



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 1211 OF 2024**

1. Naser s/o Allanurkhan Pathan,
Age 49 years, Occup. Agriculture,

2. Irrfana w/o Naserkh pathan,
Age 42 years, Occup. Household,

Both R/o. Bembli,
Tq. & District Osmanabad

.....Appellants

VERSUS

1. Sudhakar s/o Shilu mane,
Age major, Occup. Agriculture,
R/o. Bembli, Tq. & District Osmanabad

2. The Manager,
MAGMA HDI General Insurance Co. Ltd.
Shree Chamber, (Old Thermax House),
3rd Floor, Building No.A & B,
Shivaji Nagar, Pune

.....Respondents

...

Advocate for Appellant : Mr. P. S Chavan
Advocate for Respondent No.1 : Mr. M. B. Kalpe
Advocate for Respondent No.2 : Mr. S. S. Patil h/f Mr. R. H. Dahat

...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : January 17, 2025

JUDGMENT:-

1. The appellants/original claimants impugn judgment and award dated 21.06.2022 passed by Motor Accident Claims Tribunal, Osmanabad in M.A.C.P. No.140/2018, by which

appellants' claim for compensation filed under Section 166 of the Motor Vehicle Act has been partly allowed. The appellants are seeking further enhancement of compensation in this Appeal. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The claimants lost their daughter namely Joya @ Joha aged about 14 years in motor vehicular accident dated 01.10.2017 involving tractor bearing registration no.MH-25-H-5809. The claimants attributed negligence against driver of the tractor and raised claim seeking compensation of Rs.10,00,000/- under Section 166 of Motor Vehicles Act, 1988. Although claim is partly allowed, Tribunal concluded that deceased Joya was contributor in the cause of accident to the extent of 70%. Consequently, fixed the liability of respondent nos.1 and 2 to pay the compensation to the extent of 30% of assessed amount and passed an award of Rs.1,05,819/- alongwith interest @ 7% per annum from the date of filing application in favour of the claimants.

3. Mr. P. S. Chavan, learned advocate appearing for the appellants in his endeavour to assail an award passed by the Tribunal would submit that in case of death of minor, the

Tribunal could not have invoked principle of contributory negligence, thereby attributing 70% negligence against the minor victim. He would further submit that it is well settled, even in case of minor victim, the compensation has to be assessed applying multiplier method. The Tribunal committed grave error while granting compensation on lump-sum basis and further deducting the amount towards contributory negligence of the deceased. He would further urge to enhance the compensation.

4. Per contra, Mr. Swapnil Patil learned Advocate appearing for respondent No. 2/insurer supported the award passed by the Tribunal.

5. Having considered the submissions advanced, apparently, there is no doubt as regards to accidental death of daughter of appellants in motor vehicular accident dated 01.10.2017. The award as passed by the Tribunal has been accepted by respondent/insurer. Therefore, limited issue that arises for determination in this appeal is as regards to the application of principle of contributory negligence in case of minor victim and determining just and proper compensation in facts of case.

6. Admittedly, mishap took place on 01.10.2017. The insured tractor bearing registration no.MH-25-H-5809 was engaged for harvesting Soyabean crop, the driver had taken a tea break and harvesting was halted. Since, harvesting machine attached to the tractor was stopped, deceased Joya was sitting on a steel rod attached to the tractor. The driver returned back and suddenly put on the operation of grinding machine attached to his tractor that pulled the veil on person of Joya. Resultantly, she suffered suffocation and lost the life.

7. The F.I.R. was registered against the driver for rash and negligent act. In this background, the Tribunal erroneously drawn conclusion that deceased was contributor in accident. She could not have sat on rod of machine. It is trite that in case of minor victim, Tribunal shall be slow in drawing inference of contributory negligence. In case of ***Matias Costa Vs. Roque Augustinho Jacinto and another***¹, this Court referred to Halsbury's Laws of England, Third Edition Vol. 28, p. 98 and held that "There cannot be a case of contributory negligence on the part of children because child cannot be expected to be as careful for his own safety as an adult and in such a case a plea of

¹ AIR 1976 GOA, DAMAN AND DIU 1.

contributory negligence cannot be availed.” In yet another case of ***Muthusamy and another Vs. S. A. R. Annamalai and others***², reference is made to the observations of Lord Denning and Salmon, L.J., which reads thus:

“A very young child cannot be guilty of contributory negligence. An older child may be; but it depends on the circumstances. A Judge should only find a child guilty of contributory negligence if he or she is of such an age, as reasonably to be expected to take precautions for his or her own safety; and then he or she is only to be found guilty if blame should be attached to him or her. A child has not the road sense or the experience of his or her elders. He or she is not to be found guilty unless he or she is blameworthy.”

Salmon, L. J. agreeing with Lord Denning observed that an ordinary child of 13 1/2 years, would not have done anything more, than what that child did, in relying unquestionably on the lorry driver's signal, though an older person, despite the signal, would have looked behind before crossing.”

8. In this case, minor girl was sitting on connecting rod, when tractor was halted. The tractor driver without noticing her, suddenly started operation of harvesting machine attached to the tractor, eventually cloth on her person got pulled and tide around neck. In this backdrop, even otherwise no negligence can be attributed to the minor girl. The finding as recorded by Tribunal on the point of contributory negligence of the deceased cannot be countenanced. Hence, liable to be quashed and set aside.

² AIR 1990 MADRAS 201.

9. So far as, the assessment of just compensation is concerned, deceased Joya was 14 years school going girl. Although she hailed from rural area, she was bright student as appearing from the evidence on record. Be that as it may, being child dependency of claimants will have to be notionally considered at the rate of 30,000/- per annum. Considering age of the deceased, the multiplier of 15 can be applied. The claimants are also entitled for 25,000/- towards funeral expenses, 15,000/- towards loss of estate and 40,000/- towards loss of love and affection. Consequently, the compensation can be worked out as under:-

Sr. No.	Heads	Amount (Rs.)
1.	Annual loss of earning	Rs.30,000/-
2.	Applying multiplier of '15' (Rs.30,000 x 15)	Rs.4,50,000/-
3.	Rs.80,000/- towards loss of estate, funeral expenses and love and affection.	Rs.80,000/-
TOTAL		Rs.5,30,000/-

10. In that view of the matter, the appeal needs to be partly allowed and the award passed by the Tribunal needs to be modified. Hence, the order: -

ORDER

- i. The Appeal is partly allowed.
- ii. The judgment and award dated 21.06.2022 passed by Motor Accident Claims Tribunal, Osmanabad in M.A.C.P. No.140/2018, is hereby modified.
- iii. The respondent nos.1 and 2 shall jointly and severally pay compensation of Rs.5,30,000/- (Rs. Five Lakhs Thirty Thousand only) to the claimants inclusive of amount of 'NFL' along with the interest at the rate of 7% per annum from the date of application till realization.
- iv. The respondent nos.1 and 2 shall pay the aforesaid compensation amount to the claimants within a period of two months from the date of this order.
- v. On deposit of the compensation amount, it shall be apportioned equally amongst claimants.
- vi. Award be drawn up on deposit of deficit Court fees, if any.

(S. G. CHAPALGAONKAR, J.)