



{1}

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1231 OF 2021

1. Yeshodabai W/o. Nana More
Age: 29 years, Occu.: labor,
R/o. Sikadar Colony, Misarwadi,
Aurangabad
 2. Poonam D/o Nana More
Age: 7 years, Occu.: education,
R/o. as above
 3. Shrdha D/o Nana More
Age: 5 years, Occu.: minor
R/o. as above
 4. Pradnaya D/o Nana More
Age: 2 years, Occu.: Minor,
R/o. as above
- (Appellant No.2 to 4 are minor and under
guardian of their mother i.e. appellant No.1)

... Appellants
(Orig. Claimants)

Versus

1. LTC Logistics Pvt. Ltd.
R/o. 27/28, crown plaza
Nilam Bata Road Faridabad
Faridabad – 122001 (Haryana State)
2. Akramkhan Aase Mohammad
Age: 28 years, Occu: Driver,
R/o. Nadka, Tq. Ramgad,
Dist. Alwar (Rajsthan State)
3. The Manager,
HDFC ERGO,
General Insurance Company Ltd.
Near Akashwani, Jalna Road,
Aurangabad
4. Anandabai W/o Prakash More,
Age: 62 years, Occu.: Housewife
R/o. Malegaon, Tq. Bhokardan,
Dist. Jalna

.... Respondents

{2}

.....

Mr. K.A. Ingle, Advocate for Appellants

Mr. S.B. Ghute, Advocate for Respondent No.1

Mr. Vaibhav Kulkarni, Advocate for Respondent No.2

Mr. Mohit R. Deshmukh, Advocate for Respondent No.3

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 12 AUGUST, 2025

PRONOUNCED ON : 19 AUGUST 2025

JUDGMENT :-

1. The original claimants, who filed Claim Petition No. 692 of 2016 on account of the death of one Nama More in a road traffic accident on 04.09.2016, are dissatisfied primarily on the sole ground that the deceased was also held responsible for the accident and was found negligent to the extent of 60%

FACTS GIVING RISE TO THE PRESENT APPEAL ARE AS UNDER:

2. On 04.09.2016, the deceased, Nana More, was riding his motorcycle on the Bhokardan-Sillod Road. When he reached the vicinity of village Malkheda, a container bearing No. HR-55M-0426 was given a dash to the motorcycle, as a result of which Nana More died on the spot. Crime was registered against the driver of the container. The claimants, who are the wife and children of the deceased Nana More, filed an accident claim petition on the ground

{3}

that the container driver was rash and negligent in his driving and solely responsible for the accident. They also claimed that the deceased, Nana More, was working as a mason, earning a salary of Rs. 15,000/- per month, and was the sole bread earner of the family. Due to his untimely accidental death, the claimants lost their source of income and, therefore, sought compensation under various heads.

3. "The claim was contested by the insurance company and the other respondents. The Tribunal, by its order dated 21.09.2018, partly allowed the claim, holding respondents No. 1 and 2 jointly and severally liable to pay compensation. However, the Tribunal arrived at a finding that, firstly, the deceased did not possess a driving licence to ride the motorcycle, and moreover, he was on the wrong side of the road at the time of the accident. Consequently, the deceased was held 60% liable and the driver of the container 40% liable for the accident.

Feeling aggrieved by above finding, claimants have preferred the instant appeal.

4. Learned counsel for the appellants/claimants submitted that the appellants are the legal heirs of the deceased, Nana More, who died in a road traffic accident. That, he was dashed by the driver of the

{4}

container, and crime was duly registered against the driver. It is further submitted that the claim petition was filed, but it was partly allowed, and moreover, the Tribunal has fixed 60% responsibility on the deceased instead of fixing 100% liability on the driver of the container. Learned counsel also pointed out that there was no evidence before the Tribunal suggesting 60% contributory negligence on the part of the deceased, and therefore, the finding to that extent is perverse. That, Exhibit 43 was not the sole evidence, which ought not to have been considered.

5. Learned counsel further questions the computation made by the learned Tribunal. According to him, the monthly income of the deceased was considered by granting a notional income of Rs. 9,000/-. Therefore, only 40% future prospects ought to have been added, and thereafter, the deduction for contributory negligence ought to have been made. However, according to him, the Tribunal committed an error in deducting 60% contributory negligence, as reflected in the chart in paragraph 22. Learned counsel for the appellants has also sought reliance on Hon'ble Ape Court judgment in ***Mangla Ram V Oriental Insurance Co. Ltd and Ors.*** AIR 2018 SC 1900 and ***Jiju Kuruvila and others V. Kunjujamma Mohan and others***, AIR 2013 SC 2293.

6. The main contesting respondents, as well as learned counsel for the insurance company, supported the judgment by pointing out that, while fixing responsibility for the accident and the issue of rashness and negligence, the best evidence available was the spot panchanama. That, here, the same has been duly considered. That, the Tribunal has correctly recorded a finding of contributory negligence against both the container driver and the deceased, Nana More. For all the above reasons, they pray for the dismissal of the appeal.

7. In the light of above submissions, papers are visited. Considering the nature of the objection regarding the finding of rash and negligent driving and the fixing responsibility for the accident, recourse was taken to the spot panchanama.

8. As submitted, the appellants are neither aggrieved nor dissatisfied with the quantum of compensation; however, what the appellants take exception to is the finding of the Tribunal holding the deceased 60% responsible, instead of holding the container driver solely 100% responsible.

9. Here, along with FIR, copy of spot panchanama (Exhibit 43) is placed on record. On visiting the same and considering the directions

in which the vehicles were proceeding, it emerges that the deceased was traveling towards Bhokardan, while the container was proceeding towards Sillod from Bhokardan. Thus, the vehicles were proceeding in opposite directions and were expected to maintain their own correct sides of the road. Contents of spot panchanama show that, left side being correct side and deceased ought to have maintained the same. However, in view of the spot panchanama, it appears that the deceased had moved onto the side of the road meant for vehicles traveling in the opposite direction. Precisely taking this situation into account, the Tribunal, in paragraph No. 12, after discussing the circumstances of the road, recorded a finding that the deceased was also negligent to the extent of 60%.

10. Perused the citations relied by the learned counsel for the appellant. In case of ***Mangla Ram*** (supra), though the Hon'ble Apex Court has observed that, spot where motorcycle found lying after accident cannot be basis to assume that it was driven in or around the spot at relevant time. The case at hand is distinct. Here, the position of the vehicle was not the primary consideration; rather, the direction in which the vehicles were proceeding and the location of the accident were taken into account and the conclusion has been drawn. Therefore, the said ruling does not come into rescue of appellant.

{7}

11. Another ruling in *Jiju Kurivila* (supra) also deals with the position of vehicles after the accident as one of the circumstances for fixing responsibility. Therefore, even this ruling cannot be relied upon by the appellant. In the present case, on the strength of Exhibit 43, it is clear that the deceased is also responsible, having gone onto the wrong side of the road. Accordingly, no fault can be found with the finding recorded by the Tribunal holding the deceased 60% responsible.

12. Learned counsel for the appellants also raised an objection regarding the calculation, specifically the deduction of 60% towards contributory negligence, and asserted that while deducting the amount for contributory negligence, the Tribunal ought to have first added 40% towards future prospects, and only thereafter made the deduction.

ORDER

(I) First Appeal is dismissed.

(II) No order as to costs.

**ABHAY S. WAGHWASE,
JUDGE**