IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.557 OF 2012

1) Smt. Nidhi w/o Vikas Sharma,
Aged about 38 years,
Occupation-Household.

2) Ku. Shuchita d/o Vikas Sharma,
Aged about 15 years,
Occupation-Student.

3) Master Neerav s/o Vikas Sharma,
Aged about 11 years,
Occupation-Student,
Appellant Nos.2 and 3 being Minor
Through Guardian Mother Appellant No.1.

4) ~~Shri Shishpal s/o Amarnath Sharma~~ (Deleted)
~~Aged about 68 years~~,
~~Occupation-Nil~~.

5) Smt. Sapatkala w/o Shishpal Sharma,
Aged about 62 years, Occ. Household.

Now All R/o.1707, New Prem Nagar,
Street No.1, Near Punjab University,
Ludhiana, Tahsil & District-Ludhiana.
(Punjab) .. Appellants

..Versus..

1) Mohammad Issar s/o Abdul Kayum Ansari,
Age Major, Occupation-Business,
R/o. Behind Tidke Bhavan, C.A. Road,
Lodhipura, Gandhibagh, Nagpur.

2) Mohammad Tariq Ansari s/o Abdul Ansari,
Aged Major, Occupation-Driver,
R/o. Old Jailkhana, Ganjipeth, Nagpur.

3) National Insurance Company Limited,
Through its Divisional Manager,
DO-II (Division Office No.1)
'Paul Commercial Complex' Ajni Chowk,
Wardha Road, Nagpur-440 015. .. Respondents

....

Shri Mirza Tabish Tahseen Ahmed, Advocate for Appellants.
Shri A.W. Paunikar, Advocate for Respondent No.3.

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CORAM : PRAVIN S. PATIL, J.
DATED : 14.10.2025.

JUDGMENT

1. By the present appeal, the appellants-original claimants challenged the judgment and order passed by the Chairman, Motor Accident Claims Tribunal, Bhandara in Claim Petition No.128/2009 dated 12.12.2011, on the ground that the learned Tribunal wrongly held that there is a contributory negligence and secondly not awarded the compensation towards the future prospects, loss of estate and other components as per the settled principles of law.

2. In brief the case of the claimants is that on 10.8.2009 the deceased, who had taken the appointment of Dr. Karandikar for check-up of appellant no.1, they were travelling by Maruti Esteem Car bearing registration No.MH-36/5594 from village Warthi to Nagpur. During their travelling, when they reached to Lapka Shivar (Mauda), the offending truck bearing registration No.MH-31-AP-168 driven by respondent no.2 came from opposite direction in high speed and gave dash to the car of the deceased. Due to this accident, the deceased succumbed to death.

3. According to the claimants, the deceased was serving as Assistant General Manager (Rolling Mills) with Sunflag Iron and Steel Company Limited, Warthi-Bhandara and at the time of accident, the monthly income was Rs.78,432/- per month. His age was about 40 years. Hence, the claim petition was filed before the Chairman, Motor Accident Claims Tribunal, Bhandara seeking thereby compensation of Rs.1,20,00,000/-.

4. The claimants, in support of their claim petition, entered into the witness box and by adducing the evidence established that the accident was occurred due to rash and

negligent driving of the offending truck i.e. Swaraj Mazda Truck. The deceased was driving the car in a moderate speed and there was no fault on the part of the deceased while driving the car. The claimant no.1, who is the wife of deceased, has narrated this factual position as she was the eye witness of the incident.

5. The offending vehicle involved in the accident was duly insured with National Insurance Company Limited i.e. Respondent No.3 and the validity of the policy was between the period 25.7.2009 to 24.7.2010. Hence, according to the claimants, the respondent no.3 Insurance Company and the owner of the vehicle are jointly and severally responsible to pay the compensation, as claimed in the matter.

6. From the available evidence on record, it is established that the deceased was working as an Assistant General Manager (Rolling Mills) and to prove his income appellants had examined witness. Monthly income of deceased is not disputed in the matter. It is pertinent to note that before Tribunal, neither the driver of the offending vehicle nor owner as well as the insurance company entered into the witness box

to establish the case of contributory negligence. The whole defence of the insurance company before the Tribunal was based upon the police case papers which were filed on record.

7. On the basis of above said factual position learned Tribunal by relying upon police case papers hold that the deceased while coming from Nagpur to Bhandara, his car was on left side at the edge of the road and as such inference has been drawn that car being on the left side of the truck which was coming from the opposite direction, therefore, the deceased was driving the vehicle on the wrong side. Tribunal further relied upon the fact that the driver side door of the car was badly damaged, same indicates that deceased was responsible for the alleged incident. Hence, the conclusion is drawn that it is a case of contributory negligence.

8. The learned counsel for the appellants has pointed out the spot panchanama which is at Exh.30. The spot panchanama established the fact that beside 15 ft. of the car and 25 ft. away from the truck, oil was lying on the entire road and marks of the tyres are available on the road. Therefore, one thing is required to be considered in the matter, as to who

is at fault while driving the vehicle, whether it was the deceased or the driver of the truck or because of the oil lying on the road. This fact is not clear in the matter.

9. It is pertinent to note that the driver of the offending vehicle was very much available to examine in the matter. From his evidence, the factual position about who was at fault would have been clear in the matter, but admittedly the driver of the truck was not examined in the matter.

10. The entire case of the respondents is depend on the basis of this spot panchanama. From the perusal of the spot panchanama, I am of the opinion that the factual position is not made clear. According to me, there is an ambiguity as to whether the deceased was responsible for the accident or not. It was for Respondent to established on record by cogent evidence that deceased was equally responsible. There is no rebuttal to the evidence of Appellant No. 1 (widow of deceased) who was eye-witness of the accident.

11. It will be profitable to refer the judgment of Hon'ble Supreme Court of India in the case of ***Meera Devi and***

another .vs. Himachal Pradesh Road Transport Corporation and others, reported in ***(2014) 4 SCC 511***. The Hon'ble Supreme Court of India in this case has specifically held that to prove the contributory negligence, there must be cogent evidence. In absence of any cogent evidence to prove the plea of contributory negligence, cannot be accepted/applied in the matter. The findings recorded by the Hon'ble Supreme Court of India in para 10 are as under :

> *"10. To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased scooterist. In the absence of any cogent evidence to prove the plea of contributory negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case".*

12. Likewise, the Hon'ble Supreme Court of India in the case of ***Syed Sadiq and others .vs. Divisional Manager, United India Insurance Company Limited,*** reported in ***(2014) 2 SCC 735,*** observed that though the accident took place in the middle of the road, in the absence of any evidence the contributory

negligence cannot be fastened. The Hon'ble Supreme Court in this regard has recorded its findings in para no.29 as under :

> *"29. On the matter of extent of contribution to the accident, it is held by the Tribunal that the appellant claimants herein should have taken utmost care while moving on the highway. Looking at the spot of the accident, the Tribunal concluded that the appellant claimants were moving on the middle of the road which led to the accident. Therefore, the Tribunal concluded that though the tractor has been chargesheeted under Sections 279 and 338 IPC, but given the facts and circumstances of the case, the appellant claimants also contributed to the accident to the extent of 25%. The High Court without assigning any reason concurred with the findings of the Tribunal with respect to contributory negligence. We find it pertinent to observe that both the Tribunal and the High Court erred in holding the appellant claimants in these appeals liable for contributory negligence. The Tribunal arrived at the above conclusion only on the basis of the fact that the accident took place in the middle of the road in the absence of any evidence to prove the same. Therefore, we are inclined to hold that the contribution of the appellant claimants in the accident is not proved by the respondents by producing evidence and therefore, the finding of the Tribunal regarding contributory negligence, which has been upheld by the High Court, is set aside."*

13. The coordinate bench of this court has also occasioned to consider the somewhat relevant issue which is reported in the case of ***New India Assurance Company Limited .vs. Archana Rajendra @ Dagadu Gawade, reported in 2024 DGLS (Bom.) 1796,*** wherein it is specifically recorded in

para 4 as under :

> *4. Having considered the submissions advanced and after going through the record of the case, it is apparent that there is no dispute as regards to accidental death of the deceased arising out of use of the insured vehicle. The claimants have raised claim against owner and insurer of the jeep bearing registration No.MH-17/AE-1705 with specific allegation of rash and negligent driving on the part of the jeep driver. The claimants have relied upon the contents of police papers in support of their contentions. It is not disputed that jeep driver was prosecuted for rash and negligent driving. The respondents have not brought on record oral or documentary evidence in support of their defence on the point of negligence. The jeep driver failed to step into witness box. Even, Insurance Company made no attempt to bring him before the Court. Therefore, merely on the basis of contents of the spot panchnama, it would be difficult to draw any inference of contributory negligence. It is trite that contents of the panchnama depicts position of vehicle after the accident. It is only driver of the vehicle or eye witness can throw light on manner of accident and position of the vehicles at the relevant time. When, respondent/Insurer has failed to bring on record best possible evidence of the jeep driver, submissions advanced on behalf of the insurer to draw inference of contributory negligence only on the basis of position of vehicles depicted in the panchnama cannot be accepted. Hence, there is no reason to disturb the finding recorded by the Tribunal on the issue of negligence."*

14. After going through the above said legal position, one thing is clear that to establish the contributory negligence, there must be evidence available on record and Insurance Company should take some pains to bring certain evidence on record.

However, in the present case, there are no efforts are seen from the insurance company to establish the fact that there was a contributory negligence.

15. The entire case of the respondent no.3-Insurance Company is based upon the police case papers and more particularly on Spot Panchanama. However, according to me, it is difficult to draw any inference from such document that there was a contributory negligence on the part of deceased. Insurance company failed to examined the driver of the vehicle or any other eyewitness to throw light in what manner accident occurred and position of the vehicle at the relevant time on the basis of ocular evidence. In the present case, no efforts are taken by the insurance company to prove the case of contributory negligence. In absence of cogent evidence no conclusion can be drawn that deceased was negligent at the time of accident.

16. It is also pertinent to note that claimant no.1 i.e. widow of deceased who was travelling at the time of accident categorically stated that deceased was driving the car in moderate speed and not responsible for accident. This evidence

remain unshaken in the matter. Hence this is an additional ground to hold that it was not a case of contributory negligence.

17. The another aspect which appellants have raised that the appellant were not paid the just and fair compensation towards the future prospects and other components like funeral expenses, loss of estate etc. The bare perusal of the impugned judgment demonstrates the fact that the compensation was not paid in that regard in the matter.

18. Appellant has relied upon the Judgement of National Insurance Company Ltd. vs Pranay Sethi, (2017) 16 SCC 680 and Sarla Verma and Ors. vs Delhi Transport Corporation and Another, (2009) 6 SCC 121 and Magma General Insurance Co. Ltd. vs Nanu Ram (2018) 18 SCC 130 to claim enhance compensation in the matter. The learned counsel for the Respondent Insurance Company does not dispute the law laid down by Hon'ble Supreme Court in the matter.

19. The learned counsel for the respondent no.3-Insurance Company has raised only objection that the appellants will not be entitled for the interest on the amount of

future prospects. For this purpose, the respondent no.3 has relied upon the judgment of this Court in ***First Appeal No.1579/2006, decided on 21.9.2023 (Smt. Kalpana Madhu Gavali and others .vs. Maharashtra State Road Transport Corporation, Swargate, Pune),*** wherein this court has observed in para 19 as under :

> *"19. Coming to the reliance placed by the learned Counsel for the Respondent Corporation on the decision of Jammu and Kashmir and Ladakh at Srinagar High Court in the case of National Insurance Company Limited vs. Mst. Aisha Bano and Ors. (supra), which decision has placed reliance on a similar view taken by the Guwahati High Court in the cases of* ***Khusboo Chiranía @ Kanta Chirania vs. Kamal Kumar Sovasaria*** *and* ***Nasima Begum vs. Keramat Alf,*** *while submitting that, if this Court was inclined to consider future prospects, then in any event, compensation granted under the head of loss of future prospects should not be subjected to payment of any interest thereon, I am in agreement with the said submission. I am in agreement with the reasoning given in paragraph 12 of the said decision that future prospects are with regard to probable income to be received in the future and as such, there is no requirement to compensate the claimant by way of future interest for the loss that is to occur in future as the future is yet to happen. The said paragraph 12 is usefully quoted as under:*
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> *"12. The third and last contention raised by the learned Counsel for the Appellant is that the portion of compensation granted under the head of loss of future prospects should not have been subjected to payment of any interest thereon. This argument of the learned Counsel carries force due to the fact that the future prospects are relatable to*

an income to be received in the future and, as such, there could not be any loss to the claimants for the payment of future prospects at the time the deceased met with the accident. The reason for awarding interest on the compensation amount, minus the future prospectus, is due to the fact that, though the loss of dependency starts from the date of accident, the compensation amount is computed on the date of the award of the Tribunal, interest is awarded to compensate the loss of money value on account of lapse of time, such as the time taken for the legal proceedings and for the denial of right to utilize the money when due. However, future prospects are with regard to probable income to be received in the future and, as such, there is no requirement to compensate the claimant by way of future interest for the loss that is to occur in the future, as the future is yet to happen. Further, future prospects are given for the entire future and, as such, the claimant is getting compensation in a lumpsum under the future prospects prior to the occurrence of future event(s). Thus, with regard to future prospects, this Court is of the view that there cannot be any interest on future prospects as the same relates to an income to be given in the future. The same view has been taken by the Gauhati High Court in cases reported as ***'2018 Supreme (Gau) 966';*** *and* ***'2019 Supreme (Gau) 507',*** *therefore, the contention of the learned Counsel for the Appellant is accepted that the component of compensation under the head of loss of future prospects is not to be subjected to interest."*

20. The view taken by Co-ordinate Bench, according to me is legal and justified. Therefore, applying the same principle of law, the appellants will not be entitled to the interest on amount of future prospects.

21. In my opinion, the appellants are entitled for enhance compensation. Accordingly, by considering the law laid down by Hon'ble Supreme Court of India the calculation in respect of compensation for which the appellants are entitled is made as under :

1	Monthly income of the deceased	Rs.	78,432/-
2	Rs.78,432 (-) 1/3rd deduction comes to	Rs.	52,261/-
3	Rs.52,261/- with 30% loss of future prospects comes to	Rs.	67,939/-
4	Rs.67,939 x 12 Annual income with future prospects comes to	Rs.	8,15,628/-
5	Add multiplier 15 (Rs.8,15,628 x 15) comes to	Rs.	1,22,34,420/-
6	Loss of love and affection per claimants i.e. Rs.64,420/- (10% increase after every three years) comes to	Rs.	2,57,680/-
7	Funeral expenses	Rs.	15,000/-
8	Loss of Asset	Rs.	15,000/-
9	Total Rs.1,25,22,100/- (-) Rs.40,32,260/- granted by Tribunal comes to	Rs.	84,89,840/-
	Total :	**Rs.**	**84,89,840/-**

Hence, the appellants are entitled for the compensation as stated above in the present matter. In the circumstances, I proceed to pass the following order :

<u>O R D E R</u>

(1) The appeal is partly allowed.

(2) The judgment and award of Motor Accident Claims Tribunal, Bhandara is modified to the extent that appellants/claimants are entitled for compensation of

Rs.84,89,840/-. The rest of the judgment and order is confirmed.

(3) It is made clear that appellants will not be entitled for interest towards the compensation of future prospect in concurrence of finding recorded by coordinate bench in First Appeal No.1579/2006.

(4) Respondent No.3-Insurance Company is directed to deposit the compensation amount with the Chairman, Motor Accident Claims Tribunal, Bhandara within a period of twelve weeks.

(5) The appellants-claimants are permitted to withdraw the said amount after deposit of the same by Respondent no.3-Insurance Company.

(6) There shall be no order as to costs.

(Pravin S. Patil, J.)

Gulande