, every reason to contend that, Jairam is a got up witness. He is admittedly a relation of the deceased. It is also true that, none of the passers-by or person from the vicinity of the scene of the accident has made a report in regard thereto. The fact, however, cannot be lost sight of that, at first instance it was an accident and not a crime. Whoever was with the deceased would first necessarily see

that the injured is given best of the treatment to save his life. It is a matter of common knowledge that, now-a-days, onlookers or passers-by, even though witness an accident or crime, do not prefer to come forward and make report thereof.

8. True, the tractor is such a vehicle which could not be run in high speed. It is, therefore, just difficult for the tractor driver to flee away with the tractor soon after the accident that too by the time 7.30 p.m. It is also true that, the scene of accident panchanama was drawn when none of the vehicles were at the site. The evidence indicates that, both the vehicles were brought to the concerned police station. On due investigation, the driver of the tractor has been charge-sheeted. When the tractor driver could not flee away therewith from the scene of the accident, it is probable to infer that the relations of the deceased who were with and around him by the time of the accident first ensured to see that he is given best of the treatment and then make report of the accident, more so when the vehicle involved in the accident was identified. The owner of the tractor admitted its involvement in the accident. The deceased breathed his last within less than 48 hours of the accident. The inquest was

prepared at the hospital on the day he breathed his last. Column Nos.16 and 17 of the inquest panchanama (Exh.26) do make mention therein that the deceased was knocked down by a tractor. The same indicates that involvement of the tractor had already been disclosed. It, therefore, cannot be assumed that when the deceased was counting his breath, his relations had a time to think over to plant the tractor. When this much evidence was there, it was necessary on the part of the appellant Insurance Company to lead some evidence in disproof of the claim of the petitioner. The same has not been done. Based on the evidence on record, the Tribunal was justified in holding involvement of the tractor in the accident in question. Needless to mention, proof of the factum of accident is a question of fact. Finding in that regard is to be arrived at on the basis of evidence in the case. In view of the evidence on record, this Court finds no reason to take a different view than one taken by the Tribunal.

**QUANTUM :**

9. The deceased was a Peon with Hutatma Deoram Secondary and Higher Secondary School, Patoda, District Beed. A witness was examined in proof of his income. The salary certificate (Exh.32) indicates his gross salary was

Rs.22,773/-. His take home salary is stated to be Rs.19,431/-. For grant of compensation, the Tribunal considered the gross salary of Rs.22,773/-. In view of this Court, a sum of Rs.200/- per month needs to be deducted therefrom towards professional tax. The said deduction has been shown in the salary certificate. The monthly income of the deceased would, therefore, be Rs.22,573/- and the yearly income of the deceased (Rs.22,573 x 12) comes to Rs.2,70,876. 30% of his monthly income needs to be added thereto towards future prospects, which comes to Rs.81,263/-. As such, after adding 30% of the income towards future prospects, the total annual income of the deceased comes to Rs.3,52,139/-. Since the claimants were widow, old mother, a minor daughter and two adult sons, the Tribunal has rightly deducted one fourth towards personal and living expenses of the deceased. After deducting one fourth of the amount i.e. Rs.88,35/-, the total yearly dependency comes to Rs.2,64,104/-. Multiplying the multiplier of 14, the amount of compensation comes to Rs.36,97,456/-.

10. The Tribunal has also considered the agricultural income of the deceased. I do not propose to take the said income into consideration for granting compensation since on

the demise, the land has been inherited by the claimants. There can be no reduction in agricultural income of the claimants only due to the death of the deceased. Admittedly, the deceased was serving as a Full Time Peon. As such, he could not have been supervising agricultural operations.

11. There are medical bills worth Rs.1,45,000/-. That much amount needs to be awarded as compensation besides Rs.30,000/- towards loss of estate and funeral expenses and Rs.40,000/- for loss of consortium. This way, the total amount of compensation comes to Rs.39,12,456/-.

12. In view of the above, the appeal partly succeeds. Hence the order : -

### **ORDER**

- (i) The appeal is partly allowed.
- (ii) The impugned award is modified replacing the amount of Rs.46,27,772/- by the sum of Rs.39,12,456/-.
- (iii) Rest of the terms of the impugned award to stand unaltered.

- (iv) The amount in deposit with this Court/ Tribunal be paid to the claimants along with interest accrued thereon in terms of this order. The balance amount, if any, be paid back to the appellant Insurance Company.

**( R. G. AVACHAT )  
JUDGE**

fmp/-