

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

FIRST APPEAL NO.470 OF 2024

National Insurance Co. Ltd.	}	
Mumbai Regional Office I, 5 th Floor,	}	
Sterling Cinema Building, 65, Murzban	}	
Road, Fort, Mumbai-400 020	}	...Appellant

Versus

1. Sudhir Lalasaheb Badale	}	
Age-30 years, Occ : Nil	}	
R/o. C/o. Popat Sathe, Biibi Darfal, Taluka-	}	
North Solapur, District-Solapur.	}	

2. Sunita Pratap Deshmukh	}	
Age-Adult, Occ : Business,	}	
R/o. Majage Nagar, Latur, District-Latur	}	
	}	...Respondents

FA stand dismissed
against R.No.2 vide
order dated
10/05/24

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Mr.Amol Gatne, for the Appellant.
Mr.R.S. Alange, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 16th JANUARY 2025

ORAL JUDGMENT :-

. The issues involved in this Appeal are, at the time of
accident driver of the offending vehicle was under influence of
liquor. Initially name of the driver of offending vehicle was

mentioned as Pratap Deshmukh and thereafter, it was replaced with Belpan Kashte. The income of the injured is considered on higher side.

2. It is contention of learned counsel for the Appellant-Insurance Company that, at the time of accident driver of the offending vehicle was under influence of liquor and in FIR offence under Section 185 of the Motor Vehicle Act ('M.V. Act' for short) was registered against the driver and charge-sheet was also filed against him under same section. It shows he was under influence of the liquor, but this fact is not considered by the Tribunal. The learned counsel further submitted that, in the FIR name of the driver of offending vehicle was mentioned as "Pratap Deshmukh" but in charge-sheet the name of the driver mentioned "Belpan Kashte", it creates doubt about the driver of the offending vehicle.

3. The learned counsel further submitted that, the Tribunal has considered monthly income of the deceased at Rs.6,000/- without any evidence on record. The injured was driver. The income considered by the Tribunal is on higher side.

Hence, requested to allow the Appeal.

4. It is contention of the learned counsel for the Respondent's-Claimant's that, though Section 185 of M.V. Act, was registered against the driver of offending vehicle, but issue process under this section is not done by the learned Magistrate. The learned counsel further submitted that, after the accident immediately the Claimant was admitted in the hospital. Hence, he could not tell proper name of the driver of offending vehicle but later on Claimant came to know that, he was Mr.Kashte and his name was added as a driver. The learned counsel further submitted that, to prove the defence the Appellant have not led evidence before the Tribunal. The Claimant was driver. He was skilled worker. To prove the income the Claimant examined himself. The Tribunal has passed well reasoned order, no interference is required in it. Hence, requested to dismiss the Appeal.

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

6. It appears from record that, offence under Section 185 along with other sections was registered against the driver of offending vehicle. It is significant to note that, in Charge-sheet short gist of the incident is mentioned and in the said gist it is not mentioned that, driver of offending vehicle was under influence of liquor. Moreover, after filing charge-sheet the learned Magistrate has passed issue process order under Section 139, 337 and 338 of the IPC and 184 of the M.V. Act against the driver, and not under Section 185 of the M.V. Act. It shows that, though allegations are made against the driver of offending vehicle that he was under influence of liquor but no evidence was produced in that regard before the Tribunal. Moreover, the Appellant could have examined Investigating Officer of the said crime, to prove its defence but it has not been done, hence, I do not find merit in the contention that, the driver of the offending vehicle was under influence of liquor, at the time of accident.

7. Though, the learned counsel for the Appellant has taken defence that, name of the driver has been changed but said issue was not specifically place before the Tribunal nor it was

raised before the learned Magistrate after filing the charge-sheet against Mr.Kashte. As per view of the Hon'ble Apex Court in the case of *National Insurance Company Limited V/s. Chamundeswari and Others (C.A.@ SLP (C) No.4705 of 2019)*, if any specific defence is taken it has to prove by substantive evidence, but Appellant failed to prove it. Hence, I do not find merit in the contention that, due to change in name of the driver there is suspicion about the driver of the offending vehicle.

8. To prove the income the Claimant has examined himself. He has stated that, he was working as driver and he was getting Rs.6,000/- per month. In my view, the Claimant is skilled worker and Rs.6,000/- income considered by the Tribunal is proper, I do not find infirmity in it.

9. It is contention of the learned counsel for the Respondent that, the Tribunal has applied wrong multiplier and has not given future prospects. Compensation awarded under other heads is on lower side.

10. The learned counsel for the Appellant strongly objected to award these compensation on the ground that no

separate Appeal is filed in that regard.

11. The learned counsel for the Respondent-Claimant fairly submitted that, if this Court is dismissing the Appeal of the Appellant-Insurance Company he would not raise the above issues. Considering the submission of learned counsel for Respondent-Claimant, I pass following order.

ORDER

- (i) The Appeal is dismissed.
- (ii) The Respondent-Claimant is permitted to withdraw the amount deposited by the Insurance Company 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 Proceedings be sent back to the Tribunal.
- (v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)