

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (F) NO.338 OF 2020
IN

FIRST APPEAL ST. NO.20516 OF 2019

[Universal Sompo General Insurance Co. Ltd., ..**Vrs.**.. Sushma Wd/o
Kishore Ragde and Ors.]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
order and Registrar's orders.*

Court's or Judge's

Shri. F. I. Khan, Advocate for the Appellant
Shri. S. D. Chopde, Advocate for the Respondent Nos.1 to 4.

CORAM : **NITIN W. SAMBRE, J.**

DATE : **8th SEPTEMBER, 2021.**

1. This is an application for condonation of delay of 46 days in filing present First Appeal, which is against the judgment dated 30.04.2019 passed by the Member, Motor Accidents Claims Tribunal, Akola.

2. In view of no objection extended by Shri. S. D. Chopde, learned Counsel for Respondent Nos.1 to 4, the delay, for the reasons disclosed in the application stands condoned. The Application is allowed and is disposed of.

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3. Respondent No.4 is informed to be dead and as such, deletion is prayed as legal representatives of the said Respondent are already on record.

4. The prayer is allowed.

5. This is an Appeal under Section 173 of the Motor Vehicle Act, 1988 (for short, "the said Act") questioning the award of compensation under Section 166 of the

said Act.

6. The offending vehicle i.e. Trailer bearing No.NL-01-L-7571 was insured with Appellant, which met with an accident with a motorcycle bearing registration No.MH-30-AM-7939.

7. In the said accident, Kishor Bhaulal Ragde, an employee in the capacity of Salesman/Manager lost his life on 02.11.2016. As a sequel, the claim petition is allowed by the impugned judgment.

8. Shri. F. I. Khan, learned Counsel for Appellant/Insurance Company would invite attention of this Court to the defence raised while resisting the claim. According to him, the Tribunal has failed to appreciate the aspect of contributory negligence and also the income of the deceased.

9. The learned Counsel appearing for Respondents/Claimants would support the impugned judgment.

10. Appreciated the rival submissions, in the accident, the insurance of the offending vehicle was with Appellant, is not a fact in dispute.

11. So as to establish the case for award of compensation, Respondents/Claimants have examined Shushma (PW-1) at Exh-25 and Roshan Rathi (PW-2) at Exh-39, who is partner of the Firm with whom, the deceased Kishor was working. Alongwith the aforesaid oral evidence, the other documentary evidence such as, certified copies of form AA, FIR, Spot Panchanama, Inquest Panchanama, P.M. Report and Insurance Policy

were placed on record.

12. It appears that the deceased Kishor was riding the motorcycle, which was hit by the offending vehicle as is apparent from the police papers, which are produced on record. The informant was the uncle of the deceased Kishor. The dash was given by the Trailer and same ran over the body of the deceased Kishor. In absence of a statement of eyewitness to the said incident, the Tribunal was justified in inferring the aspect of negligence on the part of the driver of the offending vehicle based on the spot panchanama. The driver of the offending vehicle was already booked for rash and negligent driving.

13. That being so, the award of compensation thereby negating the claim of Appellant on the aspect of contributory negligence is based on the documentary evidence.

14. This takes me to the next contention of the learned Counsel for Appellant i.e. the income and whether the award of compensation is disproportionate i.e. on higher side. Rather from the evidence available on the record, the Appellant has failed to discharge its burden.

15. The Claimant has examined PW-2, a partner of the Firm with whom, the deceased Kishor was working as a Salesman/Manager. The certificate issued by the Firm under the signature of the one of the partner is exhibited in the testimony of PW-2. As such certificate speaks of monthly salary of the deceased at Rs.17,500/-. PW-2 in the evidence has brought on

record the nature of duties performed by the deceased Kishor and has also disclosed about the CA with whom, the accounts of the Partnership Firm are maintained, so also, the fact that the Firm is GST registered.

16. Once such material was brought on record, it was always open for the appellant on whom, the burden shift to call for the documents in relation to the accounts of the Firm to establish that the deceased Kishor was not drawing salary of Rs.17,500/-, but of lesser amount or was not in the employment.

17. From the testimony of this witness, it is established that the deceased Kishor was employed with the Firm and was discharging the duty of Salesman/Manager. His salary as is reflected in the certificate issued is also established in absence of any contradictory evidence brought on record by Appellant, thereby discharging their burden.

18. In that view of the matter, no illegality could be noticed in the order impugned. That being so, the award of compensation after considering the monthly income of the deceased as Rs.17,500/- by adjusting 1/3 deduction. The same was calculated with a multiplier of 16 and appropriately awarded the reasonable compensation.

19. That being so, the appeal lacks merit and the same stands **dismissed**.

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20. This is an application by the Applicant for grant of stay to the judgment and order dated 30.04.2019 passed by the Member, Motor Accidents Claims

Tribunal, Akola.

21. In view of dismissal of appeal, the application for grant of stay stands disposed of accordingly.

CIVIL APPLICATION NO.514 of 2021.

22. This is an application by Claimants for withdrawal of the amount.

23. In view of dismissal of appeal, the claimants are permitted to withdraw the amount of compensation in proportion and as was directed by the Tribunal in the judgment impugned. As far as, the share of the deceased claimant is concerned, it is open for the rest of the Claimants to seek apportionment of the same before the Court below.

24. The Application is allowed and is disposed of.

(NITIN W. SAMBRE, J.)

TAMBE