

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

981 FIRST APPEAL NO.2801 OF 2018

UNITED INDIA INSURANCE CO. LTD.
VERSUS
VIDYA SANDESH KOMATWAR AND ORS

...
Advocate for Appellant : Mr. S. G. Chapalgaonkar
Advocate for respondent No.1 and 2 : Mr. M. D. Shinde

....

**CORAM : S. G. DIGE, J.
DATE : 27.09.2022**

PER COURT :-

The issue involved in this appeal is, in spite of 50% contributory negligence of the deceased held by the Tribunal, the Tribunal has awarded total compensation to Respondent Nos. 1 and 2.

2. It is the contention of learned counsel for the appellant that, the accident occurred due to negligence of the deceased. The deceased went on wrong side and dashed against Alto car. On account of said accident, the deceased lost his life. The offence was registered against the deceased for rash and negligent driving. The Tribunal, in para No.6 of the impugned judgment and award, has observed that "The circumstances prevailing at the spot of accident show that, due

to contributory negligence of deceased and respondent No.2, said accident occurred. Hence this is case of contributory negligence and held that respondent No.2 and deceased are responsible to the extent of 50% each for the said negligence.” But while awarding the compensation, the Tribunal has considered total compensation of Rs. 46,58,760/- @ 9% per annum and directed the appellant and respondent No.3 herein to pay compensation jointly and severally which is illegal. It should be 50% as per the observations of the Tribunal.

3. Learned counsel for respondent Nos. 1 and 2 submitted that, the Tribunal has considered all the aspects and evidence produced before him and on that basis the order has been passed. There was no negligence by the deceased. Hence the order passed by the Tribunal is legal and valid.

4. I have heard both the learned counsel. Perused the judgment and order passed by the Tribunal. Admittedly, the offence is registered against the deceased. The Tribunal has observed that, it is case of contributory negligence, and deceased and respondent No.2, driver of Alto car, are 50% each responsible for the said accident. In spite of observation of 50% contributory negligence of deceased, the Tribunal has awarded

total compensation without deducting 50% contributory negligence amount of the deceased. In view of above, I pass the following order.

ORDER

- (I) The appeal is allowed.
- (ii) The judgment and order passed by the Tribunal is modified as under :-
- (iii) Respondent No. 1 and 2 are entitled 50% amount of the awarded amount i.e. Rs. 46,58,760/-, i.e. Rs. 23,29,380/- (Twenty Three Lakhs, Twenty Nine Thousand, Three Hundred Eighty) along with interest @ 9% per annum.
- (iv) The respondent No.1 is permitted to withdraw the deposited amount.
- (v) All pending Civil Applications are disposed of.

**(S.G. DIGE,)
JUDGE**

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