

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

FIRST APPEAL NO.1814 OF 2018

Bajaj Allianz General Insurance
Company Ltd., through -
the Branch Manager, Market Yard,
Latur, District Latur

Bajaj Allianz General Insurance
Company Ltd., Plot No.D-5/1,
ABC East, 3rd Floor, Besides Prozone Mall,
Chikalthana MIDC, Aurangabad,
Tq. & dist. Aurangabad
PIN Code : 431 210

... APPELLANT

VERSUS

1. Shafi @ Shafik s/o Shanur Shaikh,
Age 40 years, occu. Before accident -
Driver, now Nil, R/o Sambhaji Nagar,
Khadgaon Road, Latur,
Tq. and Dist. Latur.

2. Salim s/o Salamat Pathan,
Age major, Occu. Business,
R/o Sindhgaon, Tq. Renapur
District Latur.

... RESPONDENTS

.....
Mr. S.G. Chapalgaonkar, Advocate for appellant
Mr. F.K. Patel, Advocate for respondent no.1.
Mr. S.C. Swami, Advocate for respondent No.2.

WITH

**CROSS-OBJECTION ST. NO.15648 OF 2019 IN
FIRST APPEAL NO.1814 OF 2018**

Shafi @ Shafik s/o Shanur Shaikh,
Age 41 years, occu. Before accident -
Driver, now Nil, R/o Sambhaji Nagar,

Khadgaon Road, Latur,
Tq. and Dist. Latur.

... APPELLANT

VERSUS

1. Salim s/o Salamat Pathan,
Age major, Occu. Business,
R/o Sindhgaon, Tq. Renapur
District Latur.
 2. Bajaj Allianz General Insurance
Company Ltd., through -
its Branch Manager, 2nd Floor,
Rajendra Bhavan, Near LIC Building,
Adalat Road, Aurangabad
- ... RESPONDENTS

.....
Mr. F.K. Patel, Advocate for appellant
Mr. S.C. Swami, Advocate for respondent no.1.
Mr. S.G. Chapalgaonkar, Advocate for respondent No.2.

.....
WITH

FIRST APPEAL NO.3707 OF 2019

Bajaj Allianz General Insurance
Company Ltd., through -
the Branch Manager, Market Yard,
Latur, District Latur

Bajaj Allianz General Insurance
Company Ltd., Plot No.D-5/1,
ABC East, 3rd Floor, Besides Prozone Mall,
Chikalthana MIDC, Aurangabad,
Tq. & dist. Aurangabad
PIN Code : 431 210

... APPELLANT

VERSUS

1. Tabbsum d/o Allanur Deshmukh,
age 23 years, Occu. Nil,
R/o Chaudhary Nagar,
Near Kadri Urdu School, Latur,
District Latur
2. Mastan @ Ishwar s/o Sopanrao Paste,

Age 42 years, Occu. Driver,
R/o Gauspura, Galli no.7,
Near Churmure Factory, Water Tank,
Latur, District Latur.

3. Salim s/o Salamat Pathan,
Age 37 years, Occu. business,
R/o Sindgaon, Tq. Renapur,
District Latur, At present Near Masjid,
Indira Nagar, Latur, District Latur
 4. Shafik Shahnursab Shaikh,
Age major, Occu. Driver
R/o Near Wale English School,
Khadgaon Road, Latur.
 5. Maroti s/o Chandar More,
Age major, Occu.
R/o Khopegaon, Tq. Latur,
District Latur.
- ... RESPONDENTS**

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Mr. S.G. Chapalgaonkar, Advocate for appellant
Mr. G.R. Syed, Advocate for respondent No.1.
Mr. S.V. Natu, Advocate for respondent No.5.

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WITH
FIRST APPEAL NO.2702 OF 2018

Bajaj Allianz General Insurance
Company Ltd., through -
the Branch Manager, Market Yard,
Latur, District Latur

Bajaj Allianz General Insurance
Company Ltd., Plot No.D-5/1,
ABC East, 3rd Floor, Besides Prozone Mall,
Chikalthana MIDC, Aurangabad,
Tq. & dist. Aurangabad
PIN Code : 431 210

... APPELLANT

VERSUS

1. Allanur s/o Ajmoddin Deshmukh,
Age 52 years, Occu. Driver.
2. Shakila w/o Allanur Deshmukh,
Age 44 years, Occu. Household

Both R/o Chaudhari Nagar,
Near Kadri Urdu School, Latur.
3. Mastan @ ishwar s/o Sopanrao Pate,
Age 42 years, Occu. Driver,
R/o at present Gauspura, Galli no.7,
Near Churmuri Factory, Water Tank,
Latur, Tq. & Dist. Latur
4. Salim s/o Salamat Pathan,
Age 33 years, Occu. Owner,
R/o Sindgaon, Tq. Renapur,
District Latur.

... RESPONDENTS

.....
Mr. S.G. Chapalgaonkar, Advocate for appellant
Mr. F.K. Patel, Advocate for respondent No.1.
Mr. S.C. Swami, Advocate for respondent No.4.
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CORAM : R. G. AVACHAT, J.

DATE : 31st AUGUST, 2021

J U D G M E N T :

These three appeals along with Cross Objection in First Appeal No.1814/2018 are being decided by this common judgment since challenge therein is to the judgments and awards passed in Motor Accident Claim Petitions arising out of one and the same accident. The appeals have been preferred by the Insurance Company mainly on the ground of false

implication of the vehicle.

FACTS :-

2. A TATA Sumo bearing Registration No.MH-24/AB-9786 was on its way from Latur towards Buldhana. It was being driven by Shafi @ Shafik Shaikh, claimant in Motor Accident Claim Petition No.212/2014. He was proceeding along with others for Sailani Baba Dargah. When his vehicle was passing Manjara river bridge near village Mahapur, the truck bearing Registration No.MH-06/K-5786 came from opposite direction. It was being driven in rash and negligent manner. The truck dashed against the TATA Sumo. Shafik and all the inmates in the vehicle suffered multiple injuries. They were immediately rushed to Civil Hospital, Latur. Shafik was shifted to Ashwini Hospital for better treatment. As a result of the injuries, Ashpak passed away and his sister Tabassum suffered permanent disability. Shafik, Tabassum and parents of Ashpak preferred three separate petitions for compensation. The Tribunal, vide its separate judgments and orders, allowed the claim petitions, granting compensation as under :-

Sr. No.	Name of the Claimant	MACP No.	Amount of compensation awarded (Rs.)
1	Allanur s/o Ajmoddin Deshmukh & anr. (parents of deceased Ashpak)	183/2014	3,75,000/-
2	Tabassum d/o Allanur Deshmukh	18/2015	7,72,604/-
3	Shafi @ Shafik s/o Shanur Shaikh	2012/2014	15,15,295/-

3. Learned counsel for the appellant Insurance Company would submit that, the accident took place on 2/6/2014, MLC was forwarded by Ashwini Hospital, Latur to Shivajinagar Police Station. A station diary entry was made on that basis. Neither MLC nor station diary entry speaks of history of road traffic accident involving two motor vehicles. The investigating officer admitted that, on receipt of telephonic information, officials had paid visit to the accident site. No spot panchanama was drawn nor F.I.R. was registered. The Police Officer from Shivajinagar Police Station did not visit the site. These facts indicate that, except TATA Sumo, no other vehicle was involved in the accident. The F.I.R. was lodged 16 days after the accident. Spot panchanama was drawn thereafter. No truck was noticed at the site for being seized therefrom. Evidence in this regard is

nothing but a concoction. He would further submit that, the owner of the truck joined hands with the claimants. The driver has not been made party to the claim petitions. The owner, driver of the truck and the claimants are residents of nearby places. Merely because some damage the truck is shown to have sustained, inference of its involvement in the accident could not be drawn. In the alternative, the learned counsel would submit that, it was a case of head on collision. As such, the driver of the jeep was equally responsible for the accident.

4. On the question of disability suffered by Shafik, learned counsel would submit that the doctors examined in proof thereof had not treated him. The disability has been assessed at 30%. He can perform any other work to earn his living. The Tribunal, therefore, ought not to have held it to be a case of 100% functional disability. According to learned counsel, the quantum of compensation awarded is on higher side. He, therefore, urged for allowing the appeals.

5. Learned counsel Mr. Patel would, on the other hand, reiterate the reasons given by the Tribunal in support of the impugned awards. According to him, the Tribunal has not granted compensation towards future prospects and further

medical treatment of Shafik. He, therefore, urged for enhancement of compensation.

6. Admittedly, the jeep met with the accident on 2/6/2014. True, the report of the accident was lodged on 18/6/2014 with Renapur Police Station, there was delay of 16 days in reporting of the accident. It has been stated in the report (Exh.28) that the jeep started from Latur. Near Mahapur bridge, the truck bearing Registration No. MH-06/K-5786 came from opposite direction. It was being driven in rash and negligent manner. The truck dashed against the jeep. The inmates of the jeep suffered multiple injuries. One ambulance happened to pass by. It stopped. Ashpak was rushed to Sahyadri Hospital, Latur immediately.

7. Shafik was admitted to Ashwini Hospital by his cousin. It is true that, in MLC (Exh.27) prepared at Ashwini Hospital, there is no mention of involvement of the truck. It has simply been mentioned therein that Shafik suffered injuries in road traffic accident. The scene of accident panchanama (Exh.29) would also not be of much assistance since it was drawn long after the accident. Presence of the truck at the site is not evident therefrom. The appellant Insurance Company, therefore, may have a reason to contend

that the truck has falsely been implicated. The accident is said to have taken place within the limits of Renapur Police Station.

8. It is also evident that the accident was reported at Shivajinagar Police Station. It appears to be the lethargy on the part of the police officials to prepare the relevant papers. The documents on record indicate that Ashpak was rushed to Sahyadri Hospital. He was admitted there on 3rd June i.e. within 12 hours of the accident. The medical officer at Sahyadri hospital immediately informed the Police Station officer, Shivajinagar Police Station of admission of Ashpak. It has been reported therein that, while the jeep was proceeding towards Buldhana, the truck dashed against it head on. As such, involvement of truck in the accident was reported within hours of the accident. The persons traveling in the jeep had suffered multiple injuries, severe in nature. Ashpak died the next day of the incident. Necessarily, the passengers and their relations must be taken to have first been engaged in securing best of the medical treatment to save lives. It could not be assume that for some hours they thought over and then planned to implicate the truck in the accident.

9. The owner of the truck has also given his

statement to the police on 26/6/2014. He admitted the truck to have met with the accident. It is in his statement that he, therefore, rushed to the site and took the truck to the police station. Its driver is on the run. The seizure panchanama of the truck does indicate it to have suffered damage. It is reiterated that, involvement of a truck in the alleged accident was reported at Sahyadri Hospital within hours thereof. The persons concerned were busy in attending the injured and securing best of the treatment. Ashpak had passed away within 40 hours of the accident. The appellant Insurance Company did not lead any evidence in disproof of the claim regarding involvement of the truck in the accident. On due investigation, the charge sheet has been filed against the truck driver. The Tribunal has, on the basis of evidence on record, rightly come to the conclusion it to be case of accident between the truck bearing Registration No.MH-06/K-5786 and the jeep. This Court has no reason to interfere with the said finding.

10. In the alternative, it was urged on behalf of the appellant Insurance Company that, it would be a case of contributory negligence in equal proportion since it has been reported in the MLC at Sahyadri Hospital that it was a head on

collision. To make out such a case, there is no any other material. The scene of accident panchanama was drawn 18 days after the accident. Shafik, driver of the jeep gave his evidence. In his cross-examination, no questions were put to him suggesting even it to be a case of head on collision so as to infer it to be a case of contributory negligence. The submission on behalf of the appellant Insurance Company in this regard, therefore, could not be acceded to.

11. Quantum of compensation granted to Shafik has also been taken exception to. The evidence on record indicates that he was a professional driver. When the jeep met with the accident, he was at its wheel. His driving licence was placed on record. Post accident, he canceled the driving licence since he could no longer drive a vehicle. True, the doctors Shital Agroya and Jagdish Agroya examined in proof of the disability had not treated him. There is, however, no reason to disbelieve their evidence. There are on record number of medical bills, X-ray reports (films) to suggest severity of injuries suffered by Shafik. He was required to incur expenditure of Rs.5,00,000/- towards medical treatment. He was indoor patient for long. The disability certificate (Exh.53) indicates him to have suffered (1)

persistent seizures 25%, (2) slowness of gait 10%.

12. Although the extent of disability is said to be 32.5% because of elbow injury i.e. elbow stiffness M 70⁰ etc., he is no longer able to drive. As such, it is a case of 100% functional disability. The Tribunal has, therefore, rightly observed the same and granted compensation considering his notional income at Rs.5000/- per month. True, the Tribunal has not granted any amount towards future prospects or further medical treatment. There is, however, no concrete evidence to suggest that Shafik required further medical treatment and expected expenditure therefor. Although he could not drive any longer, he can undertake any other work to earn his living. This Court is, therefore, of the view that, the amount of compensation granted by the Tribunal is just and reasonable, requiring no enhancement therein.

13. In the result, First Appeals and the Cross Objection as well fail and are dismissed. The amount in deposit with this Court/ Tribunal be paid to the claimants in all the petitions along with interest accrued thereon.

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

fmp/-