



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

FIRST APPEAL NO.148 OF 2005

- | | | |
|-----|--|------|
| 1. | MR. MAHESH HARSUKHALAL DHURUVA |) |
| | (since deceased) Through his legal heirs |) |
| | |) |
| 1A. | Mr. Sandeep Maheshkumar Dhuruva |) |
| | Age :- 43 years, |) |
| | R/at. D/1401, Presidential Tower, |) |
| | LBS Marg, Opp R City Mall, |) |
| | Ghatkopar West, Mumbai-400086. |) |
| | |) |
| 1B. | Ms. Kavita Mihir Shah |) |
| | Age :- 37 years |) |
| | R/at. 21, Monalisa Apartment, |) |
| | Near Parsi General Hospital, |) |
| | Kemps Corner, Cumballa Hill, |) |
| | Mumbai-400026. |) |
| | |) |
| 2. | Mr. Rajendra Harsukhlal Dhuruva |) |
| | Age :- 41 years |) |
| | R/at. Nilkhanth Prakash, 54 Garodia, |) |
| | Ghatkopar (East). |) |
| | Bombay – 400 077. |)... |

APPELLANTS

Vs.

- | | | |
|----|--|------|
| 1. | MR. VISHAL JHUNJHUNWALAL |) |
| | C/o. Smt. Shanta Agarwal, Bhagat |) |
| | Niwas Peddar Road, Bombay – 400 -026. |) |
| | |) |
| 2. | New India Assurance Co. Ltd |) |
| | @ Regd Office :- 87, Mahatma Gandhi Road |) |
| | Flora Fountain, Mumbai 23. |)... |

RESPONDENTS

Ms.Amrin Khan i/by Mr.A.M.Gokhale, Advocate for the Appellants.

Ms.Urmila Sanil, Advocate for the Respondent No.2.

CORAM : ABHAY AHUJA, J.

RESERVED ON : 1st AUGUST 2023
PRONOUNCED ON : 28th AUGUST 2023

JUDGMENT :

1. This Appeal has been filed under section 173 of the Motor Vehicles Act, 1988 (the “M.V. Act”) challenging the judgment and award dated 16th August, 2004 passed by the Motor Accident claims Tribunal, Mumbai in Application No.2405 of 1995 partly allowing the Application with proportionate costs and further ordering the original owner of the offending vehicle and the Insurance Company to jointly and severally pay Rs.1,40,000/- to the first Appellant along with interest at the rate of 6%.
2. The Appeal was admitted on 16th January, 2007 and the hearing was expedited.
3. The brief facts are that on 24th March, 1995 at about 6.30 p.m. one Mr.Harsukhalal L. Dhuruva aged 65 years, a business partner of Arun Enterprises and Arun Plastic Printer and commission agent, was crossing Peddar road from west to east after coming from Nalanda society along with his nephew and going to his office at Masjid Bunder. After crossing

half of the road, Mr.Harsukhalal Dhuruva and his nephew came on to the divider and just when Mr.Harsukhalal Dhuruva had taken one step on to the road towards the eastern half, one car came from the side of the Mahalaxmi temple at a very high speed and gave a dash to Mr.Harsukhalal from the right side of the bonnet of the said vehicle bearing No.MGA 8452, such that Mr.Harsukhalal was thrown 20 feet away. Thereafter, one traffic police-man, who was standing at some distance, came running and some people also rushed to the spot whereafter Mr.Harsukhalal Dhuruva was taken to the nearby Jaslok Hospital by the same offending car which had stopped after the accident at a distance. On 30th March, 1995 while undergoing the treatment at the Jaslok hospital, Mr.Harsukhalal Dhuruva succumbed to his injuries.

4. Two sons of the deceased Harsukhalal L. Dhuruva then preferred a claim application before the Motor Accident Claims Tribunal, Mumbai for compensation under the M.V. Act against the owner of the offending vehicle as well as the insurer of the offending vehicle viz. New India Assurance Company Limited for compensation of Rs.4,00,000/- along with interest and costs.

5. Before the Tribunal, the owner of the offending vehicle remained absent and also did not file any written statement and the case proceeded *ex-parte* against him. The Insurance Company did not deny that the said car was insured with it on the date of accident but filed its written statement *inter-alia* stating that the accident did not happen due to the rash driving of the driver of the offending vehicle.

6. The Tribunal after considering the evidence of Rajendra H. Dhuruva, the second Applicant, who had not seen the accident, the evidence of Nayan Dhurva who was the nephew of the deceased and an eye-witness to the accident as well as the evidence in the form of the police papers including the First Information Report ("FIR"), the spot panchanama concluded that the deceased undisputedly died on 30th March, 1995 as a result of the accident. Observing that as there was no pedestrian crossing at the spot, the deceased did not have right of crossing the road and inferring that even though the car was very near from him, the deceased did not bother to take care not to cross the road and ought not to have stepped down from the divider, held that there was contributory negligence on the part of the deceased to the extent to the 60%. Relying upon the findings in the Spot panchanama, that tyre marks

of the wheel of the car are not seen on the spot, the Tribunal inferred that the driver did not try to avoid the accident by applying brakes; that the FIR revealed that the driver had been arrested immediately and presumed that the driver was negligent though the insurer did not try to examine the driver to disprove the presumption and held that the car driver was 40% negligent.

7. Coming to the quantum, based on the bills of the hospital, medicines, the assessment orders with respect to the income tax returns of the deceased, the evidence of Rasiklal Shah - the tax consultant, Narendra More - Senior Clerk of Jaslok hospital as well as Applicant No.1 - Mahesh Dhuruva and applying the multiplier of five as well as considering the amounts under the conventional heads, the Tribunal worked out the total compensation of Rs.3,50,860/-. But since 60% negligence was attributed to the deceased, the just compensation was worked out to Rs.1,40,000/- approximately, along with interest at the rate of 6%, directing the owner of the vehicle and the Insurance Company to jointly and severally pay the said amount with interest from the date of the application till payment inclusive of the No Fault Liability amount of Rs.50,000/- awarded under section 140 of the M.V. Act.

8. Aggrieved by the apportioning of the negligence by the Tribunal, the Appellants have preferred this Appeal.

9. I have heard Ms.Amrin Khan, learned counsel for the Appellants and Ms.Urmila Sanil, learned counsel for the Respondents at length and with their able assistance, I have perused the papers and proceedings in the matter and considered the rival submissions.

10. Ms.Amrin Khan, learned Counsel for the Appellants, would submit that the First Appeal is on both, the ground of negligence of the driver of the offending vehicle as well as on the point of quantum.

11. On the point of negligence, learned Counsel would submit that there was complete negligence on the part of the offending vehicle. She would submit that the eye witness namely Nayan Dhruva was examined and his testimony is sufficient to prove how exactly the accident took place and how there was complete negligence on the part of the offending vehicle. Learned Counsel for the Appellants has also relied on the FIR and Spot panchnama to submit that there was negligence on the part of the offending vehicle and how the accident could have been avoided by the

driver of the offending vehicle. Learned Counsel would submit that the Spot panchnama indicates that tyre marks of the wheel of the car were not seen on the spot. Therefore, inference can be drawn that the driver of the offending vehicle did not try to avoid the accident by applying brakes. Learned Counsel would further submit that there is also lack of description of the facts in the written statement regarding contributory negligence. Learned Counsel would submit that except to contend, in the alternative, that the deceased was guilty of contributory negligence, there is not a single place where the allegation of contributory negligence has been used in the written statement. Learned Counsel would submit that as there are no facts pleaded to lead to the inference of contributory negligence, therefore there is no question of proof and without pleading, the finding of the Tribunal holding that the deceased was guilty of contributory negligence, is arbitrary and unfair. Learned Counsel would further submit that there is no documentary evidence produced or witness examined by the insurer to prove contributory negligence. Merely because the deceased was crossing the road, no contributory negligence can be fastened upon the pedestrian without cogent evidence on record. Learned Counsel would submit that it is the driver's duty to take care. She would submit that it was the duty of the driver of the offending car to adjust the

speed on noticing the deceased so that the car could be stopped instantaneously, if the need arose.

12. Learned Counsel for the Appellants would submit that human beings do not need a license to walk on the road, however, drivers need license to drive their vehicle and by virtue of that, responsibility is imposed on drivers to drive the vehicle with due care and caution. The liability of negligence, hence, cannot be fastened on a pedestrian for crossing the road. Further, in the present case the deceased was a 65 year old person and considering the nature of the motor vehicle legislation which is a beneficial legislation, imposing liability on the deceased for contributory negligence, is against the law. Learned counsel would, therefore, submit that it should be held that there was 100% negligence of the driver of the offending vehicle in the said road accident.

13. On the point of quantum, learned Counsel for the Appellants would submit that the Tribunal has considered Rs.60,000/- per annum to be the income of the deceased and although the age of the deceased at the time of the accident was 65 years, the multiplier of '5' has been applied. Learned Counsel would submit that in view of the decision in the case of

*National Insurance Company Limited vs. Pranay Sethi*¹ and in the case of *Sarla Varma and Others vs. Delhi Transport Corporation and Another*² for an age group of 61 to 65 years, a multiplier of '7' should have been applied and that the Tribunal has erred on this aspect as well.

14. Learned counsel would further submit that loss of consortium has also not been granted in the present case. Learned counsel would submit that as per the judgment in the case of *Magma General Insurance Company Limited vs. Nanu Ram*³, each claimant is entitled for Rs.44,000/- as consortium amount under this head. Hence, Rs.88,000/- needs to be awarded towards loss of consortium, as there were two original claimants and each should be granted Rs.44,000/-. Learned Counsel would submit that, therefore, the total compensation should have been Rs.5,18,916/- instead of Rs.3,50,860/-, as calculated by the Tribunal. Learned Counsel would submit that without prejudice to the arguments with respect to the 60% negligence attributed to the deceased, if the total compensation was calculated as Rs.5,18,916/- as per the Hon'ble Supreme Court decisions, the total compensation payable would be Rs.3,78,916/- to the Appellants and not Rs.1,40,000/-.

1 2017 ACJ 2700

2 2009 ACJ 1298

3 2018 ACJ 2782 (SC)

15. Learned Counsel for the Appellants has relied upon the following decisions in support of her contentions.

1. *Ramwati and Ors Vs. Oriental Insurance Co. Ltd And Ors.*⁴
2. *Shaligram Ramji Dhekale and Another Vs. Ravindra Manikrao Khadse and Others*⁵
3. *Shakuntala Shridhar Shetty Vs. State of Maharashtra*⁶
4. *Dulichand Vs. Delhi Administration*⁷
5. *Sarla Verma & Ors. Vs. Delhi Transport Corp. & Anr. (supra)*
6. *National Insurance Co. Ltd Vs. Pranay Sethi (supra)*
7. *Magma General Insurance Co. Ltd. Vs. Nanu Ram (supra)*

16. Per contra, Ms.Sanil, learned Counsel for the Respondent no.2- Insurance Company, has opposed the submissions made on behalf of the Appellants. Learned Counsel would firstly submit that the Applicants are not dependents. Each of them is aged 41 and 43 years, and therefore, cannot be permitted to make the claim. Secondly, learned Counsel would submit that the Appellants have not produced the map of the accident site. She would submit that all the police papers were submitted to the

4 (2005) 59 ALR 484 (ALL)

5 2010(3) Mh.LJ 207

6 1976 ACJ 368

7 1976 ACJ 128

Tribunal. However, the Appellants have not examined the driver. Then, Mrs. Sanil would submit that the nephew who is the eye witness is a coloured witness as he is related to the deceased. Learned Counsel would submit that it has been admitted that the uncle stepped two feet from the divider; that there is a blind spot for the motorist. The driver cannot imagine that some person is walking to cross the road, especially when there is a green signal and once there is a green signal one has to go. Learned Counsel would submit that the deceased and the nephew overlooked that there was a green signal and they had to wait to cross. The driver could not imagine that they were there; there is no speed restriction, so the driver came in his speed and because despite the green signal, the uncle, who is now deceased, had stepped from the divider, he got hit by the car. However, the driver stopped when he saw that the deceased was hit and took him to the hospital. Learned Counsel would submit that, therefore, there has been contributory negligence on behalf of the deceased and that no indulgence can be shown. As far as the cases cited by the learned Counsel for the Appellants are concerned, learned Counsel would submit that in all those cases there was an involvement of two vehicles which is not the case here, and therefore, the said cases are clearly distinguishable. Learned Counsel would submit that the deceased

was not supposed to cross from where he had crossed, and therefore, this being a clear case of contributory negligence, the decision of the Tribunal ought to be sustained.

17. It is not in dispute that the death of Mr.Harsukhlal L. Dhuruva took place due to the dash given by the right side bonnet of the vehicle bearing No.8452 driven by Respondent no.1 and insured with Respondent no.2 Insurance Company i.e. due to the negligence of the driver of the offending vehicle.

18. On the point of negligence, the nephew of the deceased viz. Nayan Dhruva has been examined as an eye witness of the accident, as he was accompanying the deceased at the time of the accident. Therefore, it would be pertinent to quote his testimony. His examination in chief is quoted as under:

“On 24.3.1995 Hasrukhlal Dhruva met with a vehicular accident. It happened at 6.30 p.m. That road is divided in two parts. That road is called Gopalrao Deshmukh Road. Mahalaxmi Mandir was to my left side. Kemp’s corner was to my right side. I was standing about two feet away from deceased. Both of us were crossing the road from west to east. After crossing half road we both were standing on the divider. One car came from the side of Mahalaxmi Temple. It was in very fast speed. He gave violent dash to the Harsukhlal Dhruva by right side of

bonnet. Therefore he was thrown 20ft. Then the car stopped after going ahead. One traffic police was standing at a long distance. He came running. Some people also rushed to the spot. Thereafter Harsukhlal Dhruva was removed to Jaslok Hospital by the same car. I also accompanied him in the same car. Police recorded my complaint. Now I am shown certified copy marked X-1 of my complaint. It is now marked Exhibit-16.

Police recorded spot Panchnama. I showed police the spot. Certified copy of the same is also now shown to me. It is now marked Exhibit-17 (Note : Panchnama Exhibit-17 is exhibited subject to objection of the learned Counsel for Insurer).

For three to four days I had gone to Jaslok Hospital to see Harsukhlal. He was feeling great pain and agony. He died on 30.3.1995.”

19. His cross examination by the Advocate for the Insurance Company is also quoted as under:

“Harsukhlal was my father’s uncle. On that day we both had gone to Nalanda Society. We were going to his office at Masjid Bunder from Nalanda Society. We were going to his office at Masjid Bunder from Nalanda Society. On the spot, there is a road divider. Its height is about 8 inches. Both of us together were crossing the road. After crossing half the road we both were standing on the road divider. At that time there was no continuous flow of vehicles from Mahalaxmi to Kemp’s Corner. There was no pedestrian crossing at the spot. Harsukhlal was hit when he was standing on the road divider.

I had not seen that car before I heard noise of bang. The reason was that the car came in great speed. Car came from our left side. We took hardly one step from the road divider and the accident happened. Within a minute that traffic police came running. It is not true to say that accident happened because of negligence of Harsukhlal. It is not true to say that car was not in great speed. I did not speak when I had gone to see him in the hospital. But he was crying loudly. It is not true to say that the

accident did not happen because of negligence of the driver of the car.”

20. A perusal of the examination in chief and cross examination of the eye witness indicates that on the fateful day, at around 6.30 p.m., when Nayan, the eye witness, and Hasrukhilal, who was Nayan's father's uncle were crossing Gopalrao Deshmukh Road, which is divided into two parts from the west to the east with Mahalaxmi Mandir on their left side and Kemps Corner on their right side, and after they had crossed half of the road and were standing on the divider and hardly one step had been taken from the road divider by Harsukhlal, the offending car came in very high speed from the side of the Mahalaxmi temple and gave a violent dash to the deceased from the right side of the bonnet, due to which the deceased was thrown 20 feet. The offending car stopped after going ahead. The traffic police constable who was standing at a distance came running. Some people also rushed to the spot. The deceased was then taken in the offending vehicle to Jaslok hospital and the eye witness also accompanied him in the said car. The eye witness has also stated in his cross-examination that he had not seen the car before he heard the noise of the bang. It is also borne out from the cross-examination that, at that time, there was no continuous flow of vehicles from Mahalaxmi to Kemps

Corner. It also emerges that, there was no pedestrian crossing at the spot. It has also been recorded that the deceased was hit when he was standing on the road divider. Other than the aforesaid, there is no other finding to show that the deceased was not on the divider or had stepped off the divider on to the other side of the road. FIR was filed against the driver of the offending car under Sections 179 and 337 of the Indian Penal Code, 1860 and the driver was immediately arrested, however, the insurer did not try to examine the said driver.

21. As noted above, the principal dispute is with respect to the apportionment of negligence : according to the Appellants, the driver of the offending vehicle was fully negligent whereas according to the Insurance Company, the deceased was negligent as per the Award. The Tribunal, relying upon the eye witness testimony of Nayan Dhruva that there was no pedestrian crossing at the spot and the deceased had hardly taken one step from the road divider and the accident happened, drew an inference that the car was very near from the deceased but still Harsukhlal did not bother to take care not to cross the road. That, the deceased did not try to keep out of the way of the coming car on the road. Observing thus, the Tribunal has, in my view, correctly observed that it was not

possible to believe that the accident happened because of the sole negligence of the car driver and that there was contributory negligence on the part of the deceased. True also that the Spot panchnama indicates that tyre marks of the wheel of the car were not seen on the spot, which leads to an inference that the driver of the car was also negligent, as he did not try to avoid the accident by applying brakes. That, the driver was arrested immediately after the FIR which leads to a presumption that the driver was negligent but the presumption was rebuttable. Surprisingly neither the claimants nor the Insurance Company nor the Tribunal has sought to examine the driver. Be that as it may, there is no doubt that there was contributory negligence. But whether the apportionment of the same by the Tribunal is tenable or not is the question.

22. Let us first appreciate what is contributory negligence. The Hon'ble Supreme Court in the case of *Pramodkumar Rasikbhai Jhaveri vs. Karmasey Kunvargi Tak*⁸ has explained this in paragraph 8. But before that, what is negligence ? Negligence ordinarily means breach of legal duty to take care, but when used in the expression contributory negligence, it does not mean breach of any duty; it only means the failure by a person to use reasonable care for the safety of either himself or his

8 (2002) 6 SCC 455

property, so that he becomes blameworthy in part as an 'author of his own wrong'. The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused and is of such a nature that it may be properly described as negligence.

23. In *Meera Devi and Another vs. Himachal Pradesh Road Transport Corporation and Others*⁹, the Hon'ble Supreme Court has observed in paragraph 10 that to prove the contributory negligence, there must be cogent evidence. The word 'cogent' means clear, logical and convincing. Admittedly, there was no pedestrian crossing at the spot, which means the deceased did not have a right to cross the road at the spot. Hardly a step had been taken from the road divider and the accident happened. The deceased, in my view, failed to use reasonable care for his safety and contributed to his own accident, eventually leading to his death. He omitted to keep out of the way of a speeding vehicle on the road on which he had no right of use which was of the offending vehicle. Therefore, there is, as mentioned above, contributory negligence on the part of the deceased.

9 (2014) 4 Supreme Court Cases 511

24. In the case of *Dulichand Vs. Delhi Administration (supra)* relied upon by the learned Counsel for the Appellants, the Hon'ble Supreme Court has observed that since the driver of the offending vehicle did not apply any brakes, which was his duty to be reasonable and careful, considering it was the main road, he would have seen the deceased and avoided the accident but the driver failed to do so and noticed only after the offending vehicle struck the deceased, and therefore, it was a case of culpable negligence and the accident was caused on account of the negligent driving of the offending car.

25. Therefore, though this Court has observed that the deceased did contribute to the accident but it has also been observed from the evidence of the Spot panchnama that the tyre marks of the wheel of the car were not seen on the spot leading to an inference that the driver of the car also did not try to avoid the accident by applying brakes. No doubt, the driver, as a good samaritan, stopped soon after the accident at a distance and also took the deceased to the hospital, however, can 100% contributory negligence be fastened upon the pedestrian. Is it not also the driver's duty to take care. Was it not the duty of the driver of the offending car to adjust the speed on noticing the deceased so that the car could be stopped

instantaneously, if the need arose. I agree with the submission of learned Counsel for the Appellants that human beings do not need a license to walk on the road, however, drivers need license to drive their vehicle and by virtue of that, responsibility is imposed on drivers to drive the vehicle with due care and caution.

26. Although some of the decisions cited by the learned Counsel for the Appellants relate to involvement of two vehicles, however, the principles that the decisions lay down would apply with greater vigour and higher duty of care, to the facts of the case at hand, where a pedestrian is involved. Paragraphs 18 and 19 of the decision of a Division Bench of this Court in the case of *Shakuntala Shridhar Shetty Vs. State of Maharashtra (supra)* are usefully quoted as under :

“18. There can be no doubt that a person in the control of a motor vehicle must keep a good look-out in all the directions of the road, on the sides and in front of him and if he does so it would naturally be expected that he would be able to notice a person walking or riding a cycle right in front of him.

19. It requires to be stated that having noticed another user of the road, whether in the form of a pedestrian or a cyclist or another vehicle, in front of him, (whether going in the same direction or in the opposite direction) it at once becomes the duty of the driver of the vehicle to adjust the speed of his vehicle in such a manner that it comes under his complete control and he may stop it instantaneously in case of necessity so as to avoid an accident.”

27. In *Shaligram Ramji Dhekale and Anr Vs. Ravindra Manikrao Khadse and Others (supra)*, a Single Judge of this Court in a case where a pedestrian was hit by a truck taking turn, the Court observed in paragraph 5 as under :

“5. I have considered the submissions at the bar and rulings cited as also evidence led before the Tribunal. Assuming that deceased was crossing the road near Kailas Petrol Pump, offending motor truck driver was expected to be careful and cautious while driving on road near petrol pump or beer bar, restaurant etc. as there is every possibility of persons crossing the road near such public places. Driver of the offending motor vehicle did not enter in the witness box nor was summoned to throw light upon cause of the accident which was especially within his knowledge. Merely because the deceased was crossing the road even small amount of liability for contributory negligence cannot be fastened upon the pedestrian without cogent evidence on record. It cannot be said on the basis of evidence led or material placed before the Tribunal that deceased Nitin had voluntarily taken risk to his own life by crossing the road in front of the moving truck. It is duty of the driver of truck driven on highway to drive the motor vehicle in such manner so as to safeguard the life of pedestrians who may have to cross the road or walk by the side of the road near public places like petrol pump, restaurants etc. Driver of the motor vehicle approaching a pedestrian crossing is always expected to reasonably adjust the speed, blow the horn to avoid any untoward incident when any person using the road may be likely to lose his life or suffer permanent disability. Prudent driver would always drive with caution and at reasonable speed near places like petrol pump, beer bar and restaurants. Deceased Nitin was serving as a waiter in beer bar-cum-restaurant and on account of his employment may have occasions to cross the road. Hence, in my opinion, by a mere fact that he was crossing the road at the time of accident, liability for contributory negligence cannot be fastened upon

deceased victim. For these reasons, finding as to fastening liability for apportionment of contributory negligence upon deceased victim is not sustainable.”

28. Ergo, full liability of negligence or even 80% liability, hence, cannot be fastened on a pedestrian for crossing the road. In the present case the deceased was a 65 year old person and considering the nature of the motor vehicle legislation which is a beneficial legislation, imposing liability of 80%, in my view, would not be fair in the facts of this case, particularly when FIR was lodged against the driver, he was arrested and despite that, he was not examined. The Insurance Company cannot take the objection that the driver was not examined. It was the duty of the owner/Insurance Company to prove contributory negligence, which they failed to do to the extent awarded by the Tribunal. Even if the other arguments of Mrs.Sanil on behalf of the Insurance Company that there is a blind spot for the motorist, the driver cannot imagine that some person is walking to cross the road, especially when there is a green signal and once there is a green signal one has to go, the driver could not imagine that they were there; that there is no speed restriction, so the driver came in his speed and because despite the green signal, the uncle, who is now deceased, had stepped from the divider and therefore he got hit by the car

are considered, even then the presumption that the driver was also negligent, based on the evidence at hand, ought to have been rebutted by the owner/Insurance Company by cogent evidence, which in my view, has not been done to sustain the judgment and award of the Tribunal attributing contributory negligence of 80% on the deceased.

29. Ergo, considering the above discussion, I hold the driver of the offending vehicle to be 80% negligent. Considering the eye witness account of no pedestrian crossing being there, that the deceased had sought to take one step from the divider instead of keeping out of the way, I hold the deceased to have contributed to the negligence to the extent of 20% for crossing road without taking due care and caution of road safety rules leading to unfortunate accident.

30. In view of what has been held, it would not be necessary for this court to comment on the decision of the Allahabad High Court in the case of *Ramwati and Ors Vs. Oriental Insurance Co. Ltd And Ors. (supra)* relied upon by the learned counsel for the appellant.

31. I now come to the two other objections of Mrs.Sanil, one on the issue with respect to the two Appellants not being dependents and the other with respect to the eye witness being a coloured witness.

32. With respect to the first one, I am afraid that the said objection is not tenable as the Appellants had preferred the Application under Section 166 of the M. V. Act as legal representatives of Shri. Harsukhlal Dhuruva. The Section does not refer to the claimants being dependents nor is there any age restriction as suggested by the learned Counsel for the Respondent-Insurance Company. No judgment or any other law has been cited by Ms.Sanil to the contrary. Therefore, this objection is rejected as untenable.

33. With respect to Mr.Nayan Dhruva, the eye witness who is the nephew of the deceased, being a coloured witness, I am afraid this objection also does not and cannot be countenanced in as much as the entire body of evidence including the FIR, the Spot panchnama, the testimony of senior clerk of Jaslok hospital, clearly corroborate the testimony of Nayan Dhruva that Shri. Harsukhlal Dhuruva was hit by speeding vehicle, met with an accident while crossing Gopalrao Deshmukh

Road on 24th March 1995, was taken to Jaslok hospital and died there on 30th March 1995 while taking treatment. Therefore, Mr.Nayan Dhruva cannot be said to be a coloured witness.

34. On the point of quantum, learned Counsel for the Appellants has submitted that in view of the decision in the case of *National Insurance Company Limited vs. Pranay Sethi (supra)* and in the case of *Sarla Varma and Others vs. Delhi Transport Corporation and Another (supra)* for an age group of 61 to 65 years, a multiplier of '7' should have been applied. Learned counsel has also submitted that loss of consortium has also not been granted in the present case and that as per the judgment in the case of *Magma General Insurance Company Limited vs. Nanu Ram (supra)*, each claimant is entitled for Rs.44,000/- as consortium amount under this head. Hence, Rs,88,000/- needs to be awarded towards loss of consortium, as there were two original claimants and each should be granted Rs.44,000/-. That, therefore, the total compensation should have been Rs.5,18,916/- instead of Rs.3,50,860/-, as calculated by the Tribunal. I am in agreement with the above submissions made by the learned Counsel for the Appellants on the point of quantum. Let the Tribunal recompute the total compensation to be awarded to the Appellants after

attributing 20% negligence to the deceased. The judgment and award be modified accordingly.

35. The Appeal stands allowed as above. Parties to bear their own costs.

(ABHAY AHUJA, J.)