

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

FIRST APPEAL NO. 1416 OF 2011

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

..APPELLANT

VERSUS

1. Ashok S/o Shrinivasji Dhoot
(Since deceased) through L.Rs.
- 1-A. Suman W/o Ashok Dhoot,
Age : 49 year, Occ : Household,
- 1-B. Ashish S/o Ashok Dhoot
Age : 23 years, Occ : Education,

Both R/o Vidyanagar, Bidar Road,
Nilanga, Tq. Nilanga, Dist. Latur.
- 1-C. Sow. Archana W/o Prakash Lahoti
Age : 27 years, Occ : Household,
R/o Motinagar, Latur,
Tq. & Dist. Latur.
- 1-D. Sow. Dipali W/o Satyam Zanwar
Age : 20 years, Occ : Household,
R/o Partur, Tq. Partur, Dist. Parbhani
- 1-E. Shital D/o Ashok Dhoot
Age : 19 years, Occ : Education,
R/o Vidyanagar, Bidar Road,
Nilanga, Tq. Nilanga, Dist. Latur.

2. Mangesh S/o Manohar Mukkawar
Age : Major, Occ : Buiness,
R/o Arvind Nagar, Nanded.

...
...RESPONDENTS

Advocate for Appellant : Mr.S.V. Kulkarni
Advocate for respondent nos.1-A to 1-E : Mr.Ram S. Shinde

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CORAM : S.G.DIGE, J.

DATE : 21.07.2022

JUDGMENT :

Being aggrieved and dissatisfied by the judgment and award passed by the Member, Motor Accident Claims Tribunal, Latur, the appellant (original respondent no.2) – Insurance Company has preferred this appeal.

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

On 29.09.2006 at about 6.00 a.m. original claimant had gone for morning walk on Nilanga Aurad-Shahajani road along with his friends Shri Borale and Shri Shinde. He was on left side of the road. At the relevant time, Alto Maruti Car bearing no.MH-26-L-1439 gave dash

to the claimant and his friends from back side. The claimant sustained injuries. He was taken to Civil Hospital, Nilanga in unconscious condition. Then he shifted to Civil Hospital, Latur and then transferred to Apex Hospital. He became conscious after six days. He was got operated for his injuries. He was admitted in hospital for two months. He took follow up treatment for 10-12 months. Due to the said accident, he is unable to walk. The crime was registered against the driver of the Car.

3. The claimant filed claim petition for getting compensation before the Motor Accident Claims Tribunal, Latur (for short, "the Tribunal"). After considering the evidence on record and hearing the parties, the Tribunal has directed respondent nos.1 and 2 in claim petition to pay compensation of Rs.10,91,440/- jointly and severally. Against the said judgment and order, this appeal.

4. It is the contention of the learned counsel for the appellant that the Tribunal has not considered the point

of contributory negligence. The claimant himself was negligent and he had not taken proper care on the road at the time of accident. The Tribunal has considered the income of injured on higher side and awarded exorbitant compensation, hence requested to allow the appeal.

5. It is the contention of the learned counsel for the respondents that the claimant had shop in addition to his agricultural landed property. The claimant's income from the business was at around Rs.1.70 Lakhs per year at the time of accident and he was getting Rs.40,000/- per year from the agricultural land. The claimant sustained 45% disability. The Tribunal has considered all aspects and has passed the order which is legal and valid.

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

7. The issues raised by the appellant are contributory negligence of the injured and income of the

injured is considered on higher side.

8. Firstly, I deal with the issue of contributory negligence. The first information report Exhibit-50 shows that the dash was given to respondent no.1 – original claimant from back side when the claimant was walking on road. After the accident, the spot panchanama was prepared by the Police. It is at Exhibit-51. It shows the incident spot on the left side of the road. It shows there was sole negligence of the Car driver. Moreover, the appellant has not examined any witness to prove that there was contributory negligence. Mere plea of the appellant that the accident was occurred due to contributory negligence is not sufficient, unless there is evidence produced on record to substantiate their plea.

9. In respect of issue of income of the deceased on higher side, it has come in the evidence of respondent no.1 – original claimant that he was getting Rs.40,000/- per year from the agricultural land and Rs.1,60,000/- from business.

Total income comes to Rs.2,00,000/- per year. Respondent no.1 had suffered 45% permanent disability. The Tribunal has considered it as 40% disability. On the basis of it, the Tribunal has considered the total income of respondent no.1 of Rs.80,000/- per year i.e. 40% of Rs.2,00,000/-. The medical, hospitalization and transportation expenses are considered of Rs.4,11,438/-. Considering Rs.80,000/- income per year and medical expenses, on that basis the compensation is awarded. In my view, to prove the income, the respondent no.1 has examined PW-3 – Shamsundar Dhoot, Chartered Accountant at Exhibit-193. He has stated that respondent no.1 (original claimant) was his client. Respondent no.1 was proprietor of Ganesh Traders, Nilanga since last seven years. It is individual firm. Respondent no.1 was filing the income tax returns. The income tax returns are at Exhibit-196. Respondent no.1 had income of Rs.1,69,112/- in the year 2005. The same is decreased to Rs.1,59,574/- in the year 2006-2007. So evidence of this witness shows that from business respondent no.1 got income of Rs.1,60,000/- in year 2006, when accident wa

occurred, which supports the evidence of respondent no.1.

10. It has come on record that respondent no.1 has agricultural land, he was receiving the income from agricultural land. Considering the income of business, which is proved through income tax returns and agricultural income, the Tribunal has considered the proper income of respondent no.1.

11. It has come on record that surgeries are performed on respondent no.1 at Latur by Dr.Agroya and at Sancheti Hospital at Pune for the injuries caused due to accident. PW-4 Dr.Agroya has stated that he has treated respondent no.1 – original claimant and he has suffered 45% permanent disability. Dr. Chetan Prabhakar Puram, who has examined by Court Commissioner at Exhibit-55 has stated that he has treated respondent no.1 at Sancheti Hospital at Pune.

12. From the evidence of both doctors, it shows that

medical expenses produced by respondent no.1 of Rs.4,11,438/- are correct and proper. In view of above, I do not find any infirmity in the judgment and order of the Tribunal. Hence, I pass the following order:-

ORDER

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

[S.G.DIGE]
JUDGE

SGA/-