



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

**FIRST APPEAL NO. 1203 OF 2024**

AYODHYA MURLIDHAR MULIK AND ANR  
VERSUS  
MAHESH BABAN SONAWANE AND ANR

...  
Mr. Swapnil Sunilkumar Dargad, Advocate for Appellants.  
Mr. A. G. Choudhari, Advocate for Respondent No.2.  
...

**CORAM : S. G. CHAPALGAONKAR, J.  
DATED : 11<sup>th</sup> MARCH, 2025.**

**P.C.:-**

1. Heard learned Advocates appearing for respective parties.
2. The original claimants in M.A.C.P. No.430/2019 aggrieved by assessment of compensation made by Motor Accident Claims Tribunal, Beed filed present Appeal seeking enhancement of compensation.
3. The claimants are parents of deceased Mahadev Murlidhar Mulik. On 09.08.2019, he was proceeding on motorcycle from Limbaganesh to Manjarsumba. At that time offending motorcycle bearing Registration No.Mh-23-AQ-7781 came from opposite direction and gave forceful dash to the motorcycle of deceased. In result, he suffered fatal injuries. The claimants lodged M.A.C.P. No.430/2019 before Tribunal raising claim for compensation under Section 166 of the Motor Vehicle Act.
4. The respondent no.2-Insurance Company appeared before Tribunal and contested claim on all possible grounds. The respondent no.1 i.e. owner of offending vehicle filed his written statement and denied averments regarding negligence.

5. The Tribunal framed issues, recorded evidence of parties and finally allowed claim for compensation of Rs.10,70,000/- alongwith interest @ 7% per annum.

6. Mr. Dargad, learned Advocate appearing for the appellants submits that findings on the point of contributory negligence as recorded by Tribunal is contrary to the evidence on record. The Tribunal has erroneously concluded that deceased has contributed to the extent of 30% in cause of accident. He submits that FIR as well as charge-sheet clearly suggest that accident occurred due to fault on the part of respondent no.1 and there was no reason to draw inference of contributory negligence of deceased to the extent of 30%. Mr. Dargad would further submit that learned Tribunal could have considered grant of compensation of Rs.40,000/- each to both claimants towards loss of consortium, but same is not awarded.

7. Mr. Choudhari, learned Advocate appearing for respondent-Insurance Company justifies award as passed by Tribunal. He would invite attention of this Court to spot panchanama to contend that accident occurred in the center of road. According to him, both motorcycle riders were under obligation to maintain their left side. In present case, failure of deceased to maintain his left side, is sufficient to infer his contributory negligence. Mr. Choudhari would further submit that total compensation of Rs.70,000/- is awarded towards non-pecuniary losses, which according to him is just and proper. He, therefore, urges to maintain award as passed by Tribunal.

8. Having considered submissions advanced, it can be observed that claimants have specifically pleaded about rash and negligent

driving of respondent no.1. In support of their contentions, they relied upon copy of FIR and charge-sheet, which suggest that offence was registered against respondent no.1 for rash and negligent driving. The Investigating Officer appears to have drawn conclusion as to negligence of respondent no.1 on the basis of evidence collected in investigation. Apart from that claimants have examined CW-3-Rahul Ramdas Kagde, who is an eye witness of accident, who clearly states that respondent no.1 was at fault and seen to have driving his vehicle in rash and negligent manner. Perusal of spot panchanama depicts that deceased was proceeding on his motorcycle from Limbaganesh to Manjarsumba. The spot of accident is just on left side from middle line of road, which suggests that deceased was following his own side. Pertinently, respondent no.1 did not step into witness box and explain circumstances leading to accident.

9. It is trite that, negligence or contributory negligence cannot be inferred in absence of specific or corroborative evidence as to rash and negligent driving of the victim. In present case, evidence on record is suggestive of fault on the part of respondent no.1. The Tribunal committed patent error while assuming contributory negligence of deceased ignoring law laid down by Supreme Court of India in case of ***Jiju Kuruvila and Others Vs. Kunjamma Mohan and Others***<sup>1</sup> and ***Kumari Kiran through her father Harinarayan Vs. Sajjan Singh and Others***<sup>2</sup>. Recently, in case of ***Prabhavati and Others Vs. Managing Director, Bangalore Metropolitan, Transport Corporation (Civil Appeal Nos.3465-3466 of 2025 dated 28.02.2025)***, Supreme Court again reiterated similar legal position.

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<sup>1</sup> 2013 SCC (9) 166.

<sup>2</sup> 2015 SCC (1) 539.

10. In view of aforesaid exposition of law, findings as recorded by Tribunal on the point of contributory negligence cannot be countenanced and liable to be modified. This Court is, therefore, holds that subject accident occurred due to sole negligence on the part of respondent no.1 and no deduction in compensation is permissible on the ground of contributory negligence of deceased.

11. The second ground raised in this Appeal is as to non-grant of compensation under head of loss of consortium. Mr. Dargad points out that Tribunal awarded total compensation of Rs.70,000/- toward non-pecuniary heads. It is well settled that there are three types of consortium approved under Indian Law. The parents, who lost their bachelor son are also held to be entitled for compensation towards loss of consortium. The Supreme Court of India in case of *United India Insurance Company Limited Vs. Satinder Kaur @ Satwinder Kaur and Others*<sup>3</sup> has approved grant of compensation towards loss of consortium to each of claimant while approving law laid down in case of *Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others*<sup>4</sup>.

12. In light of aforesaid exposition of law, both claimants are entitled for compensation of Rs.40,000/- each towards loss of consortium.

13. Mr. Dargad further submits that evidence on record suggests that deceased was working as driver and apart from salary of Rs.10,000/- he was getting Rs.200/- towards daily bhatta, whenever he was on duty.

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<sup>3</sup> 2021 (11) SCC 780.

<sup>4</sup> 2018 SCC (18) 130.

14. Perusal of pleadings in claim petition, particularly Clause No.(D) suggests that claimants have pleaded that deceased was earning Rs.10,000/- by way of salary. There is no pleading of any additional perk arising out of employment. In absence of such pleading, contention of Mr. Dargad cannot be accepted. In that view of the matter, Appeal deserves to be partly allowed by modifying award. Hence, following order:

**ORDER**

- a. First Appeal is partly allowed.
- b. The judgment and award under Appeal is modified.
- c. The claimants are held entitled for total compensation of Rs.15,38,000/- alongwith interest @ 7% per annum, jointly and severally from respondents.
- d. Rest of the directions under impugned award shall *mutatis mutandis* apply to modified award under this order.
- e. The amount of compensation, if already paid/deposited as per award passed by Tribunal shall be appropriated.
- f. The respondent nos.1 and 2 shall deposit enhanced compensation amount as per modified award within a period of two months from today.
- g. Award be drawn accordingly on payment of Deficit Court Fee, if any.

**(S. G. CHAPALGAONKAR)**  
**JUDGE**