

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

FIRST APPEAL NO. 1335 OF 2017

The National Insurance Company Ltd
a Subsidiary of the General Insurance
Corporation of India and a company
Incorporated under the Companies Act
having one of its Divisional Office at
Hazari Chambers, Station Road, Aurangabad
Through its Authorized Signatory

... Appellant
(Orig. Resp. No.3)

Versus

- 1) Vithhaldas Fakirchand Bhutada - deleted
- 2) Shardabai Vithhaldas Bhutada,
Age 58 yrs, Occ. Nil,
R/o Swami Samarth Temple,
Tilak Mohalla, Ambad,
Dist. Jalna
- 3) United India Insurance Co. Ltd.,
Through its Branch Manager,
M.H. No.2190/01
Gandhi Chowk, Jalna
- 4) Santosh Gulabchand Somani
Age 47 yrs, Occ. Business &
Vehicle owner,
r/o Swami Samarth Temple,
Tilak Mohalla, Ambad Dist. Jalna
- 5) Sarbansing Bhagsing Siddhu,
Age 34 yrs, Occ. Vehicle owner
R/o. Wadoda, Tk. Mawda,
Dist. Nagpur

6) Narayan Vithhal Bhagat
 Age 37 yrs, Occ. Driver
 C/o Sarbansing Bhagsing Siddhu,
 R/o Wadoda, Tk. Mawda,
 Dist. Nagpur

... Respondents
 (R.No.1 – 2: clmts.
 R.No. 3 - 4: R.Nos. 1-2
 R.Nos. 5 – 6: R.Nos. 4 - 5)

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Mr. A. B. Kadethankar, Advocate for appellant
 Mr. S. A. Deshmukh, Advocate for respondent No.2
 Mr. S. R. Bagal, Advocate for respondent No.3
 Mr. R. R. Kulkarni, Advocate for respondent No.4

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CORAM : R. G. AVACHAT, J.

DATED : 10th AUGUST, 2021

PER COURT :-

. The challenge in this appeal is to the award dated 30.11.2016 passed by the Member, Motor Accident Claims Tribunal (M.A.C.T.), Jalna in Motor Accident Claim Petition (M.A.C.P) No.152 of 2014, granting compensation of Rs.6,63,000/- with 9% interest thereon from the date of petition to the date of realization of the amount.

2. The appellant herein is the National Insurance Company Limited (original respondent No.3) .

3. The only son of the petitioners (respondent Nos. 1 and 2 herein), died in the accident involving motor vehicles i.e. Truck bearing No. MH-40-N-7337 and Tata Tempo bearing No. MH-21-X-3144. On 07.08.2013, the deceased was proceeding in a Tata tempo MH-21-X-3144 along Tuljapur - Solapur road. He was at the wheel of the tempo when the accident took place. It so happened that the truck was negotiating a speed breaker near Sindphal bus stop. The driver of the truck, therefore, slowed down its speed. The tempo driven by the deceased rammed into the truck from behind. As a result, the deceased died. On investigation of the crime, the charge-sheet was lead against the deceased.

4. The parents of the deceased filed the petition for compensation of Rs.20,00,000/- (Rupees Twenty Lakh). The Tribunal, on appreciation of the evidence, directed the appellant – Insurance Company and the owner of the truck, to pay the amount of compensation as stated above.

5. Heard.

Learned Advocate for the appellant - Insurance Company would submit that the accident took place due to rash and negligent driving by the deceased. The speed of the truck had been slowed down as it was admittedly negotiating a speed breaker. It was a tempo driven by the driver in rash and negligent manner, came from behind and rammed into the truck. The tribunal should therefore have dismissed the petition. He, therefore, urged for setting aside the impugned award.

6. Learned Advocate for the claimants would, on the other hand, supports the impugned award. Neither cross appeal nor cross objections have been preferred for enhancement of compensation.

7. I have perused the set of police papers placed on record. The First Information Report (FIR) was lodged by the driver of the truck. He was bound to come with a case exculpating himself. On investigation of the crime, the charge-sheet was filed against the deceased. The facts, however, indicate that the truck involved in the accident was proceeding ahead of the Tata tempo driven by the deceased. Near Sindphal bus stop, the truck slowed down for

negotiating the speed breaker. There is nothing to indicate that the truck driver gave reflector/indicator soon before slowing down the speed of the truck. As a result, the tempo driven by the deceased rammed into the truck from behind. It was, thus, a case of contributory negligence in equal proportion. To this extent, findings recorded by the tribunal needs to be interfered with.

8. On the question of quantum, it would necessarily be reduced by 50% in view of the deceased having been found contributory negligent. There is, however, other aspect of the matter. The tribunal did not grant 50% addition of income towards future prospects. The deceased had a permanent job in the nature of a transport business, since the tempo involved in the accident belonged to him. He was below 40 years of age. Even though, the claimants did not file cross appeal or cross objection for enhancement of compensation, they can very well defend the impugned award.

9. In case of *Ranjana Prakash and Ors v. Divisional Manager and Anr – 2012 AIR SCW 848*, the Hon'ble Supreme Court of India, observed :-

“Where in an appeal filed by the owner/insurer, if the High Court proposes to reduce the compensation awarded by the Tribunal, the claimants can certainly defend the quantum of compensation awarded by the Tribunal, by pointing out other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation. It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections.”

10. The claimants were the parents of the deceased. He was their only son. Pending the appeal, the father passed away. For want of their being clear evidence about the income of the deceased, the tribunal considered it at Rs.6,000/- per month as notional income. Since the deceased died bachelor, 50% thereof was reduced towards expenditure which he would have incurred for self, had he been survived. In short, there would not be any change or interference with the impugned award granting a sum of Rs.6,63,000/- towards compensation. Because, the finding recording 50% of contributory negligence on the part of the deceased would be set off by grant of 50% compensation towards future prospects. All in all, no interference with the impugned award is called for.

11. In the result, the appeal fails. The same is, therefore, dismissed.

12. The amount in deposit with this Court be paid to the claimant/applicant along with interest accrued thereon, forthwith.

13. In view of above, civil application No. 4003 of 2021 is disposed of.

[R. G. AVACHAT, J.]

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