

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.706 OF 2018

National Insurance Co. Ltd.	}	
MBRO III, Royal Insurance Bldg,	}	
1 st Floor, 14, J. Tata Road, Churchgate,	}	
Mumbai-400 0202	}	...Appellant

Versus

1. Shri.Shivaji Nana Ekal	}	
Age-54 years, Occ: Service	}	

2. Sharada Shivaji Ekal	}	
Age-49 years, Occ: Household Work,	}	
(Both R/at, At & Post-Thipkurli, Taluka-	}	
Radhanagari), District-Kolhapur	}	

3. Raisa Khatun Jiyakhan Pathan	}	
Age-45 years, Occ: Transport,	}	
R/o 196, Mali Mohalla, Near Masjid Ward	}	
No.27, Umred, District-Nagpur	}	

4. Mahesh Gopalji Shengyya	}	
Age-28 years, Occ-Driver,	}	
R/at-P.No.112, Ganga Baug, Pande Road,	}	
District-Nagpur	}	...Respondents

Ms.Urmila K. Sanil, for the Appellant.

Mr.Jayant Joseph Bardeskar, for Respondent Nos.1 and 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 30th JANUARY 2025

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ORAL JUDGMENT :-

. The issues involved in this Appeal are accident occurred due to negligence of the rider of motorcycle, on which deceased was pillion-rider and income of the deceased is considered on higher side.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, there was head on collision between motorcycle on which deceased was pillion-rider and offending truck. There was contributory negligence of the rider of the motorcycle, but the Tribunal has not considered this fact. The learned counsel further submitted that, the Tribunal has considered monthly income of deceased @ Rs.10,000/- per month without any evidence on record, it is on higher side. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondents-Claimants that, the deceased was pillion-rider on motorcycle and accident occurred due to sole negligence of Respondent No.3-driver of the truck who gave dash to the motorcycle of the deceased. The offence was registered against

the Opponent No.3. No evidence is produced on record to show that, there was contributory negligence of the rider of the motorcycle. The Tribunal has considered all the facts. The learned counsel further submitted that, the deceased was working as skilled worker and he was working in Tata Motors, Pimpri Pune and evidence was produced in that regard. Considering the evidence on record, the Tribunal has considered monthly income of the deceased at Rs.10,000/-, which is proper. Hence requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Kolhapur.

5. It is Claimant's case that, on 3rd September 2012 deceased Amit Ekal along with his friend Anil Chougule were returning to Kolhapur from Sangli on a motorcycle bearing No.MH-09/AY-6400, motorcycle driven by Anil Chougule. At about 4.30 p.m near Chougule Mala on Kolhapur-Sangli Road, truck/trailer bearing No.MH-40/N-4126 driven by Opponent No.3 came from opposite side rashly and negligently and in high

speed. Said truck suddenly came towards the side of the motorcycle and dashed the motorcycle, due to which deceased Amar fell down on the road and died on the spot, due to fatal accidental injuries. The offence was registered against Opponent No.3-driver of the truck.

6. To prove the negligence of Opponent No.3 the Claimant's have relied on police papers. To prove negligence of the rider of motorcycle, the Opponent No.3 did not enter into witness box, as offence was registered against the Opponent No.3. After making enquiry, the spot panchnamma at Exhibit-35 and FIR at Exhibit-34 shows negligence of the Opponent No.3, hence, I do not see merit in the contention that, accident occurred due to negligence of the rider of the motorcycle.

7. It is Claimant's case that, at the time of the accident the deceased was 27 years old and he was working in Tata Motors, Pimpri Pune and earning Rs.11,000/- per month. To prove the income of the deceased the Claimant's have examined PW-2 Appaso Shirgave at Exhibit-47 employee of Tata Motors. He has produced appointment letter of the deceased at it is

Exhibit-48 showing salary of Rs.11,864/-. In cross-examination he admitted that, the deceased was working with the said company for two days and company has paid salary for two days to the deceased. Considering evidence on record, the Tribunal has considered monthly income of deceased at Rs.10,000/- per month. I do not find infirmity in it. In my view, the deceased was skilled worker. He had completed metal sheet work course. He was 27 years old at the time of the accident and he had received appointment letter from Tata Motors. Unfortunately after joining in the Company within two days he met with an accident, but his salary was fixed at Rs.11,864/-. Considering these facts, the income of deceased considered by the Tribunal is proper.

8. In view of above, I pass following order.

ORDER

- (i) The Appeal is dismissed.
- (ii) The Claimants are permitted to withdraw deposited amount along with accrued interest thereon.

(iii) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(iv) Record and Proceeding be sent back to the Tribunal.

(v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)