



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1694 OF 2017

1. Shaikh Nazer S/o. Shaikh Afsar,
Age : 36 years, Occu. : Labour,
 2. Shaikh Altamash S/o. Shaikh Nazer,
Age : 6 years, Occu. : Minor,
U/g of Applicant No.1 real father,
- Both R/o. Mahatma Phule Nagar, Risod,
Tq. Risod, Dist. Washim.

... Appellant
(Orig. Claimant)

Versus

1. Kadoji S/o. Narayan Ghodke (Patil),
Age : Major, Occu. : Business,
R/o. Aundha Nagnath, Dist. Hingoli,
2. The United India Insurance Company Ltd.,
Through its Branch Manager,
Dayawan Complex, Station Road,
Parbhani.

... Respondents

.....
Mr. V. B. Dhage, Advocate for Appellant.
Mr. S. S. Naikwade h/f. Mr. R. J. Nirmal, Advocate for Respondent No.1.
Mr. S. V. Kulkarni, Advocate for Respondent No.2.
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 14 NOVEMBER 2025

PRONOUNCED ON : 03 DECEMBER 2025

JUDGMENT :

1. This appeal is by original claimants, who had instituted
M.A.C.P. No.14 of 2011 seeking compensation on account of death of

Rubina bee in road traffic accident dated 24.12.2010. The appellants are dissatisfied by both, quantum as well as finding of learned tribunal attributing contributory negligence.

FACTS GIVING RISE TO THE APPEAL ARE AS UNDER

2. On 24.12.2010, deceased was one of the passenger in a cruiser jeep bearing No. MH-28-C-3550. While traveling on the Aundha-Hingoli road, near Narsi T point, Rubina bee complained of sickness and alighted from the jeep. While she was vomiting, it is alleged that, tractor bearing No.MH-38-B-2472 gave dash by coming in rash and negligent manner, causing fatal injuries, to which she succumbed and crime was registered against the said tractor driver. Husband and son of Rubina bee set up above accident claim by invoking section 166 of Motor Vehicles Act and seeking compensation of Rs.4,00,000/- under various heads.

3. The claim was resisted by respondent no.1 and respondent no.2. Respondent no.2 insurance company denied the contentions and averments of the claim petition and principle ground raised that there was breach of conditions by the driver of the tractor. That, claimant had failed to prove that there was rash and negligent solely on the part of tractor driver. There being no evidence to that extent, they prayed to dismiss the claim petition.

4. After appreciating the respective cases and the evidence on record, learned tribunal was pleased to frame the issues and by order dated 23.12.2016 allowed the claim petition directing payment of compensation to the tune of Rs.5,92,000/- with interest at the rate of 9% per annum. However, learned tribunal recording the finding that jeep driver was also 50% liable equally with the tractor driver and deducted the amount accordingly.

It is the above judgment which is impugned herein.

5. Learned counsel for claimant would submit that, there was clearly rashness and negligence solely on the part of tractor driver. He pointed out that, there was no evidence to arrive at the conclusion that both the drivers of tractor as well as jeep, were negligent. According to him, tractor of the driver has not entered in the witness box and therefore, adverse inference ought to have been drawn. He further pointed out that, even spot panchanama clearly depicts that the tractor driver was solely responsible.

6. According to him, the Hon'ble Apex Court has clarified this position more than once and more particularity in the case of ***Khenyei v. New India Assurance Company Limited and Ors.***, (2015) 9 SCC 273 as well as in First Appeal No. 447 of 2013 in the case of ***Vikrant S/o.***

Vinodkumar Shukla and Anr. v. Smt. Shardamma W/o. B.G. Venkatechhalapathy and Ors., this court has also clarified the legal position on above point of contributory negligence and composite negligence.

7. The second ground of challenge is quantum as according to appellants, learned tribunal ought not to have considered mere Rs.3,000/- as notional income and instead ought to have considered to Rs.4,500/-. There is no grant of quantum under the head of future prospects; no grant of parental consortium to minor and less/no amount granted under the head of funeral expenses and loss of estate.

8. Learned counsel for original respondent nos.1 and 2 justify the award and urged not to disturb it.

9. Much emphasis is laid by learned counsel for appellants on the judgment of Hon'ble Apex Court in the case *Khenyei* (supra) and therefore, the same is visited. However, it is noticed that in this case, before the Hon'ble Apex Court, there was head on collision between bus and trailer-truck and both vehicles were in motion. Here, deceased suffered dash while jeep was halted and deceased had alighted to ease herself. Therefore, on facts at least above judgment, with due respect to the Hon'ble Apex, cannot be taken aid of.

Likewise, in the judgment of this court in First Appeal No. 447 of 2013 in the case of ***Vikrant S/o. Vinodkumar Shukla*** (supra) also, facts are distinct as therein Maruti Car itself went and rammed over the truck, which was parked without signal or indicator, and as such, this court found fault on the part of tribunal therein by taking recourse to above referred judgment of Hon'ble Apex Court, wherein the difference between contributory negligence and composite negligence were distinguished by relying on the judgment of ***Anthony v. Karvarnan and Ors.*** [2008 (3) SCC 748].

10. On the contrary, on visiting the impugned judgment and order, learned tribunal seems to have dealt with issue nos. 2 and 7 in paragraph 13, 14, 15, 16 and 17 and analysis part is done in paragraph no.18. Situation at the scene of occurrence i.e. at the spot, has also been discussed apart from taking into account the directions in which both vehicles were proceeding and were situated at the time of actual mishap. Further, there is no evidence on behalf of respondent nos.1 and 2.

11. Therefore, on re-appreciation of the said findings, this court also agrees with the tribunal on the point that, here, jeep was in stationary, but was not halted appropriately, rather, it was halted on wrong side. The aspect of deceased suffering dash while she was on the

tar portion of road itself shows that, driver of the jeep had not taken care to halt the vehicle to his extreme left side i.e. on the side of the road and therefore, finding recorded by tribunal that there is 50% negligence on the part of each driver of both vehicle, cannot be said to be erroneous. Resultantly, this court refrains from interfering in the findings of learned trial court to above extent.

12. As regards to entitlement of compensation is concerned, tribunal seems to have made discussions in issue no.8. In absence of any evidence of earning by deceased, tribunal seems to have considered notional income of Rs.3,000/-. Accident is of 2010. Therefore, notional income in the considered opinion of this court is on the lower side and the same is required to be raised to Rs.4,000/- per month.

13. Further, learned tribunal also seems to have incorrectly calculated amount of Rs.50,000/- towards loss of consortium and Rs.1,00,000 towards love and affection. Even Rs.10,000/- is awarded under the head of funeral expenses.

14. In view of the ratio laid down in ***National Insurance Company Limited vs. Pranay Sethi and others***, 2017 (16) SCC 680, and ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and***

Others, (2018) 18 SCC 130, claimants are entitled for Rs. 40,000/- each, i.e. 80,000/- plus 30% (Rs.24,000/-) which comes to Rs.1,04,000/- towards consortium and loss of love and affection. Rs. 15,000/- plus 30% (Rs.4,500/-), which comes to Rs.19,500/- towards loss of estate and Rs.15,000/- plus 30% (Rs.4,500/-), which comes to Rs.19,500/- towards funeral expenses.

15. Claimants are also entitled for future prospects. Considering that the age of deceased at the time of accident, 40% needs to be awarded towards future prospectus in view of ratio in **Magma General Insurance Co. Ltd.** (supra).

16. In view of the aforesaid discussion, claimants are entitled for following compensation.

Sr. No.	Heads	Amount (Rs.)
1.	Annual Income (Rs.4,000 x 12)	48,000/-
2.	Future Prospects 40% i.e. 19,200 (48,000 + 19,200)	67,200/-
3.	Less 1/3 rd deduction towards personal expenses. (Rs. 67,200 – Rs 22,400)	44,800/-
4.	Multiplier of 18 (44,800 X 18)	8,06,400/-
5.	Loss of consortium	1,04,000/-
6.	Funeral Expenses	19,500/-

7.	Loss of Estate	19,500/-
8.	Total compensation to be paid	9,49,400/-
9.	Compensation awarded by Tribunal	5,92,000/-
10.	Total Enhanced Compensation (i.e. Rs.9,49,400 – 5,92,000)	3,57,400/-
11.	Contributory Negligence 50 : 50	1,78,700/-
12.	Compensation to be paid by respondent Nos.1 and 2	1,78,700/-

17. In view of above, appellants are entitled for the amount of Rs.9,49,400/-. It is held that, the jeep owner and its insurer are responsible to pay 50% and respondent Nos.1 and 2 are responsible for 50% compensation granted above. Hence, the following order is passed :

ORDER

- (i) Appeal is partly allowed with proportionate costs.
- (ii) Impugned judgment and award dated 23.12.2016, passed by the learned Member, M.A.C.T., Hingoli, Dist. Hingoli, is modified.
- (iii) Respondent nos.1 and 2, jointly and severally to pay enhanced compensation of Rs.1,78,700/- to claimants within 12 weeks from today along with interest @ 9% per annum from the date of registration of claim petition till its realization.
- (iv) Modified award be prepared accordingly.

(v) Claimants to pay court fees on enhanced compensation as per rules.

(vi) On deposit of the amount, appellants/claimants are permitted to withdraw the same.

(ABHAY S. WAGHWASE, J.)