

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1076 OF 2016

United India Insurance Co. Ltd.)
Pune Regional Office,)
Through its Divisional Office,)....Appellant
Janata Shopping Centre,) (Original Opp.
Navi Peth,) No.2)
Solapur.)

Versus

1. Mr. Vasant Dattatraya Chanmal)
Age: 72 years, Occ:- Nil)
2. Mrs. Sumitra Vasant Chanmal,)
Age: 64 years, Occ:- Household)
3. Mrs. Lata Ajay Chanmal)
Age:- 35 years, Occu:- Household)
4. Miss. Sonali Ajay Chanmal)
Age:-13 years, Occ:- Education)
5. Mast. Ritesh Ajay Chanmal)
Age:- 10 years, Occu:Education)
- Resp. Nos.4 & 5, being minor, through)
their Natural Guardian Mother Resp. No.3.)
- All Resp. Nos. 1 to 5 R/o:- House No. 848,)
Vidi Gharkul, D-Group, Sagar Chowk, Solapur.)Respondents

Mr. Amol Gatne for the Appellant.
Mr. Milind Deshpande a/w Mr. K.P. Deshmukh for the Respondent
Nos. 2 & 3.

CORAM : SHIVKUMAR DIGE, J.**DATE : 12th APRIL 2023.****JUDGMENT :**

1. The issues in this appeal are Non joinder of necessary party, there was contributory negligence of the deceased, future prospects awarded on higher side and breach of terms and conditions of Insurance Policy.

2. It is contention of learned counsel for the appellant that at the time of accident, the driver of offending vehicle was holding license of LMV vehicle, whereas, he was driving the commercial vehicle, there was breach of terms and conditions of Insurance Policy but, this fact is not considered by the tribunal. Learned counsel further submits that deceased was in private employment and while awarding future prospects, tribunal has awarded 50% future prospects, it should be 40%, as he was not in permanent service and was not getting fixed salary. Learned counsel further submits that the accident occurred due to contributory negligence of deceased but this

fact is not considered by the tribunal. Hence, requested to allow the appeal.

3. Learned counsel for the respondents/claimants submits that accident occurred due to sole negligence of driver of offending vehicle. To prove the negligence of deceased, driver of offending vehicle was not examined by the appellant. Learned counsel further submits that deceased was working at IndusInd Media and Communication Limited Vasco-Goa. He was permanent employee of the said company. Hence, 50% future prospects considered by the tribunal is proper. Learned counsel further submits that appellant had not lead any evidence, to prove that there was breach of terms and conditions of Insurance Policy. The order passed by the tribunal is legal and valid and no interference is required in it.

4. I have heard both learned counsel, perused judgment and order passed by Motor Accident Claims Tribunal, Solapur (for short 'the Tribunal').

5. It is the claimants' case that on 14th February, 2012 at about 1:30 p.m, the deceased Ajay Chanmal was proceedings from Vasco to

Chicalim, on his Bajaj Discover motorcycle no. GA/06/H-4748, when he reached near Tiger Garriage at Chicalim, a Bolero Jeep No. GA/04/T-3290, came in very rash and negligent manner from opposite direction and gave dash to Ajay Chanmal, due to which, the deceased sustained multiple injuries to his head. Deceased died while taking treatment.

6. It is contention of learned counsel for the appellant that there was contributory negligence of deceased in the said accident. While dealing with this issue, the tribunal has observed that FIR at Exhibit-'22', spot panchanama at Exhibit-'24' show that accident occurred due to rash and negligent driving of the offending Jeep. I do not find any infirmity in it. In my view, if there was specific defense of the appellant that accident occurred due to contributory negligence of deceased, it was burden on the appellant to prove this facts by leading evidence. No witness was examined by the appellant, nor driver of offending Jeep stepped into witness box to prove these facts. I do not see merit in the contention of learned counsel for the appellant that accident occurred due to contributory negligence of deceased. In respect of issue of future prospects, it has come on record that deceased was working in IndusInd Media and Communication

Company Private Limited Vasco-Goa. The claimants have examined manager of the company, who has stated that deceased was permanent employee of the company and was getting salary of Rs.10,000/- per month. Respondent No.3 Lata Chanmal widow of deceased has stated that deceased was employee of the company. It has come on record that deceased was the permanent employee of the company. He was 38 year old at the time of accident, Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)***, has held that if deceased was permanent employee and he was below 40 years of age, the claimants are entitled for 50% future prospects. I do not find any infirmity in awarding 50% future prospects by the tribunal.

6. In respect of issue of holding license of light motorcycle by the driver of offending motorcycle, the appellant has not examined any witness to prove that the driver of offending vehicle was holding which type of license, nor is there any evidence on record in that respect. The claimants have produced the driving license of deceased on record, which shows that the driver was holding license of LMV Non transport whereas, he was driving Bolero Jeep. As per the view of

Hon'ble Apex Court in the case of **Mukund Dewangan versus Oriental Insurance Company Limited 2017 AIR SC 3668.**, the license to drive light motor vehicle, includes license to drive transport vehicle. I do not find any merit in the contention of learned counsel for the appellant that at the time of the accident, the driver was not holding effective and valid license.

7. In view of above, Appeal is devoid of merit and I pass following order.

ORDER

- i. Appeal is dismissed. No order as to cost.
- ii. The claimants are permitted to withdraw deposited amount along with accrued interest thereon.
- iii. The statutory amount be transmitted to the tribunal. The parties are at liberty to withdraw it, as per Rule.

(SHIVKUMAR DIGE, J.)