

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

FIRST APPEAL NO. 396 OF 2018

The National Insurance Company Ltd
Through its Divisional Manager
Divisional Office at Hazari Chamber,
Railway Station Road, Aurangabad.

. **APPELLANT**

(Original Respondent no.3)

VERSUS

1. Vinay Ambadas Wahul
Age : 30 years, Occ : Nil,
R/o Indiranagar, Garkheda Parisar,
Aurangabad.
2. Ryan International School,
Gut No.42, Next of Nath Seed,
Paithan Road, Aurangabad.
3. Shaikh Riyaz Shaikh Vazir
Age : 34 years, Occ : Driver,
R/o Turkabad Khardi,
Tq. Gangapur, Dist. Aurangabad.

. **RESPONDENTS**

(Resp. no.1 – original claimant and
R.Nos.2 and 3 – Orig. Respondent
nos.1 and 2)

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Advocate for Appellant : Mr.S.S. Chapalgaonkar h/f Mr.S.P.
Chapalgaonkar

Advocate for respondent no.1 : Mr.G.R. Syed

Advocates for respondent no.3 : Mr.A.P. Avhad & Mr.S.K.
Ashraf Patel

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CORAM : S.G.DIGE, J.

DATE : 03.08.2022

JUDGMENT :

The appellant has challenged the judgment and award passed by the Member, Motor Accident Claim Tribunal, Aurangabad. The appellant is the original respondent no.3.

2. Brief facts of the case are as under :-

On 23rd December, 2015, Shantabai Ambadas Wahul (deceased) was proceeding towards her office. When she reached opposite Anjali Theater, at that time the school Bus No.MH-20-XA-0511 came from the back side in high speed with negligent manner and dashed her. Respondent no.3 herein was driving the Bus. Due to said dash, the deceased was sustained multiple injuries. She was immediately shifted at Asian City Care Superficiality Hospital, Aurangabad. After examining her, the doctor declared her dead. Thereafter she was shifted to the Government Hospital where the postmortem was carried out. Crime was registered against the Bus driver.

3. The respondent no.1 – original claimant-son of the deceased filed claim petition before the Motor Accident Claims Tribunal (For short, “the Tribunal) for getting compensation. Considering the evidence led before the Tribunal and after hearing the parties, the Tribunal held respondent nos.1 to 3 liable to pay compensation jointly and severally. The said order is under challenge.

4. It is the contention of the learned counsel for the appellant that respondent no.1 is the major son of the deceased, so he cannot be termed as dependent on the income of his mother. The deceased was temporary employee, but the Tribunal has considered her as permanent employee. No salary slip of the deceased was produced on record. There was contributory negligence of the deceased but this fact was not considered by the Tribunal. The income of deceased has considered on higher side. The Tribunal has not considered the evidence properly, hence requested to allow the appeal.

5. It is the contention of the learned counsel for

the respondents that no evidence is led by the appellant before the Tribunal to prove their contentions. The evidence produced on record shows that the deceased was the permanent employee. The order passed by the Tribunal is legal and valid.

6. I have heard both the learned counsel. Perused the judgment and order passed by the Tribunal.

7. The appellant has mainly raised following issues:-

- (i) Dependency of respondent no.1;
- (ii) Temporary Employment of deceased ;
- (iii) Contributory negligence of deceased and
- (iv) Income of deceased

8. I deal with these issues one by one :-

(i) **Dependency of respondent no.1** :- It is the contention of the learned counsel for the appellant that earning/major son of the deceased cannot be termed as dependent on the income of his mother. Respondent no.1- original claimant

has examined himself before the Tribunal at Exhibit-23. In his examination-in-chief, he has stated that he is unable to do any type of work, he is physically very weak by birth and he was totally dependent on his mother. His mother was the only earning member of their family. In cross-examination, the suggestion was given to this witness, he was not dependent on the income of his mother, but this witness denied it.

From the evidence of this witness, it reveals that he is physically weak by birth and was dependent on the income of his mother. It proves that he was dependent on his mother. He is major but he is unable to do any work. He is the legal representative of the deceased.

. The section 2(1)(d) of the Employees' Compensation Act, 1923 defines the dependent as under :-
Section 2(1)(d) :-

“dependent” means any of the following relatives of a deceased (employee), namely-

(i) a widow, a minor (legitimate or adopted

son, an unmarried (legitimate or adopted daughter, or a widowed mother, and

(ii) if wholly dependent on the earnings of the (employee) at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;

(iii) if wholly or in part dependent on the earnings of the (employee) at the time of his death-

(a) a widower,

(b) a parent other than a widowed mother,

(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter, legitimate or illegitimate or adopted if married and minor or if widowed and minor,

(d) a minor brother or an unmarried sister or a widowed sister if a minor,

(e) a widowed daughter-in-law,

- (f) a minor child of a pre-deceased son,
- (g) a minor child of a pre-deceased daughter where no parent of the child is alive, or
- (h) a paternal grandparent if no parent of the employee is alive.”

Section 2(1)(d)(ii) speaks about dependent who is major but wholly dependent on earning of deceased. In present case, respondent no.1 has stated on oath that he is very weak by birth and he was totally dependent on income of his deceased mother. No evidence came on record to disbelieve his evidence. Hence in my view, respondent no.1 / original claimant is dependent of deceased.

(ii) Temporary Employment of deceased :-

It is the contention of the appellant that the deceased was the temporary employee. Shri. Shaikh Rafiq Shaikh

Issak was examined as PW-2 at Exhibit-32, who is the junior clerk in Mahila Bal Vikas Department where the deceased was working as peon. He has stated that the deceased was employee of their office and she was permanent employee. It has also come on record that she had joined the service on 5th April, 1997 as a peon. The date of accident is 23rd December, 2015. It means almost 18 years she worked in Mahila Bal Vikas Department as peon hence, I do not find merit in the contention of the learned counsel for the appellant that the deceased was temporary employee.

(iii) Contributory Negligence of deceased : -

Admittedly, the dash is given to the deceased from back side so no question of contributory negligence arise. Moreover, the spot panchanama Exhibit-24 shows that the accident occurred at crowdly place. There is theater, Bank, Service Road and shops around the spot of accident. It shows that the Bus was not in moderate speed and gave dash to the deceased from back side. So no question of

contributory negligence arise and I do not find merit in the contention that there was contributory negligence of deceased.

(iv) **Income of the deceased :-**

It has come in the evidence of PW-2 Shri Shaikh Rafiq Shaikh Issak that the deceased was getting salary of Rs.23,768/- per month. The salary certificates are at Exhibit-42, 43 and 44. There is no reason to disbelieve these salary certificates. Hence the salary considered by the Tribunal on the basis of these salary certificates is correct.

9. In view of the above, I pass the following order :-

ORDER

- (i) The Appeal is dismissed.
- (ii) No order as to costs.

**[S.G.DIGE]
JUDGE**