



(This judgment is corrected as per speaking to minutes order dated 07.05.2024.)

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

FIRST APPEAL NO.447 OF 2013

1. Vikrant S/o Vinodkumar Shukla,
Age. 23 years, Occu. Education,
R/o Near New Telephone Bhavan,
Parbhani, Tq. & Dist. Parbhani.

2. Vivek S/o Vinodkumar Shukla,
Age. 19 years, Occu. Education,
R/o Near New Telephone Bhavan,
Parbhani, Tq. & Dist. Parbhani.

..Appellants
(Ori. Claimants.)

Versus

1. Smt. Shardamma W/o B.G. Venkatechhalapathy,
Age. Major, Occu. Household &
Business and owner of lorry
No. KA-07-909, R/o Sri Vinayaka
Roadways, No. 1419, 1st Main
Road, Old Extension, Kollar,
District Kollar, (Karnataka State).

2. The New India Assurance Co. Ltd.,
Dhembur, Mumbai Through its
Branch at Yeshodeep Building,
Shivaji Road, Parbhani.

3. United India Insurance Co. Ltd.,
Through it's Branch Manager,
Dayawan Complex, Station Road,
Parbhani.

..Respondents

...

Mr. Manjeet Shaikh h/f Mr. S. S. Deshmukh, Advocate for the
Appellant.

Mr. D. P. Deshpande, Advocate for Respondent No.2 (Through
V.C.).

Mr. S. V. Kulkarni, Advocate for Respondent No.3.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 18th APRIL, 2024.

PRONOUNCED ON : 29th APRIL, 2024.

JUDGMENT:-

1. With the consent of the parties, matter is taken up for final hearing.
2. The appellants/original claimants have filed this Appeal under Section 173 of the Motor Vehicle Act impugning the judgment and award dated 23.02.2010 passed by the Motor Accident Claim Tribunal, Parbhani in M.A.C.P. No.297/2006.
3. Mr. Shaikh, learned Advocate appearing for the appellants/orig. claimants submits that the claimants were dependent on the deceased Pramila, who died in motor vehicle accident dated 10.11.2001. At the time of accident, she was traveling in Maruti Car bearing Registration No.MH-04-AX-1600 alongwith her husband-Mr. Vinodkumar. The offending Truck bearing Registration No.KA-07-909 was parked without signal or indicators at the spot of the accident. The car driver could not notice parked vehicle. Unfortunately, car rammed on rear portion of the parked Truck. Late Pramila suffered fatal injuries in the said accident. The appellant had, therefore, lodged claim seeking compensation of Rs.5,00,000/- against owner and insurer of the Truck under Section 166 of the Motor Vehicle Act attributing negligence against the Truck driver. The Tribunal partly allowed the claim and directed respondent nos.1 and 2 to jointly and severally pay the compensation of Rs.1,43,250/- to the claimants alongwith interest at the rate of 6% per annum. He would submit that although Tribunal has assessed the compensation to the tune of Rs.4,77,500/-, owing to the finding of negligence of 30% against the Truck driver, the award is restricted to 30% of the assessed compensation amount. He would, therefore, urge that the Tribunal has wrongly applied principles of contributory negligence though

deceased was not contributor to cause of accident but mere occupant of the car. Mr. Shaikh would further submit that the Tribunal has overlooked contribution of the deceased to the family being housewife and assessed the compensation based on meager notional income @ of Rs.3000/- per month. Even, nothing is added by way of future prospects. As such, assessment of the compensation itself was unjust.

4. Mr. Kulkarni, learned Advocate appearing for respondent no.3 supports the award. He would submit that the accident in question took place in the year 2001. The deceased was traveling alongwith her husband in Maruti Car. The accident occurred due to sole negligence on the part of the car driver. The Crime No.140/2017 was registered against him. He would further submit that the assessment of the compensation is based on valuation of money in the year 2001. As such, he urged to maintain the award.

5. Having considered submissions advanced and after going through the record and proceedings received from the Tribunal, it can be gathered that there is no dispute as regards to the accidental death of the mother of the appellants. The insurer of the Truck has already disbursed the compensation in terms of the award passed by Tribunal. Therefore, only issue that requires consideration in this Appeal is as regards to the application of principles of contributory negligence and reassessment of quantum of compensation.

6. The deceased Pramila was occupant in the car that was driven by her husband-Vinodkumar. The car banged on rear side of the Truck that was parked without signs and signals. The Tribunal after appreciation of evidence held that the Truck driver contributed in the accident to the extent of 30%. Consequently,

directed respondents to pay 30% of the assessed compensation to the claimants. Rest of 70% part of the assessed compensation is deducted towards contribution of the car driver as owner and insurer of the car were not made party to the petition. The approach of the Tribunal on this point appears to be erroneous. When the deceased was occupant of the car, the case would be governed by the principles of composite negligence. In such cases, it is a choice of the claimants to recover the compensation from any of the joint tortfeasor. In such cases, the claim for compensation cannot be defeated merely because one of the owner and insurer of the vehicles involved in the accident is not made party. The Supreme Court while dealing with the similar issue in case of ***Khenyei Vs. New India Assurance Co. Ltd.***¹ has advocated the applicability of the principles of the composite negligence and entitlement of the claimants to recover the compensation without adding owners and insurer of all the vehicles involved in the accident. The Supreme Court further observed in paragraph no.15 as under:

“15. There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the extent cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite negligence, a person who has suffered has not contributed to the accident but the outcome of combination of negligence of two or more other persons. This Court in T.O. Anthony v. Karvarnan & Ors. [2008 (3) SCC 748] has held that in case of contributory negligence, injured need not establish the extent of responsibility of each wrong doer separately, nor is it necessary for the court to determine the extent of liability of each wrong doer separately. It is only in the case of contributory negligence that the injured himself has contributed by his negligence in the accident. Extent of his negligence is required to be determined as damages recoverable by him in respect of the injuries have to be reduced in proportion to his contributory negligence.”

¹ (2015) 9 SCC 273.

7. In that view of the matter, the award of the Tribunal appears to be fallacious. Although, the Tribunal has concluded that the Truck driver was negligent to the extent of 30%, the liability of the owner and insurer of the Truck cannot be restricted applying principles of contributory negligence in case of death of occupant of vehicle. They would be bound to satisfy the entire award.

8. So far as the quantum of the compensation is concerned, looking to the fact that the accident took place in the year 2001 the notional loss of income @ Rs.3000/- per month appears to be just and proper considering the money valuation at the relevant time. However, the compensation will have to be reassessed by applying correct principles of assessment of compensation as espoused in case of *National Insurance Company Limited Vs. Pranay Sethi & Ors.*². It is incumbent to add 40% towards future prospects. Even the claimants would be entitled for reasonable compensation under non-pecuniary heads. Applying the aforesaid principles of assessment, the compensation can be reassessed in tabular form as follows:

Sr. No.	Heads	Amount (Rs.)
1	Annual Income (Rs.3000 x 12)	Rs.36,000/-
2	Addition of 40% towards future prospects (Rs.36,000/- + Rs.14,400/-) =	Rs.50,400/-
3	1/3 rd deduction towards personal and living expenses. Rs.50,400 / 3 = Rs.16,800/- 50,400 – 16,800/-	Rs.33,600/-
4	Apply multiplier of '17' (Rs.33,600 x 17)	Rs.5,71,200/-
5	Rs.15,000/- to each claimant towards loss of consortium (Rs.15,000/- x 2)	Rs.30,000/-
6	Rs.15,000/- towards funeral expenses	Rs.15,000/-
7	Rs.5000/- towards loss of estate	Rs.5000/-
TOTAL		Rs.6,21,200/-

9. In that view of the matter, the appeal deserves to be allowed. Hence, following order: -

ORDER

- i. The Appeal is partly allowed with proportionate cost.
- ii. The judgment and award dated 23.02.2010 passed by the Motor Accident Claim Tribunal, Parbhani in M.A.C.P. No.297/2006 is modified.
- iii. The appellants are held entitled to the compensation of Rs.6,21,200/- (Rs. Six Lakhs Twenty One Thousand Two Hundred only) from respondent nos.1 and 3 jointly and severally, (inclusive of amount of 'NFL') alongwith interest at the rate of 6% pa. from the date of filing of the claim petition till realization of the amount.
- iv. The amount already paid/deposited by the respondents in pursuance of the impugned judgment and award shall be appropriated.
- v. Award be drawn up on payment of deficit court fees.
- vi. On deposit of compensation amount, it be disbursed to the claimants in equal proportion.

(S. G. CHAPALGAONKAR)
JUDGE