

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1146 OF 2025**

- | | | | |
|--------|---|-----|-------------|
| 1 | Rajashree Sanjay Khandagale
Age- 44 years, Occ : Household | | |
| 2 | Harshad Sanjay Khandagale
Age – 24 Years, Occu - Education | | |
| 3 | Nandini Sanjay Khandagale
Age- 21 yrs., Occu - Education | | |
| 4 | Poonam Sanjay Khandagale
Age- 17 yrs., Occu – Education
No.4 being Minor through
Applicant No.1 Mother | | |
| 5 | Bhamabai Uttareshwar Khandagale
Age – 58 yrs., Occu – Household
(Deleted as per order below Exh.62)
All R/o. Dumma Vasti,
Laxmi Peth, Solapur, Dist – Solapur | ... | Appellants |
| Versus | | | |
| 1 | M/s. Chaudhari Freight Corporation
Plot No.3, Bhopale Nagar
Hotagi Road, Majarewadi, Solapur | | |
| 2 | United India Insurance Co. Ltd.
Having Its Division Office
at Navi Peth, Solapur | ... | Respondents |

Mr. R. S. Alange, Advocate for the Appellant.

Mr. H. M. Khupsare, Advocate for Respondent No.1

Ms. Varsha Chavan, Advocate for Respondent No.2-Insurance Company.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st AUGUST, 2025.

Judgment :

1. The issue involved in this appeal is that Tribunal has considered 50% negligence of the deceased.

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2. It is contention of learned counsel for the claimants that the accident occurred due to sole negligence of the driver of the offending truck as he stopped the truck suddenly on the road. The deceased was proceeding on his motor-cycle behind the truck. As the truck suddenly stopped, the deceased gave dash to the backside of the truck and got injured and died while undergoing treatment. The Tribunal has fixed 50% contributory negligence on the deceased and 50% contributory negligence on the driver of the offending truck. Learned counsel further submitted that an offence was registered against the driver of the offending truck and charge-sheet was filed against the him. There is eye-witness to the incident but the Tribunal has considered 50% contributory negligence of the deceased, which is erroneous. Hence, requested to allow the appeal.

2. It is contention of learned counsel for the respondent No.2- Insurance Company that after the accident, the statement of the deceased, who was in injured condition was recorded by the police. There was an endorsement of the Doctor showing that the deceased was in conscious state. It is contention of learned counsel that the alleged eye-witness is planted eye witness as his statement is recorded after some days of the accident. Learned counsel further submitted that the FIR was lodged two months after the accident. The deceased himself has stated that he had given dash to the truck from the backside. Learned counsel further submitted that the driver of the offending vehicle has examined himself and he has categorically stated that he had stationed the truck on

road by switching on the tail lamps, indicator lights as well as parking light and he had gone to use the restroom. At that time, the deceased came from backside and gave dash to the parked truck. The accident occurred due to sole negligence of the deceased but the Tribunal has fixed 50% contributory negligence on the driver of the offending Truck. The medico legal paper shows that at the time of admitting the deceased in hospital, he was in conscious state. The Tribunal has passed well reasoned order, no interference is required in it and requested to dismiss the appeal.

3. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal, Solapur, (for short "the Tribunal").

4. It is claimants' case that on 5th August 2018 at about 9.30 pm, the deceased was proceeding from Mangalwedha to Solapur on his motor-cycle. When the deceased was proceeding on a road in front of Anand Nagar within the limits of Salgar Vasti Police Station, one truck bearing No.MH 13 CU 1848 was proceeding in same direction ahead of the said motor cycle. The truck was in high speed. At the spot of the accident, the truck driver suddenly applied the brake without giving any signal and consequently the deceased dashed against the said truck. The tail lamps of the said truck were not in order, there was no radium strip on the backside of the truck and the accident took place due to negligence on the part of the driver of the said truck. An offence was registered against the truck driver.

5. To prove the negligence of the driver of the offending truck, the claimants have examined PW-2 Chandrakant Shinde. He has stated that on the day of accident, he was proceeding on the said road in his Innova Vehicle and the deceased was riding his motor-cycle in front of his Innova Car and one truck was proceeding ahead of the said motor-cycle. The truck driver suddenly applied brake and stopped his truck on the road, due to which, the motor-cycle dashed against the backside of the truck. In cross-examination, he admitted that he had got acquainted with deceased three months before the accident and police has recorded his statement three days after the accident. He has stated that there was no brake lights and reflectors on the backside of the truck.

6. The Insurance Company has examined Yuvraj Jadhav, Investigating Officer, of the said crime as defense witness. He has stated that he has investigated the said crime when deceased was admitted in the hospital in injured condition, he was in position to give statement. He has further stated that he requested the medical officer to opine as to whether the patient is physically and mentally fit to give statement. The Doctor gave endorsement that the patient is fit to give statement. The said letter is at Exhibit-54. He has further stated that as per the statement of injured, the said accident took place due to sudden increase of speed of his motorcycle. In cross-examination, he has stated that the crime is registered against the truck driver. He has further admitted that the crime

is registered on the ground of negligence. After completion of investigation, charge-sheet is filed against the truck driver. He has further admitted that when the deceased was admitted in hospital, his mental condition was not proper.

7. The Insurance Company has examined the driver of the offending truck – Basvant Patil. He has stated that on 5th August 2018, he was proceeding from Kolhapur to Solapur. He had stopped the truck at about 7–8 kilometers away from Solapur. He had switched on the indicator lights as well as parking lights of the truck before parking. At about 8:45 or 9:00 PM, he alighted from the truck and went to use the restroom. When he came back, he saw people near the backside of the truck. A person was lying on the ground at the backside of the truck. Motorcycle was also lying on the ground. Reflectors were also affixed on the truck. The truck was new. As people were saying that, there was no mistake on his part, they asked him to leave the place. Thereafter, he left the place. In cross-examination, he has stated that the FIR showing him responsible for death of the deceased.

8. While dealing with the issue of negligence, the Tribunal has observed that there was negligence on the part of the deceased and driver of the offending truck. On that ground, the Tribunal has considered 50% contributory negligence of the truck driver and 50% negligence of the deceased. I am unable to understand the observations of the Tribunal as the driver of the offending truck has stated that he had stopped the truck

by putting reflectors and indicators on and had gone to use the rest room. Whereas, the eye-witness PW-2 has stated that the truck was in moving condition. Whereas, the statement of the deceased recorded in hospital shows that the truck was in moving condition and suddenly speed of his motor-cycle increased and he dashed on the backside of the truck. So it appears that at the time of the accident, the truck was in moving condition but the driver of the offending truck has stated that it was stationary. The Tribunal has observed that the spot panchanama shows that there are no brake marks of the truck as it was suddenly stopped. On that ground, the Tribunal has considered that the truck was not suddenly stopped. In my view, suddenly stopping the vehicle may not leave brake marks in every case. In this case, the evidence of the Investigating Officer is crucial. He has stated that after completing the investigation, it revealed that the accident occurred due to negligence of the driver of the offending truck.

9. It is contention of learned counsel for the Insurance Company that weightage should be given to the statement given by the deceased before the police when he was admitted in the hospital and he was in conscious state. In my view, after the accident, the deceased was admitted in the hospital. Thereafter, he remained admitted in the hospital for couple of days and died. Though the doctor has given endorsement that the deceased was conscious and fit to give statement but thereafter, he did not recover from the said injuries and died while taking treatment.

The Investigating Officer has specifically stated that the mental condition of the deceased was not proper while recording his statement. Admittedly, the accident occurred around 9.00 pm at night time. The deceased had given dash to the offending truck from backside. The evidence of the driver of the offending truck states that the truck was stationed on the road. Whereas, the evidence of the eye-witness states that it was moving. Charge-sheet is filed against the driver of the offending truck. In view of these facts, I am considering 75% contributory negligence of the truck driver and 25% of the deceased instead of "50%".

10. Considering 25% contributory negligence of the deceased, the claimants are entitled for following compensation :

Particulars	Rs.	Amount
Annual Income Rs.25000 pm x 12	Rs.	3,00,000.00
25% future prospects	Rs.	75,000.00
Total	Rs.	3,75,000.00
Less : 1/4th Deduction towards personal expenses	Rs.	93750.00
Total	Rs.	2,81,250.00
Rs.2,81,250/- x 15 (multiplier)	Rs.	42,18,750.00
Less 25% Contributory Negligence.	Rs.	10,54,688.00
Total	Rs.	31,64,062.00
Medical expenses	Rs.	1,37,469.00
Consortium Amount Rs.40000/- x 5 claimants	Rs.	2,00,000.00
Funeral Expenses	Rs.	15,000.00
Loss of Estate	Rs.	15,000.00
Total	Rs.	35,31,531.00

The Tribunal has awarded Rs.27,02,500/-, if this amount is

deducted from the amount of Rs.35,31,531/- considered by this Court, it comes to Rs.8,29,031/-. The claimants are entitled for this amount.

11. In view of above, I pass the following order :

O R D E R

- (1) The appeal is allowed.
 - (2) The claimants are entitled for enhanced compensation of Rs.8,29,031/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
 - (3) Respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.
 - (4) The claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.
 - (5) The claimants shall pay deficit court fees on enhanced amount, if any, as per Rule.
 - (6) Record and Proceedings be sent back to the Tribunal.
12. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)