

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1782 OF 2007**

The New India Assurance Co. Ltd.)
Branch Junagad (Gujarat), Through)
Branch Manager, The New India Assurance)
Co. Ltd., Divisional Office, Mata Building)
Ambedkar Road, Sangli.)

...Appellant/Ori. Opponent. No.3.

Versus

1. Smt. Varsha Chandrashekhar Swami,)
Age - 35, Occupation: household)
2. Sachin Chandrashekhar Swami,)
age-14, Occupation: education.)
3. Kumari Supriya Chandrashekhar Swami)
Age -9 years, occupation : education)
(through Respondent No.1 the mother and)
natural guardian of Respondent Nos. 2 & 3.)

All resident of Nitiraj Apartment, Flat No.8,)
Neminathnagar, Sangli.)

....Respondents/Ori. Claimants

AND

4. Pravin Raghubhai Bhela, age-27,)
Occupation : service (driver),)
Resident of Patalgaon, taluka Besan,)
District Junagad (Gujarath).)

5. Shri. Haji Mahamad Yusuf Khan Pathan,)
Major, occupation : transporting.)
Resident of Chobari taluka and district)
Junagad 362 001, Gujarat)
6. Basavraj Gurubasav Patil, age-24,)
Occupation: driver, opposite to)
Weighing gate of Vasantdada Shetkari)
Sahakari Sakhar Karkhana,)
Purnima Hote, Industrial state, Sangli.)
7. The United India Insurance Co. Ltd.,)
Branch at Chambers of Commerce)
Building, Mahavirnagar, Sangli)

...Respondents/Ori.Opponents.

WITH
FIRST APPEAL NO. 1783 OF 2007

The New India Assurance Co. Ltd.)
Branch Junagad (Gujarat), Through)
Branch Manager, The New India Assurance)
Co. Ltd., Divisional Office, Mata Building)
Ambedkar Road, Sangli.)

...Appellant/Ori. Opponent. No.3.

Versus

1. Smt. Anita Vasantryao Jadhav,)
age-45, Occupation : household.)
2. Sou. Seema Babasaheb Patil,)
age-23, Occupation : household)
3. Miss. Sushama Vasantryao Jadhav,)
age-21, Occupation : educaction)
4. Miss. Archana Vasantryao Jadhav,)
age - 19, Occupation : education)
5. Minor Vaibhav Vasantryao Jadhav,)
age-16, Occupation: education.)
6. Minor Vishal Vasantryao Jadhav,)
age-14, Occupation : education.)
- Claimants no.5 and 6 minors through)
their mother Smt. Anita Vasantryao Jadhav)
- All resident of Kavalapur, taluka Miraj,)
district Sangli.)

....Respondents/Ori. Claimants

AND

7. Pravin Raghubhai Bhela, age-27,)
Occupation : service (driver),)
Resident of Patalgaon, taluka Besan,)
District Junagad (Gujarath).)

8. Shri. Haji Mahamad Yusuf Khan Pathan,)
Major, occupation : transporting.)
Resident of Chobari taluka and district)
Junagad 362 001, Gujarat)
9. Basavraj Gurubasav Patil, age-24,)
Occupation: driver, opposite to)
Weighing gate of Vasantdada Shetkari)
Sahakari Sakhar Karkhana,)
Purnima Hote, Industrial state, Sangli)
- 10.The United India Insurance Co. Ltd.)
Branch at Chambers of Commerce)
Building, Mahavirnagar, Sangli)

...Respondents/Ori. Opponents.

Mr. D. S. Joshi, Advocate for the Appellant in both Appeals.

Mr. Tejpal Ingale, Advocate for the Respondent Nos 1 to 3 in FA/1782/2007 and for Respondent Nos. 1 to 6 in FA/1783/2007.

Mr. Amol Gatne, Advocate for the Respondent No. 7 in FA/1782/2007 and Respondent No. 10 in FA/1783/2007.

CORAM : S. G. DIGE, J.

DATE : 6th MARCH 2023.

Judgment:

1. These two appeals are out of the same accident and issues involved in both these appeals are same. Hence, I am deciding these appeals by common judgment.

2. It is contention of learned counsel for the appellant – Insurance Company that the accident had occurred due to sole negligence of the offending jeep driver but the Tribunal has fixed liability on the offending truck driver. The accident had occurred due to composite negligence of both the drivers. At the most, the Tribunal should have fixed 50% contributory negligence on both drivers but the Tribunal has not done so. Hence, requested to allow the appeals.

3. It is contention of learned counsel for respondent Nos. 7 and 10 – Insurance Company that the accident had occurred due to sole negligence of the driver of the offending truck. FIR was lodged against the driver of the offending truck. To prove the negligence, respondent Nos. 7 and 10 examined the passenger in the jeep. He has categorically stated that accident had occurred due to negligence of driver of the offending truck. The driver of offending truck had not stepped into witness box to prove the negligence of jeep driver. Hence, requested to dismiss the appeals.

4. Learned counsel for claimants submits that appropriate order be passed and consortium amount be awarded to the claimants.

5. I have heard learned counsel for all the parties.

6. The issue involved in these appeals is negligence.

7. It is contention of learned counsel for the appellant that the accident had occurred due to sole negligence of the jeep driver but to prove its contention the appellant has not examined any witness.

8. It has come in the evidence of the examined witness that the truck driver is responsible for causing the said accident. As the truck driver was at fault, on that basis, the Tribunal has held that the accident had occurred due to negligence of truck driver, I do not find any infirmity in it as the appellant has not examined any witness to prove the negligence of jeep driver or contributory negligence of jeep driver as well as FIR was lodged against the driver of the offending truck.

9. In respect of awarding consortium amount, it is contention of learned counsel for the appellant that cross objection was filed by the claimants but it was not registered due to rejection of delay condonation application. As there is no appeal by the claimants for enhancement of compensation, consortium cannot be awarded. In my view, it is settled principle of law that claimants are entitled for just compensation. Section 168 of Motor Vehicles Act states about just and fair compensation. Hence, claimants are entitled for consortium amount. I am not considering enhancement in income of deceased. As per view of the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for Rs.40,000/- as consortium amount, Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate.

10. In appeal No.1783 of 2007, the Tribunal has awarded an amount Rs.7000/- as consortium amount and funeral expenses and Rs.20,000/- for loss of love and affection. In this appeal, there are six claimants, so Rs.2,40,000/- is the consortium amount, Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate, it comes to Rs.2,70,000/-. If out of this amount, Rs.27,000/- is

deducted, it comes to Rs.2,43,000/-. The claimants are entitled for this amount.

11. In appeal No.1782 of 2007, the Tribunal has awarded an amount Rs.27000/- in all. In this appeal, there are three claimants, so Rs.1,20,000/- is the consortium amount, Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate, it comes to Rs.1,50,000/-. If out of this amount, Rs.27,000/- is deducted, it comes to Rs.1,23,000/-. The claimants are entitled for this amount.

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

ORDER

1. The appeals are dismissed. No order as to cost.
2. In First Appeal No.1783 of 2007, the appellant is directed to deposit additional amount of Rs.2,43,000/- along with 7.5% interest from 1st October 2017 till realisation of the amount. The claimants in this appeal are permitted to withdraw award amount and additional amount along with accrued interest thereon.

3. In First Appeal No.1782 of 2007, the appellant is directed to deposit additional amount of Rs.1,23,000/- along with 7.5% interest from 1st October 2017 till realisation of the amount. The claimants in this appeal are permitted to withdraw award amount and additional amount along with accrued interest thereon.
 4. The statutory amount in both the appeals be transmitted to the Tribunal along with accrued interest thereon. Parties are at liberty to withdraw it as per Rule.
13. Pending civil applications, if any, stand disposed of.

(S. G. DIGE, J.)