

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

FIRST APPEAL NO.1524 OF 2019

- Appellants** : 1] Smt. Kiran wd/o Ravindra Bhande,
Aged about 44 yrs., Ocup. Household Work.
- 2] Ku. Prajakta d/o Ravindra Bhande,
Aged about 16 yrs., Ocup. Nil. Minor.
- 3] Harshad s/o Ravindra Bhande,
Aged about 11 yrs., Ocup. Nil. Minor.

Applicant Nos.2 & 3 being minor,
through natural guardian i.e. mother
Kiran Ravindra Bhande (Applicant No.1),
All R/o Dharna, Tq. Kelapur, Distt. Yavatmal.

-- Versus --

- Respondents** : 1] ~~Uttamchand s/o Baburao Nimsorkar.~~

Resp. No.1 deleted as
per Registrar's order,
dated 23/07/20019.

- 2] M/s. Arihant Transport Agencies,
Occp: Truck Owner.
- a) R/o. Civil Lines, Chandrapur,
Tq. & Distt. Chandrapur.
- b) R/o. C/o. Mahaveer Poultries Padoli,
Chandrapur, Tq. Distt. Chandrapur.
(Owner of Truck bearing No.MH34/A/5923
involved in the accident).
- 3] The National Insurance Co. Ltd.,
through its Divisional Manager,
The Policy Issuing Office at above Bank of India,
Jathura, Chandrapur, through its
Divisional Manager, Divisional Office at
Gopal Plaza, Deorankar Nagar,
Near Samarth High School, Badnera Road,
Amravati, Taq. & Distt. Amravati.
(Insurance Company of Truck Bearing No. MH34/

A/5923, vide Policy No.281801/31/09/
6300005622, valid from 12/02/2010 to
11/02/2011).

- 4] Eknath s/o Marotrao Bhande,
Aged about 70 years, Occupation : Nil,
(Father of the deceased).
- 5] Mrs. Bebi @ Laxmibai w/o Eknath Bhande,
Aged about 65 years, Occupation : Household,
Both R/o Kolhe Layout, Darwha Road, Yavatmal,
Tq. & Distt. Yavatmal, (Mother of the deceased)

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Shri Vivek Awchat, Advocate for the Appellants.
Shri A.V. Joshi, Advocate for Respondent No.2.
Shri S.D. Zoting, Advocate for Respondent Nos.3.
None for Respondent Nos.4 & 5.

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CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 18th JANUARY, 2021.

ORAL JUDGMENT :-

1. This appeal is directed against the judgment and award dated 3rd April, 2018 in MACP No. 44 of 2010. By the impugned judgment and award the Claims Tribunal, partly allowed the Application under Section 166 of the Motor Vehicles Act, filed by the aforesaid Appellants and awarded compensation of Rs.11,91,082/- with interest @ 6% per annum from the date of filing of the claim petition till actual payment.

2. The Appellant Nos. 1 , 2 and 3, were the Claimants in Claim Petition No. 44 of 2010, shall be hereinafter referred to as the

“Claimants”. The Claimant No.1 is the widow, Claimant Nos.2 and 3 are the children and Respondent Nos.4 and 5 are the parents of the deceased Ravindra Bhande, who expired in a motor vehicular accident.

3. It is the case of the Claimants that on 18th February, 2010, while Ravindra Bhande was proceeding from Karangi to Dharne, his motorcycle collided with a truck bearing No.MH-34-A-5923, which was parked on the road near Guru Nanak Dhaba, Pulpod, without parking or hazard lights. The Claimants asserted that the accident was caused solely due to the careless and negligent act of the driver of the truck.

4. The Claimants stated that the deceased was 35 years of age and was working as Live Stock Supervisor at Panchayat Samiti, Kelapur and was drawing salary of Rs.20,000/- per month. He was the sole earning member of the family. The Claimants therefore filed a Claim Petition under Section 166 of the Motor Vehicles Act against the driver, owner and insurer of the offending vehicle claiming total compensation of Rs.90,28,000/- towards loss of dependency and other heads.

5. The driver of the offending vehicle did not contest the proceeding despite due service. The Owner and the Insurer denied that the accident was caused due to rash and negligent act of the driver of the truck. They claimed that had the deceased driven the motorcycle carefully and cautiously, he would have been able to avoid

the accident. They therefore raised a plea of contributory negligence. Upon considering the oral as well as documentary evidence adduced by the Claimants and the Respondents, the Tribunal held that the driver of the truck was negligent in parking the truck in the middle of the highway. The Tribunal further held that the driver of the motorcycle was at a fast speed, and that either the headlight of the motorcycle was not in working condition, or that he had not seen the truck parked on the road. The Tribunal therefore held that the deceased was also responsible for the accident and therefore concluded that it was a case of contributory negligence.

6. As regards quantum of compensation, the Tribunal considered the annual income of the deceased as Rs.1,63,116/- and deducted 10% towards income tax, 25% towards personal expenses of the deceased, and upon adding 40% towards future prospects and applying multiplier of 14 computed loss of dependency at Rs.23,12,163/-. The Tribunal also awarded compensation of Rs.70,000/- on other conventional heads viz. loss of spousal consortium, funeral expenses and loss of estate. Accordingly, the Tribunal assessed total compensation at Rs.28,82,163/-. Upon deducting 50% towards contributory negligence, the Tribunal directed payment of compensation of Rs.11,91,082/-. Being aggrieved by the judgment and award, the Claimants have preferred this Appeal.

7. Shri Vivek Awachat, learned Counsel for the Claimants submits that the Tribunal has grossly erred in attributing contributory negligence to the deceased. He submits that the evidence on record amply proves that the accident was caused due to parking of the offending vehicle in the middle of the road during night time. He therefore contends that the finding recorded by the Tribunal on the issue of contributory negligence is not based on evidence on record.

8. Learned Counsel for the Claimants further submits that the Tribunal has erred in considering the income of the deceased as Rs.13,593/- per month. He submits that the deceased was 35 years of age, and as per the decisions of the Apex Court in **Sarla Verma vs. Delhi Transport Corporation (2009) 6 SCC 121** and **National Insurance Company Ltd. Vs. Pranay Sethi & Ors. (2017) 16 SCC 680**, the multiplier applicable is 16. He therefore submits that the amount quantified by the Tribunal is not just and reasonable.

9. Shri S.D. Zoting, learned Counsel for the Respondent Insurance Company submits that the motorcycle had dashed against a stationary vehicle. The fact that the witness Paramjitsing had heard the sound of the impact from a distance of 150 ft in fact suggests that the motorcycle was driven at a fast speed. He therefore justifies deduction of 50% towards contributory negligence.

10. I have perused the records and considered the submission advanced by the learned Counsel for the respective parties. The question for consideration is whether the Tribunal was justified in attributing negligence to the deceased and apportioning the liability equally between both the vehicles.

11. Before advertng to the facts, it would be relevant to refer to the decision of the Apex Court in ***Usha Rajkhova & Ors. Vs. Paramount Industries & Ors. (2009) 14 SCC 71***, where the Apex Court after considering the earlier decision on the issue of contributory negligence and has held thus:-

10. The question of contributory negligence on the part of the driver in case of collision was considered by this Court in Pramodkumar Rasikbhai Jhaveri Vs. Karmasey Kunvargi Tak and Ors. reported in 2002 (6) SCC 455. That was also a case of collusion in between a Car and a truck. It was observed in Para 8:-

"The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as 'negligence'. Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence", it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an "author of his own wrong."

This Court further relied on an observation of High Court of Australia in Astley Vs. Austrust Ltd.

reported in 1999 (73) ALJR 403 to the following effect:-

"A finding of contributory negligence turns on a factual investigation whether the plaintiff contributed to his or her own loss by failing to take reasonable care of his or her person or property. What is reasonable care depends on the circumstances of the case. In many cases, it may be proper for a plaintiff to rely on the defendant to perform its duty. But there is no absolute rule. The duties and responsibilities of the defendant are a variable factor in determining whether contributory negligence exists and, if so, to what degree. In some cases, the nature of the duty owed may exculpate the plaintiff from a claim of contributory negligence; in other cases, the nature of the duty may reduce the plaintiff's share of responsibility for the damage suffered; and in yet other cases, the nature of the duty may not prevent a finding that the plaintiff failed to take reasonable care for the safety of his or her person or property. Contributory negligence focuses on the conduct of the plaintiff. The duty owed by the defendant, although relevant, is one only of many factors that must be weighed in determining whether the plaintiff has so conducted itself that it failed to take reasonable care for the safety of its person or property."

12. In the instant case, it is not in dispute that the motorcycle driven by the deceased had collided with the truck parked on the National Highway No.7, near Guru Nanak Dhaba, at Pulpod. CW.2. Paramjitsing Hode, is the owner of the Dhaba situated on the eastern side of the highway near the place of the accident. His evidence indicates that the road at the place of the accident which runs in north-south direction is a four lane National highway with divider in between. The two lanes towards the eastern side of the divider were closed for

traffic due to construction work. As a result, the entire traffic was diverted towards western side lane.

13. The evidence of Paramjitsing further reveals that the offending truck was proceeding towards Pandharkawada. The driver of the truck parked the vehicle in the middle of the road along the divider towards the western side and went to the Dhaba to have meals. He has stated that the motorcycle which was also proceeding in the same direction collided against the rear portion of the truck, as a result, the driver of the motorcycle sustained fatal injuries. This witness has deposed that the accident was caused due to negligence of the driver of the truck. He therefore lodged an accident report which is at Exhibit 38

14. The spot panchanama at Exhibit 39 supports the evidence of this witness that the offending vehicle was parked in the middle of the highway along the divider on the western side. It is on record that the accident had occurred during night time and as deposed by CW2 there was no visibility at the place of accident. The evidence of CW2 further reveals that the truck was parked without parking lights or indicator. Neither the owner nor the driver of the offending vehicle stepped in the witness box to rebut this statement. It need not be emphasized that parking of the vehicle on public road obstructs free flow of vehicular traffic and causes not only inconvenience to the usage of public road,

but enhances crash risk. Section 122 of the Motor Vehicles Act therefore prohibits parking or leaving vehicle in dangerous manner so as to cause inconvenience to the users of the public place or passengers. Regulation 15 of the Road Regulations, 1989 casts duty on the driver of the vehicle parking on any road to ensure that the vehicle is not likely to cause danger, obstruction or undue inconvenience to the other road users and to indicate the manner of parking by any sign board or markings on the roads. These provisions cast implicit duty on the driver of the vehicle to ensure that they do not endanger life of any road user or obstruct their right by parking vehicle on the road.

15. As noted above, the two lanes of the National highway were closed for traffic and the entire traffic was diverted in the other two lanes towards the western side. The driver of the offending vehicle had parked the vehicle on the left side of the two lane road along the divider, on a busy highway during night time without parking lights. He was not constrained to do so due to breakdown of the vehicle or other unavoidable circumstances, but he had breached the statutory mandate and endangered the life and property of the users of the road only to go to the nearby Dhaba to have meals. The Tribunal has ignored this fact and has contributed negligence to the rider of the motorcycle on an assumption that he was at fast speed. The finding

recorded by the Tribunal that the headlight of the motorcycle were not in working condition are not borne out of record since the evidence of CW2 clearly indicates that the headlights were damaged in the accident. It is also pertinent to note that the driver of the offending vehicle has been chargesheeted for offence under Section 279 and 304A of IPC. As noted above, he has not stepped into the witness box to explain the manner or circumstances in which the accident occurred. Under the circumstances, there is absolutely no evidence on record to suggest that the motorcycle was at a fast speed or that there was sufficient visibility at the place of accident to enable the driver of the motorcycle to see the stationary truck. In the circumstances, it was unreasonable to expect the rider of the motorcycle to avoid the accident. In my considered view, the Tribunal has attributed negligence to the driver of the motor cycle for failing to do something which in the facts of the case, he could not reasonably do so. Suffice it to say that the finding of contributory negligence is not matter of conjectural inference, but has to be based on cogent evidence.

16. It would be relevant to refer to the decision of the Apex Court in Juman Begum vs. Ram Narayan & Ors. (Civil Appeal No.9343 of 2019-SC). On similar facts the Tribunal had attributed contributory negligence on the part of the deceased which was assessed at 50%

holding that if the lights of the motorcycle were lit, the deceased would have been able to avoid the accident. This view of the MACT was affirmed by the High Court in appeal. While setting aside the said finding, the Apex Court observed that the reasoning of the MACT that if the lights of the motorcycle were lit, the deceased would have been able to avoid the accident, is purely a matter of surmise. It has been held that once the substantive evidence before the MACT established that the truck trailer had been parked on the road at night without any reflectors, there was no reason or justification for the MACT to proceed on the basis of conjecture in arriving at the finding of contributory negligence.

17. In the instant case, the evidence on record amply proves that the accident was caused due to gross negligence and carelessness of the driver of the offending truck. There is nothing on record to indicate that the deceased had contributed to the accident in any manner. Hence the Tribunal was not justified in holding the deceased guilty of contributory negligence. Consequently, the Tribunal was not justified in deducting 50% of compensation towards contributory negligence.

18. As regards quantum of compensation, the salary certificate at Exhibit 79, shows that the deceased was drawing gross salary of Rs.14,733/- per month and he was paying professional tax of Rs.200/-.

The net salary after deducting the professional tax works out to Rs.14,533/- per month, the Tribunal has therefore erred in concluding the monthly income of the deceased as Rs.13,593/-. The deceased was in permanent employment and considering the fact that he was below 40 years of age, as per the dictum of the Apex Court in Pranay Sethi (supra) the Tribunal ought to have added 50% of the actual salary towards future prospects. Since the deceased was 35 years of age, as per the decision of the Hon'ble Apex Court in the case of Sarla Verma (supra) the multiplier applicable was 16. The Tribunal has thus erred in adding 40% of the actual salary towards future prospects and computing loss of dependency by applying multiplier of 15. Hence, the compensation awarded by the Tribunal cannot be considered as "just compensation".

19. Considering the law laid down by the Hon'ble Apex Court in Pranay Sethi and Magma General (supra) the compensation payable to the Claimants and Respondent Nos.4 and 5, the parents of the deceased is computed as follows:-

S.N.	Particulars	Amount
(i)	Annual Income of deceased	Rs. 1,74,396/-
(ii)	Future prospect 50% of actual salary	Rs. 87,198/-
(iii)	Total income of deceased	Rs. 2,61,594/-

(iv)	25% deduction towards personal expenses considering the number of dependents	Rs. 65,398/-
(v)	Multiplicand (iii-iv)	Rs. 1,96,195/-
(vi)	Multiplier applicable	16
(vii)	Loss of Dependency (Rs.1,96,195 x 16)	Rs.31,39,136/-
(viii)	Loss of Spousal Consortium Loss of Parental Consortium Loss of Filial Consortium (to each Parent R4 & R5)	Rs. 40,000/- Rs. 80,000/- Rs. 80,000/-
(ix)	Loss of Estate	Rs. 15,000/-
(x)	Funeral Expenses	Rs. 15,000/-

Total Compensation Award Rs.33,69,136/- payable with interest @ 7% per annum from the date of Petition till final realization.

20. Hence the following order:-

[I] The appeal is allowed. The impugned judgment and award is set aside.

[II] The Claimants / Respondent Nos.4 and 5 are held to be entitled for total compensation of Rs.33,69,136/- with interest @7% per annum from the date of application till the date of final realization, payable jointly and severally by Respondent Nos.1, 2 and 3.

[III] The Respondent No.3 Insurance Company shall deposit the difference in compensation before the Claim Tribunal, Kelapur, District Yavatmal, within a period of three months from the date of uploading of this order.

[IV] The MACT shall disburse an amount of 20% of the compensation with proportionate interest thereon to the Claimant No.1 and 10% each with proportionate interest to Respondent Nos.4 and 5 being the parents of the deceased. The Claimant Nos.2 and 3 are minor children. Hence the Claim Tribunal shall invest 30% of the compensation with proportionate interest thereof in their respective names in any nationalized bank in Fixed Deposit, initially for a period of six (6) years with further renewal until such that they attain the age of majority.

[V] Appeal stands disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)