

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

FIRST APPEAL NO.357 OF 2020

Bajaj Allianz General Insurance Co.Ltd.	}	
Add : 4 th Floor, G.E. Plaza, Airport Road,	}	(Org. Resp.
Yerwada, Pune-06	}	No.2)
	}	...Appellant

Versus

NILAM
SANTOSH
KAMBLE

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1. Smt.Meena Jijaba Jadhav	}	
Age-59 years, Occ : Household	}	(Respondent
R/at Shinde galli, 126 Shaniwar Peth,	}	No.1 is Org.
Karad.	}	Claimant)

2. Dhanaji Dnyanu Nagwade	}	
Age-43 years, Occ : Transport	}	(Respondent
R/at Post : Banpuri, Taluka-Patan,	}	No.2 is Org.
District-Satara.	}	Respondent
	}	No.1)
	}	...Respondents

Mr.Sarthak S. Diwan, for the Appellant.

Mr.Yuvraj Narvankar a/w Ms.Raufa Shaikh, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th MARCH 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal are contributory negligence of the deceased and income of the deceased is

considered on higher side.

2. It is contention of the learned counsel for the Appellant that, the accident occurred due to sole negligence of the deceased, but this fact is not considered by the Tribunal. The learned counsel further submitted that the Tribunal has considered monthly income of the deceased at Rs.10,000/- without any evidence on record, which is on higher side. The learned counsel further submitted that at the time of the accident, driver of the offending vehicle was not holding effective and valid driving license. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, the deceased was driver and he was earning Rs.15,000/- per month. The evidence was produced on record to show the income of the deceased, but Tribunal has considered monthly income of the deceased at Rs.10,000/-, which is proper. The learned counsel further submitted that the accident occurred due to sole negligence of the driver of the offending truck but, Tribunal has fixed 30% contributory negligence on the deceased, which is erroneous. As Claimants did

not want to prolong the matter, hence, they did not file Appeal for enhancement of the amount. Hence, requested to dismiss the Appeal.

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

5. It is Claimant's case that on 11th November 2013 at about 8.10 p.m. deceased Niranjan Jadhav was riding on his motorcycle and he was returning from work place, at the relevant time, truck bearing No.MH-11/AL-3135 came from opposite side in rash and negligent manner and gave dash to the motorcycle of the deceased. Due to said dash, deceased sustained injuries and succumbed to the injuries. The FIR was registered against the driver of the offending truck.

6. To prove the negligence of driver of offending truck, the Claimant's have relied on police papers. The driver of the offending vehicle Sagar Jadhav examined himself at Exhibit-75. He has stated that on the day of accident, when he was driving the said truck, there was no cleaner in the said truck. He crossed

the chowk, he heard the big voice from back side of the truck, therefore, he parked his truck by side of the road. The public started throwing stones towards the truck therefore, he ran away from the said place. In cross-examination he admitted that at the time of the accident sand was loaded in the truck.

7. While dealing with the issue of negligence, the Tribunal has observed that there was contributory negligence of the deceased in the accident and Tribunal has held that there was 70% negligence of the truck driver and 30% negligence of the deceased. I do not find infirmity in it.

8. In my view, the truck driver was not aware about occurred incident and after the accident, he ran away from the spot. The police papers produced on record shows the negligence of the truck driver. Moreover, FIR was lodged against the truck driver. I do not see merit in the contention that accident occurred due to sole negligence of the deceased.

9. To prove the income of the deceased, the claimants have examined mother of the Claimant. She has stated that the deceased was working as a driver and he was earning Rs.15,000/-

per month. In support of her evidence, the Claimant's have examined PW-2 Ayub Shaikh, employer of the deceased at Exhibit-39. He has stated that he was paying Rs.10,000/- per month as salary and Rs.200/- bhatta per day for 25 days to the deceased, thus he was paying Rs.15,000/- total to the deceased. Considering the evidence on record, the Tribunal has considered monthly income of the deceased at Rs.10,000/- per month. In my view, at the time of the accident the deceased was 24 years old. He was skilled worker. There is no reason to disbelieve the evidence of PW-2, employer of the deceased. The income considered by the Tribunal is proper. No evidence is produced on record to show that the driver of the offending vehicle was not holding effective and valid driving license. Hence, I do not see merit in the contention of the learned counsel for the Appellant that driver was not holding valid license.

10. In view of above, I pass following order.

ORDER

- (i) The Appeal is dismissed.
- (ii) The Claimant is permitted to withdraw the

deposited amount along with accrued interest thereon.

(iii) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)