

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

932 FIRST APPEAL NO. 1844 OF 2011

The New India Assurance Company Ltd. a Subsidiary of the General Insurance Corporation of India and a Company Incorporated under the Companies Act Having one of its Divisional Office at Adaklat Road, Aurangabad Through its Senior Divisional Manager Shri Vishwas S/o. Bansi Gaikwad, Age-53 years, Occu-Service at the New India Assurance Co. D.O. No.1 Adalat Road, Aurangabad	...APPELLANT [Orig.Resp. No.3]
--	--

VERSUS

- | | |
|---|--|
| <p>1. Asaram S/o. Shivsing Marmat,
Age-46 years, Occu-Agriculture,
R/o.Parsodea, Tq. Vaijapur,
Dist. Aurangabad</p> | <p>...Respondents
[R-1&2:or.clmts]
R-3: Or. R-No.1
R-4: Or.R-No.2</p> |
| <p>2. Smt. Nirmala W/o. Asaram Marmat (Died)
Age-48 fyears, Occu & Res. As above.
Through LRs</p> | |
| <p>2-A. Sachin Asaram Marmat
Age-24, Occu-Nil,
R/o. Parsoda, Tq. Vaijapur,
Dist. Aurangabad</p> | |
| <p>2-B. Rupali Asaram Marmat,
Age-24, Occu-Nil,
R/o. Parsoda, Tq. Vaijapur,
Dist. Aurangabad</p> | |

(2)

apeal1844.11

3. Ms. Omkar Carriers & Movers Pvt. Ltd.
307-308, 3rd Floor, Satguru Complex,
Opp. Gandhi Medical College,
Bashirbaugh, Dist. Hyderabad
4. Errapa Manikapa,
Age-Major, Occu-Driver,
R/o. Hokamabi, Tq. & Dist. Beedar,
Karnanataka
(Dismissed as per order dated 26-03-2013)

Mr. A. B. Kadethankar, Advocate for the appellant
Mr. S. M. Vibhute, Advocate for the respondent Nos.
2-A and 2-B

CORAM : VINAY JOSHI, J.

DATE : 11-01-2022

JUDGMENT:

. This is an appeal of Insurance Company claiming exception to the judgment and award dated 08-07-2009 passed by the Tribunal in MACP No. 462 of 2008.

2. The facts, in brief, are that:

a] The original claimants were the parents of the deceased Vipin who died in vehicular accident on 29-04-2008. It is the claimants' case before the Tribunal that on 20-04-2008 the

deceased Vipin was traveling by motorcycle as a pillion rider. While motorcycle was proceeding from the place of occurrence, offending vehicle namely container/truck bearing registration No. AP-29-T-4661 driven by respondent No.2 came from opposite side in excessive speed and gave dash to the motorcycle. As a result and impact of said dash, Vipin sustained injury of grave in nature to which he succumbed on the spot. It is the claimants' case that deceased a bachelor was serving as a sweeper with Cantonment Board, Chawani, Aurangabad and was drawing monthly salary to the tune of Rs. 5,990/-. The claimants were solely dependent on the income of the deceased. The offending container/truck was duly ensured with the present appellant i.e. New India Assurance Company Ltd. Since the accident was outcome of rash and negligent driving of driver of offending container/truck, claim was made against the driver, owner and insurer of offending container/truck.

b. The claimant Asaram Marmat led his evidence on affidavit. He has also examined one witness to establish the income of the deceased. The

claimants have also produced supporting documents in the nature of copy of FIR, spot panchanama, PM notes, insurance policy etc. The Insurance Company though resisted the claim by filing written statements, however, did not examine witness to establish the defence. It was the case of the Insurance Company that the accident was outcome of rash and negligent driving of the motorcycle. The Insurer has denied age and income of the deceased. It is contended that the Tribunal has awarded the compensation at higher rate. Hence, the award is challenged.

3. Both the learned counsels made submissions in consonance with their case. The appellants' learned counsel submitted that the Tribunal erred in holding that the accident occurred due to negligence of container /truck driver. According to the appellant it was the case of composite negligence. The Tribunal failed to appreciate the evidence in proper perspective. Besides that it is argued that the Tribunal has wrongly assessed the monthly income of the deceased which resulted into granting excessive compensation.

4. With the assistance of both the sides, the entire evidence is gone into. It is the claimants' evidence that at the relevant time, the motorcycle was proceeding in moderate speed. However, the container/truck came from opposite direction in high speed and gave dash to motorcycle. Always the driver of heavy vehicle owes heavy duty to take care while driving on public road. It reveals that the police have registered the offence against the truck driver for causing death due to rash and negligent act. The panchanama of the scene of offence is produced which supports the case of the negligence as set out by the claimants. The Tribunal has properly appreciated the evidence on the point of negligence.

5. As regards to the quantum of the compensation is concerned, the claimants has led the evidence before the Tribunal about salaried income of the deceased. The Tribunal while assessing the monthly income has calculated future prospects as well as deducted 50% amount towards personal and living expenses of the deceased. Having regard to the material on record, the monthly income of the

deceased was assessed to the tune of Rs. 4361/-. The Tribunal has applied multiplier of 14 by relying on the decision of the Supreme Court. Besides that the amount of Rs. 10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses has been added. As such the Tribunal has calculated the total compensation to the tune of Rs. 7,32,648/-. The quantum of the compensation awarded by the Tribunal is quite reasonable and therefore, no interference is called for.

6. After re-appreciating the entire material on record it is evident that the conclusions drawn by the Tribunal are based on sound reasoning. The appeal calls no interference. Hence, the appeal stands dismissed.

[VINAY JOSHI, J.]