

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

FIRST APPEAL NO. 483 OF 2013

1. Peniel Children Home
Sisu Society for integrated Soci,
Uplipeniel Children Home,
R/o LIC Colony, Plot No.R-4/160/9,
Khopegaon Road, Latur,
Dist. Latur, Maharashtra
2. Ramesh S/o Shankar Suryawanshi
Age : 43 years, Occ : Driver,
R/o LIC Colony, Plot No.R-4/160/9,
Khopegaon Road, Latur.

.. APPELLANTS

VERSUS

1. Godawari w/o Baliram Hasnale
Age : 47 years, Occ : Household,
R/o Gawali Nagar, Latur.
2. Pradeep S/o Baliram Hasnale
Age : 27 years, Occ : Education,
R/o Gawali Nagar, Latur.
3. Prashant S/o Baliram Hasnale
Age : 24 years, Occ : Education,
R/o Gawali Nagar, Latur.
4. Trivenibai W/o Babarao Hasnale
Age : 67 years, Occ : Household,
R/o Chambarga, Tq. Shirpur Anantpal,
Dist. Latur.
5. The New India Assurance Co. Ltd.,
Gayatri Krupa Ukka Road,
Chandra Nagar, Latur.

RESPONDENTS

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Advocate for Appellant : Mr.S.N. Pagare
Advocate for respondent nos.1 to 4 : Mr. S.P. Urgunde
Advocate for respondent no.5 : Ms. Sayali S. Tekale h/f
Mr.S.G. Chapalgaonkar

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CORAM : S.G.DIGE, J.

RESERVED ON : 19/07/2022
PRONOUNCED ON : 26/08/2022

JUDGMENT :

Being aggrieved and dissatisfied with the judgment and award passed by the Member, Motor Accident Claims Tribunal, Latur, the appellants – original respondent no.2 and original respondent no.1 have preferred this appeal.

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

On 30.05.2010 during night hours deceased Baliram and his son-in-law were proceeding to the Railway Station at Latur on motor cycle. Deceased Baliram was ridding the motor cycle. At about 8.45 p.m., auto rickshaw bearing no.MH-24-L-9233 driven by respondent no.1 in rash

and negligent manner gave dash to the motor cycle from opposite direction. In the said accident, deceased Baliram sustained fatal injuries and while undergoing the treatment, he succumbed to the injuries. First Information Report was lodged for rash and negligent driving against respondent no.1 under various sections of the Indian Penal Code (For short, "IPC").

3. The respondent nos.1 to 4 -original claimants filed Claim Petition before the Motor Accident Claims Tribunal, Latur (For short, "the Tribunal") for getting compensation against the appellants and respondent no.5 on account of death of deceased Baliram. Considering the evidence on record and after hearing the parties, the Tribunal has awarded compensation of Rs.15,49,120/- with interest @ 6% p.a. from the date of Petition till its realization. The said judgment and order is under challenge.

4. It is the contention of the learned counsel for the appellants that the Tribunal has erroneously held

appellant no.2/original respondent no.2 responsible for paying compensation in respect of the accident, in fact the deceased was at fault. The learned counsel further submits that the treatment was given to the deceased in private hospital without recording medico-legal case. The first information report is lodged after lapse of 11 days. The pillion rider was not examined to prove the point of rash and negligent driving of appellant no.2. The Tribunal granted excess and exorbitant compensation under the guise of just compensation. The Tribunal has not considered that appellant no.1 is society for integrated social upliftment SISU who is running orphanage in Latur District and the auto rickshaw is registered in the name of appellant no.1. Appellant no.1 is not profit organization and working for the welfare of poor and orphan children. Hence requested to allow the appeal.

5. It is contention of the learned counsel for respondent nos.1 to 4 that while granting compensation, the Tribunal has considered all the aspects and granted

compensation. The deceased was serving as permanent Mason in Irrigation Department, Latur, whose monthly salary was Rs.19,495/-. The deceased was getting income from agricultural land. Considering the evidence on record the Tribunal has granted just and proper compensation.

6. The learned counsel for respondent no.5 submitted that on the date of vehicular accident, the auto rickshaw was not insured with respondent no.5. Hence the appellant no.1 being the owner of the auto rickshaw is liable to pay the compensation. The judgment and order passed by the Tribunal is legal and valid.

7. I have heard all the learned counsel. Perused the judgment and order passed by the Tribunal. The appellants have preferred this appeal mainly on three grounds (i) The deceased himself was negligent while driving the motor cycle, (ii) F.I.R. is lodged after 11 days of the accident and (iii) income of deceased considered on higher side.

8. I deal with all issues one by one.

(i) **Negligence of deceased :-**

It has come in the evidence of CW-1 – Pradeep Baliram Hasnale, who is son of the deceased, that after the accident the deceased become unconscious, therefore, the son-in-law (pillion rider) of deceased took him to hospital i.e. Civil Hospital, Latur, thereafter deceased was taken to Vivekanand Hospital, Latur and then Lokmanya Intensive Care Centre, Latur. The deceased was under treatment in ICU for 15 days from the date of accident. Thereafter, he died on 15.06.2010. On 10.06.2010, the son-in-law (pillion rider) of the deceased filed the complaint with M.I.D.C. Police Station, Latur against appellant no.2/original respondent no.1, nothing elicited in cross-examination of this witness.

The evidence of this witness shows that the deceased was admitted in the hospital and he was taking treatment in ICU. As the deceased was taking treatment, hence there was delay for lodging the F.I.R. Mere delay for

lodging the complaint cannot be a ground to exonerate the liability of appellant no.2 against whom the offence is registered for rash and negligent driving. Appellant no.2 has examined himself at Exhibit-52. He has stated that on the date of incident, he was returning from Latur Railway Station towards SISU School. His auto rickshaw was in moderate speed. He was driving the auto rickshaw on the left side of the road. The deceased was driving his motor cycle in high speed with rash and negligent manner. The deceased tried to overtake one Jeep. At that time, the speed of the motor cycle was very high and the deceased gave dash to his auto rickshaw and fallen down. Thereafter, this witness and others shifted deceased to the hospital and son-in-law of the deceased (pillion rider) told this witness that they are responsible for the said accident and they are not going to file any complaint against this witness. On that assurance this witness returned from spot of incident to his school. This witness further stated that on 30th May, 2010, he went to M.I.D.C. Police Station, Latur to inform about the accident. At that time Incharge Officer of the M.I.D.C.

Police Station told him that if he is not responsible for the accident then there is no need to register the F.I.R. Thereafter, the false complaint is filed against this witness. In cross-examination, this witness admitted that he had gone to M.I.D.C. Police Station, Latur with written complaint stating therein that the deceased was at fault and responsible for vehicular accident but his written complaint was not accepted by the Police.

9. From the evidence of this witness, it appears that there are contradictions in the statement made by this witness. This witness has stated that after accident he along with others shifted the deceased to the hospital, whereas in the second sentence, this witness states that from spot of accident, he returned to the school on assurance given by the son-in-law of the deceased. Admittedly, the accident is occurred at about 8.45 p.m. As per the evidence of appellant no.2, he returned to the school on assurance of the son-in-law of the deceased and on the other side, he states that he shifted the deceased to the hospital. So there

are contradictions in his evidence regarding shifting the deceased to the hospital as well as returning to his school. Moreover, he has stated that on 30.05.2010 i.e. on the same day of accident, he went to Police Station to inform about accident. Appellant no.2 has not stated in his affidavit by what time he had gone to the M.I.D.C. Police Station to inform the Police about the accident. In his evidence, he has not stated that he had gone there with written complaint. In cross-examination, he admitted that he went there with written complaint. On one point, this witness states, on assurance of son-in-law of deceased he returned the school then question remains why again he went to Police Station, what prompted him to lodge complaint that too about 10 p.m. to 11 p.m. Had the appellant no.2 gone to Police Station, the Police would have taken cognizance of incident and would have visited the hospital where deceased was admitted, but it was not happened. Considering contradictions in statements of appellant no.2, the evidence of appellant no.2 is hard to digest.

10. While considering the evidence of both these witnesses, it is necessary to see the documentary evidence came on record in respect of the accident. F.I.R. is at Exhibit-36 and the copy of the spot panchanama is at Exhibit-37. The spot panchanama is prepared by the Police after visiting the place of accident. It shows that the vehicular accident had taken place on the left side of the road heading to Latur Railway Station. It was correct vehicular traffic side as far as the motor cycle is concerned, which the deceased was riding. The vehicular accident was occurred on the left side of the road. It shows that auto rickshaw had come by wrong side of the road and hit the motor cycle, which the deceased was riding. Had the deceased was trying to overtake the Jeep as alleged by appellant no.2 (respondent no.1), the place of accident would have been on the right side of the road, but the place of the accident is on the left side of the road, it shows that appellant no.2 was driving the auto rickshaw at high speed and in rash and negligent manner, resulting into the vehicular accident. The first information report is lodged

against appellant no.2. It proves that vehicular accident has taken place because of rash and negligent driving of the driver of the auto rickshaw i.e. appellant no.2. Moreover, from the evidence of appellant no.2 i.e. contradiction in statements, it proves that his plea of negligence of deceased is false and after thought, this plea has taken to avoid liability of paying compensation.

(ii) **Delay in filing the F.I.R. :-**

11. In respect of issue regarding the delay in filing the F.I.R., I have already observed earlier that after the accident the deceased was admitted in ICU, hence there is delay for lodging the F.I.R., hence the ground of delay is not sustained.

(iii) **Income of deceased :-**

12. In respect of issue regarding income of deceased, it has come in the evidence of PW-2 Devidas Dhage Exhibit-47 that the deceased Baliram Hasnale was working as Mason in Irrigation Department, he was permanent employee, salary certificate of the deceased is at

Exhibit-44. This certificate shows salary of the deceased was Rs.19,494/- per month. Thus annual salary comes to Rs.2,33,928/-. The Tribunal has considered the income tax returns deduction from this salary and has considered Rs.2,21,428/- per annum. At the time of accident the age of deceased was 56 years, hence the Tribunal has applied multiplier of 9. On that basis, the calculation is done. It comes to Rs.13,28,400/-. The Tribunal has considered Rs.2,03,720/- as medical expenses. Bills are produced on record. The total compensation of Rs.15,49,120/- is awarded. I do not find exorbitant amount is awarded. All compensation amounts are given on the basis of evidence.

13. It is contention of the learned counsel for the appellants that appellant no.1 is not profit organization working for welfare of poor people but this fact was not considered by the Tribunal while awarding compensation.

14. The question is whether appellant no.1 can claim immunity from the liability on the basis of their social

work. In my view, the deceased has lost his life in accident. Respondent no.1 has lost her husband whereas respondent nos.2 and 3 have lost their father. Value of human life cannot be measured in precise arithmetical calculations. Appellant no.1 is owner of offending auto rickshaw so they cannot avoid their liability. Work for welfare of people cannot be a ground to avoid any liability. In view of the above, I pass the following order :-

ORDER

- (i) The appeal is dismissed.
- (ii) No order as to costs.
- (iii) In view of the disposal of the first appeal itself, pending civil applications, if any, the same stand disposed of.
- (iv) Respondent nos.1 to 4 are entitled to withdraw amount deposited by appellant no.1.

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

SGA/-