

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

FIRST APPEAL NO. 485 OF 2022

National Insurance Co. Ltd.,
Through it's Divisional Manager
at present Aurangabad Divisional Office,
Hazari Chambers, Station Road,
Aurangabad
(Ambar Plaza, Opp. S.T. Stand
Station Road, Ahmednagar)

..APPELLANT

(Original Opp. No.4)

VERSUS

1. Smt. Sunita Ramanlal Bhalgat
Age : 53 years, Occ : Household,
2. Kum. Snehal Ramanlal Bhalgat
Age : 30 years, Occ : Household,
3. Shubham Ramanlal Bhalgat
Age : 25 years, Occ : Education,

R. Nos.1 to 3 R/o Sherkar Galli,
Sarjepura, Ahmednagar
4. Arjunkumar Bhanwarlalji Patidar
Age : 53 years, Occ : Business,
R/o village Rojana, Tahsil Jaora,
Dist. Ratlam, M.P. - 43000
5. The Branch Manager,
Iffco Tokio General Insurance Co. Ltd.
41, 2nd Floor, Cristu Complex,
Near Mandovi Motors, Levelle Road,
Banglore-560 001

6. Rajesh Sundarlal Rathod
Age : 55 years, Occ : Business,
R/o 26/52, Tapidas Lane,
Dalmandai, Ahmednagar.

..RESPONDENTS

(R.Nos.1 to 3 – original claimants
Nos.4 to 6 – orig. Opp. Nos.1 to 3)

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Advocate for Appellant : Mr.A.B. Gatne

Advocate for Respondent Nos.1 to 3 : Mr.N.C. Garud

Advocate for respondent no.4 : Mr.R.B. Jaju h/f Mr.A.S. Bajaj

Advocate for respondent no.5 : Mr.S.G. Chapalgaonkar

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CORAM : S.G.DIGE, J.

RESERVED ON : 06.09.2022

PRONOUNCED ON : 19.10.2022

JUDGMENT :

Being aggrieved by the judgment and award passed by the Motor Accident Claims Tribunal, Ahmednagar (for short, “the Tribunal”), the appellant – original respondent no.4 preferred this appeal.

2. It is contention of the learned counsel for the appellant that in the impugned judgment in para 35, the Tribunal has given finding that the negligence of 75% is of the offending vehicle and 25% is of Car. The said Car was insured with the appellant-company. However, the said

ratio not reflected in the operative part of the judgment and order. As a result, if the claimant decides to execute the award only against one insurance company, it is not possible in law to recover the amount paid for the negligence of the other vehicle/insurance company unless it is directed and incorporated in the operative order. Hence the order/award needs to be modified to that extent. The learned counsel further submits that the income of the deceased is considered by the Tribunal at Rs.18,000/- per month is in higher side, it should be Rs.12,000/- per month. Hence requested to allow the appeal.

3. The learned counsel for the respondents submits that the Tribunal has passed the order by considering all the aspects. Hence no interference is required in it.

4. I have heard all the learned counsel. Perused the judgment and order passed by the Tribunal.

5. The issue in this appeal is in respect of not mentioning the liability of the paying compensation.

6. In para no.35 of the order, the Tribunal has observed that there is composite negligence of 75% of the offending vehicle i.e. truck and of 25% of the Car. Hence I hold that opponent nos.1 to 4 are jointly and severally liable to pay the amount of compensation to the appellant. In the operative part, the Tribunal has not mentioned it. In my view, when the Tribunal has specifically mentioned in the order in para no.35 about the liability of contributory negligence then it should have been reflected in the operative part of the order, but it is not mentioned.

7. The issue in respect of the income of the deceased on higher side, it has come on record that the deceased was getting total income of Rs.40,000/- per month from all sources. Considering the evidence on record, the Tribunal has considered it at Rs.18,000/- per month. I do not find any infirmity in it.

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

ORDER

- (i) The appeal is partly allowed.
- (ii) The appellant shall pay 25% amount out of awarded amount @ 7.5% p.a. from the date of filing of the application till its realization.
- (iii) The respondent nos.1 to 3 are permitted to withdraw the deposited amount along with accrued interest thereon.
- (iv) The civil application, if any, the same stands disposed of.
- (v) The appeal is disposed of in above terms.

[S.G.DIGE]
JUDGE

SGA/-

Later on Mr.Gatne, learned counsel for the appellant submits that this Court has come to the conclusion that the appellant is liable to pay 25% amount

along with accrued interest thereon, however, the appellant has deposited more amount than 25%. Therefore, he requested to allow the appellant to withdraw the more amount than 25%.

2. The appellant is permitted to withdraw the deposited more amount than 25% along with interest thereon.

[S.G.DIGE]
JUDGE

SGA/-