

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1022 OF 2024

The National Insurance Company Limited]
Through Branch Manager, 4th Floor,]
Shubray Tower, Datta Chowk, Solapur]
Thr. TP Hub, 1st floor,]
National Insurance Building,]
Churhgate, Mumbai : 400 020.]
(Policy No.390102311562016382205)]
valid from 25.07.2016]

.... Appellant
(original Opp.
Party No.3)

Versus

1. Ashok Bhimsha Bansode,]
Age: 76 years, Occ: Nil,]
2. Sushila Ashok Bansode,]
Age: 71 years, Occ. Nil,]
3. Rajesh Ashok Bansode,]
Age: 26 years, Occ: Education,]
4. Renuka Ashok Bansode,]
Age 30 years, Occ: Education,]
All R/O Matanhill,]
Talk. Akkalkot, Dist. Solapur.]
5. Hajimalang Akbar Shaikh,]
Age: 40 years, Electric Wiremen,]
R/o. Matanhill, Talk. Akkalkot,]
Dist. Solapur,]
6. Md. Shaikh Pasavadi Lalsab,]

(Original
Applicants)

Orig. Opp.
Party No.1.

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Age: 46 years, Occ. Truck Driver,
R/O. Shidagi, Tal. Bijapur,
Dist. Bijapur.

]] **Orig. Opp.**
]] **Party No.2.**

.... Respondents

Ms. Poonam Mital, Advocate for the Appellant.
Mr. Hrishikesh S. Shinde, Advocate for Respondent Nos.1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th JULY, 2025.

JUDGMENT. :

1. The issues involved in this appeal are, income of the deceased is considered on higher side, non involvement of the offending vehicle, interest is awarded on higher side, and the deceased and rider of motorcycle were under influence of alcohol at the time of accident.

2. It is contention of learned counsel for the Appellant that, the Tribunal has considered monthly income of the deceased at Rs.6,000/- per month without any evidence on record. Learned counsel further submitted that, at the time of accident, the rider of motorcycle and the deceased, who was the pillion rider, both were under influence of liquor. But these facts are not considered by the

Tribunal. Learned counsel further submitted that, the motorcycle was not involved in the accident as motorcycle was not found on incident spot nor the accident was witnessed by any witness. The 25 feet tyre marks of four wheeler were seen on the spot of incident. Injuries sustained by the deceased are not possibly caused due to said accident. Initially, F.I.R. was not lodged for the accident. But these facts are not considered by the Tribunal. Learned counsel further submitted that, the Tribunal has awarded 9% interest on compensation amount, which is on higher side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondents/Claimants that, at the time of accident, the deceased was 29 years old. He was doing agricultural and labour work. He was maintaining family of five persons. He was getting income at Rs.9,000/- per month, but the Tribunal has considered Rs.6,000/- per month, which is proper. Learned counsel further submitted that, to prove that motorcycle was not involved in the accident, and to prove the defence that, at the time of accident, the deceased was under influence of liquor, no evidence is produced on record. The Tribunal has passed well reasoned order, and no interference is

required in it, and requested to dismiss the appeal.

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

5. It is Claimant’s case that, on 7th May 2016, the deceased - Chidanand was riding on motorcycle bearing No.KA-28/EJ-3923 along with Opponent No.5, from Mantanali to Akkalkot. Chidanand was pillion rider and Opponent No.5 was riding the motorcycle. He was riding the motorcycle in excessive speed and without observing any traffic rules. Consequently, motorcycle collided and accident occurred. The Chidanand fell on road and sustained grievous injuries and succumbed to injuries while taking treatment. The F.I.R. was lodged against the Opponent No.5 i.e. rider of motorcycle.

6. To prove the income of the deceased, the Claimants have examined the Claimant No.1, father of the deceased at Exhibit 14. He has stated that, the deceased was doing agricultural work and was earning Rs.9,000/- per month. He and his family were dependent on the income of the deceased. The evidence of PW2 – Fate Shah reiterates the fact that the deceased was getting income of Rs.9,000/- per month. However, no income proof is produced on

record. On the basis of age of deceased i.e. 28 – 29 years, the Tribunal has considered notional monthly income at Rs.6,000/-. I do not find infirmity in it. In my view, the deceased was agricultural worker. As per Minimum Wages Act, 1948, it goes more than Rs.200 per day, so the income considered by the Tribunal is proper. To prove the defence that, at the time of accident, the rider of motorcycle and deceased were under influence of liquor and non involvement of motorcycle, no evidence is produced on record by the Appellant – Insurance Company, hence, I do not see merit in it. While awarding compensation, the Tribunal has awarded 9% interest. In my view, it is on higher side, hence, I am considering interest at 7.5%

7. In view of above, I pass following order:

ORDER

- i. The Appeal is partly allowed.
- ii. The Claimants are entitled for compensation amount awarded by the Tribunal at 7.5% per annum instead of 9% from the date of filing claim petition, till realization of the amount.
- iii. The Appellant – Insurance Company is permitted to

withdraw 1.5% excess interest amount from the deposited amount.

iv. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rules.

v. Record and Proceedings be sent back to the Tribunal.

8. In view of the aforesaid terms, the appeal is partly allowed and stands disposed off.

9. All pending applications, if any, also stand disposed off.

(SHIVKUMAR DIGE, J.)