

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

**FIRST APPEAL NO. 476 OF 2012
(WITH CIVIL APPLICATION NO. 8607 OF 2011)**

The Oriental Insurance Co. Ltd.
Branch Manager
Branch office Dhule
Through Senior Division
Manager, Aurangabad.

...APPELLANT

VERSUS

1. Shri Nimba Keshav Sonar
Age : 53 years, Occ : Nil,
R/o Saraf Bazar, Sindkheda,
Tq. Sindkheda, Dist. Dhule.
2. Sow. Vijayabai Nimba Sonar
Age : 48 years, Occ : Household,
R/o Saraf Bazar, Sindkheda,
Tq. Sindkheda, Dist. Dhule.
3. Sunil Nimba Sonar
Age : 20 years, occ : Education,
R/o Saraf Bazar, Sindkheda,
Tq. Sindkheda, Dist. Dhule
4. Seema Nimba Sonar
Age : 18 years, Occ : Education,
R/o Saraf Bazar, Sindkheda,
Tq. Sindkheda, Dist. Dhule
5. Rahul Nimba Sonar
Age : 16 years, Occ : Education,
R/o Saraf Bazar, Sindkheda,
Tq. Sindkheda, Dist. Dhule

6. Shaikh Harun Shaikh Abbas Khatik
Age : Major, Occ : Business,
R/o Ekvira Devi Road, Dhule,
Tq. & Dist. Dhule.

...RESPONDENTS

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Advocate for appellant : Mr.M.K. Goyanka
AGP for Respondent Nos. 1 to 5 : Ajay D. Pawar

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CORAM : S. G. DIGE, J.

DATE : 07.09.2022

JUDGMENT :

. Being aggrieved and dissatisfied with the judgment and award passed by the Member, Motor Accident Claims Tribunal, Dhule (For short, “the Tribunal”), the appellant – insurance company (original respondent no.2) preferred this appeal.

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

On 23rd July, 2008, the deceased Sachin was proceeding towards Sindkheda from Dhule on his motorcycle, when he reached in the area of village Pimparkheda on Mumbai-Agra highway, a Mini Truck belonging to respondent no.6 gave forcible dash from back side of the motorcycle of the

deceased. As a result, the deceased suffered fatal injuries and died in the hospital on the same day. The crime was registered against the truck driver.

3. The respondent nos.1 to 5/original claimants filed claim petition for getting compensation. The Tribunal, after considering the evidence on record, has awarded compensation of Rs.5,53,500/-. Against the said judgment and order this appeal.

4. It is the contention of the learned counsel for the appellant that the deceased Sachin was driving motorcycle in rash and negligent manner so there was contributory negligence of deceased in the said accident, but it was not considered by the Tribunal. The learned counsel further submits that there is no authentic and legal proof of salary income of the deceased at Rs.4,000/- per month, inspite of that the salary of deceased is considered as Rs.4,000/-. Wrong multiplier of 17 is applied, considering the age of the deceased, it should be 15. The Tribunal has wrongly and erroneously calculated the compensation amount. Hence

requested to allow the appeal.

5. It is the contention of the learned counsel for the respondent nos.1 to 5 that the truck had given dash to the deceased from backside, so there is no question of contributory negligence of the deceased. The specific issue was framed by the Tribunal, whether accident occurred due to contributory negligence of the driver of both the vehicles involved in the accident ? The Tribunal has answered it in negative. No evidence was led by the appellant to prove that there was contributory negligence of the deceased. The deceased was 25 years old at the time of accident, hence proper multiplier method is applied. The deceased was working as Goldsmith in Chandramani Jewelers. He was skilled employee. He was getting Rs.5,000/- per month from his employer. In addition to this, he also used to earn Rs.3,000/- to Rs.4,000/-. The deceased used to earn total income of Rs.7,000/- to Rs.8,000/- per month. But considering the evidence on record, the Tribunal has considered Rs.4,000/- monthly income of the deceased. Hence requested to dismiss the appeal.

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

7. The issues involved in this appeal are whether there was contributory negligence of the deceased in the accident ?, whether the proper multiplier is applied by the Tribunal ? and whether income of the deceased is considered on higher side ?

8. Firstly, I deal with the issue of contributory negligence. It is the contention of the learned counsel for the appellant that the deceased Sachin was driving the motorcycle in rash and negligent manner, hence the accident was occurred and there was contributory negligence of the deceased in the said accident. The Tribunal has framed the issue regarding contributory negligence of the deceased and answered it in negative. The Tribunal has observed that from the spot panchanama, it does not reveal that the deceased was rash and negligent in driving but it appears from the evidence that the driver of the offending truck, who alone was negligent in driving. It is revealed that the offending truck was following

the motorcycle driven by the deceased and ultimately dashed against the motorcycle and looking to this circumstance, it cannot be said that the deceased was at fault. In my view, there was no eye witness to the incident. The offence was registered against the truck driver. Dash was given to the motorcycle of the deceased from back side. The spot panchanama shows that there was negligence of the offending truck driver. Moreover the appellant could have examined the truck driver to prove the contributory negligence of the deceased, but it was not done. In absence of any evidence, mere pleading of contributory negligence would not suffice to say that, there was contributory negligence. Hence I do not find any merit in the contention of the learned counsel for the appellant that there was contributory negligence of the deceased in the said accident.

9. In respect of issue of multiplier, in the evidence it has come on record that the birth date of the deceased is 21.10.1982. PW-1 – Vijaya Nimba Sonar, wife of the deceased has stated that the deceased was 24 years old at the time of accident. The date of accident is 23rd July, 2008. So at the time

of accident deceased was around 26 years old. The Tribunal has applied multiplier of 17. As per the view of the Hon'ble Apex Court in the case of *Sarla Verma (Smt) and others V/s Delhi Transport Corp. & another* reported in *(2009) 6 SCC 121*, 17 is proper multiplier for the age of 26 to 30 years. Hence I do not find any infirmity in it.

10. In respect of issue of income of the deceased, PW-1 has stated that the deceased was skilled worker and used to do work of preparing gold and silver jewelry. He was getting salary of Rs.5,000/- from his employer. In addition to this he also used to do private work and used to earn monthly income of Rs.3,000/- to Rs.4,000/-. According to her, the deceased used to earn total income of Rs.8,000/- per month. In my view, the Tribunal has considered monthly income of deceased at Rs.4,000/- and it is proper.

11. The appeal is devoid of merit. Hence I pass the following order:-

ORDER

(i) The appeal is dismissed.

- (ii) No order as to costs.
- (iii) Respondent nos.1 to 5 are permitted to withdraw deposited amount if not withdrawn.
- (iv) In view of the disposal of the first appeal itself, nothing survives in civil application no.8607/2011, hence the same stands disposed of.

(S. G. DIGE)
JUDGE

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SGA/-