



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1568 OF 2012

The New India Assurance Company Ltd.
Through its Divisional Manager,
Adalat Road, Aurangabad

.... APPELLANT
(Org. Opp. No.1)

VERSUS

1. Ahmedabee Nazir Shaikh
Age : 43 years, Occupation : Household
2. Shaikh Jakir Shaikh Nazir
Age : 19 years, Occupation : Student
3. Shaikh Shakir Shaikh Nazir
Age : 17 years, Occupation : Student
4. Shaikh Sameer Shaikh Nazir
Age : 15 years, Occupation : Student
5. Shaikh Rubina Shaikh Nazir
Age : 13 years, Occupation : Student
6. Shaikh Javed Shaikh Nazir
Age : 11 years, Occupation : Student
7. Shaikh Naseer Shaikh Nazir
Age : 9 years, Occupation : Student

(Nos.3 to 7 Since minor, Hence under Guardianship
of Their mother Respondent No.1)

All residents of : At Sompuri,
Taluka Paithan, Dist. Aurangabad

8. Surender Singh Rajsingh Shekhavat
Age : Major, Occupation :
Resident of : Quarter No. 114, Security Colony,
Bajaj Nagar, Aurangabad
9. Machindra Indapur
Age : Major, Occupation : Nil
Resident of : At Ranjangaon Khuri,

Taluka Paithan, District Aurangabad

10. Devanand Totaram Gadhave
(As per order dated 29/04/2014,
Res. No.10 dismissed)

... RESPONDENTS

(Nos.1 to 7 – Claimants/
Nos.8 to 10- Respondents)

Mr. M. R. Deshmukh, Advocate for the Appellant
Mr. S. S. Munde, Advocate for Respondent Nos.3 and 4
Mr. Shaikh Faruk V. Patel, Advocate for Respondent Nos. 6 and 7
Mr. A. R. Kawade, Advocate for Respondent No.7
Mr. A. R. Naik, Advocate for Respondent No.9.

CORAM : R. M. JOSHI, J.

DATE : 10th OCTOBER, 2025

JUDGMENT :-

1. This Appeal filed by the Insurer under Section 173 of Motor Vehicle Act, 1988 (for short "the Act") takes exception to the judgment and award dated 23/12/2011 passed in MACP. No. 08/2010.

2. The facts which led to the filling of this appeal can be narrated in brief as under:-

(i) It is the case of the claimant that deceased claimant was driving a motorcycle from Bidkin to Sompuri on 26/08/2009. A Tempo 709 bearing No. MH-24-A-2068, near the ITI institute at Bidkin Shivar, came from the opposite direction collided with deceased claimant at 7.30 pm, being driven rashly and negligently by the driver of said vehicle. Due to said accident, claimant sustained serious injuries and succumbed to injuries. The legal representatives of the claimant seek

compensation for the deceased claimant. Deceased was 45 years old at the time of the accident, was in good health, and was earning Rs.10,000/- per month from agriculture work and milk business. Deceased claimant was agriculturist having land Gut No. 23 admeasuring 3 Acres and Gut No. 22 admeasuring 89 R, so also he was in the business of selling approximately 8 to 10 liters of milk per day. A total compensation amounting to Rs.6,00,000/- is sought under various heads so also interest is claimed on the amount of compensation @ 18% p.a. from the date of accident.

(ii) Insurer filed written statement at Exhibit 17 asserting the offending vehicle Tempo No. MH-24-A-2068, is insured with the appellant/insurer. The owner of the offending vehicle, filed his written statement at Exhibit 24, contending that he is not the registered owner of the offending vehicle and that he sold the vehicle to owner of insurance, whose name was registered as the owner of offending vehicle at the date of the accident. Driver of the tempo filed written statement at Exhibit 23 resisting the claim by denying that the accident took place due to his rash and negligent driving of vehicle.

(iii) Issues were framed by the Tribunal at Exhibit 25. The deceased claimants, have examined two witnesses in support their case, namely Ahmedabee, (PW 1) at Exh. 26 and Kalyan as (PW 2) at Exh. 39. Both witnesses place the following documentary evidence on

record to substantiate their claim: copies of the FIR (Exh. 30), Spot Panchnama (Exh. 31), Inquest Panchanama (Exh. 32), Post Mortem Report (Exh. 33), the registration of the TATA Tempo 709 (Exh. 35), compensation form "AA" (Exh. 36), 7/12 extracts of land Gut No. 23 (Exh. 37) and Gut No. 22 (Exh. 38), and a certificate showing income of deceased/claimant from selling milk (Exh. 40). The tribunal taking cognizance of all the facts and evidence on record led before it allowed the deceased claimants claim holding insurer, owner of insurance policy, and driver of offending vehicle to jointly and severally to pay a total compensation of Rs.8,85,600/-, inclusive of the amount of no fault liability, with interest @ 9% p.a. from the date 23/12/2009 till its realisation to the deceased claimant. Being aggrieved by the said award, the Insurer has preferred this Appeal.

3. Learned Counsel for the Insurer submits that Nazir Shaikh was driving the motorcycle without following traffic rules and norms and was not wearing a helmet. He rode the motorcycle with two other persons not wearing helmet which accordingly becomes the reason for the accident and his death. Reference is made in this regard to Spot Panchanama. He argued that no intimation is given to Insurer regarding the transfer of vehicle to owner of offending vehicle and hence insurer is absolved from payment of compensation. According to him the Tribunal committed error in passing the impugned Award by ignoring the

contributory negligence of both parties in the occurrence of the accident. On these amongst other contentions he seeks setting aside of impugned award. Learned Counsel for the insurer to support his claims relies upon the judgments passed by Hon'ble Supreme Court in *Laxmi Devi and others v/s Mohammad Tabbar and another*, (2008) 12 SCC 165 and *Ramchandrappa v/s Manager Royal Sundaram Alliance Insurance Company Limited*, (2011) 13 SCC 236.

4. Learned Counsel for the claimants supported the impugned award.

5. Record indicates that claimants examined two witnesses i.e. claimant No.1 Ahmeda Bee at Exhibit 26 and Kalyan, Secretary of Godawari Co-operative Milk Society, Bidkin (Exhibit 39). In addition to the oral evidence, claimants place reliance on the FIR, spot panchanama, inquest panchanama, PM report, copy of registration and insurance policy of Tempo and 7/12 extract of Gut Nos. 22 and 23. A certificate issued by the Milk Society was also relied upon to substantiate the income of the deceased.

6. Claimant No.1 deposed about the occurrence of the accident and the death of the deceased in the same on the basis of the police papers. Though it has come on record that she has not witness the actual occurrence of the accident, the police papers and more

particularly spot panchanama clearly indicate that the rider of the motorcycle i.e. deceased was riding his vehicle from the correct side of the road. The perusal of the spot panchanama leaves no room for doubt that the accident in question has occurred on account of the negligence of the driver of the Tempo. Once such evidence is led by the claimants, the burden shifts upon the owner and insurer to prove otherwise. Admittedly, no evidence was led on their behalf before the Tribunal. Thus, on the basis of the evidence on record this Court finds no hesitation to hold that the accident has occurred solely due to the negligence of the driver of Tempo.

7. There is oral as well as documentary evidence on record to indicate that in the said accident deceased sustained grievous injuries and scummed thereto. No serious dispute has been made by the other side in this regard. If therefore can be concluded that owing to the injuries caused in the accident in question deceased lost his life.

8. In so far as the burden on the claimants to prove the loss of income on account of death of deceased, the claimants examined Kalyan, Secretary Godawari Co-operative Milk Society, Bidkin (Exhibit 39) to substantiate the same. The evidence of said witness indicates that the deceased was supplying 10 ltr. milk daily to the said society and was getting Rs.250/- per day. He produced on record income certificate. During the course of cross-examination there is not even a

suggestion made to the witness that his deposition is incorrect. This evidence get further support from the cross-examination of claimant No.1 wherein it was brought on record that at present the milk business is not done and some of the buffalo have died. This suggestion indicates that the during the lifetime deceased was having buffalo and milk business was done. Claimant No.1 has also claimed about deceased working in the agricultural filed. In the light of this evidence, the Tribunal has held that the deceased was earning Rs.6500/- per month. There is no dispute made by the Appellant with regard to the method adopted by the Tribunal for arriving at the contempt of compensation.

9. The owner and insurer of offending vehicle have not led any evidence and as such defences sought to be taken by them are not substantiated before Tribunal. For want of any evidence challenge sought to be made against impugned award must fail.

10. Having regard to the afore stated facts, this Court finds no case being made out for causing interference in the impugned order. As a result of the above discussion, Appeal stands dismissed.

(R. M. JOSHI, J.)

ssp