



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

FIRST APPEAL NO.939 OF 2022

The New India Assurance Company
 Limited (Branch at Chandrapur)
 Through its Regional Manager,
 Regional Office at Nagpur Rayan House,
 Kasturchand Park, Nagpur.

...APPELLANT
 (Ori. Respondent No.2)

...V E R S U S...

1. Smt. Seema Sheshrao Sonone
 Aged 60 years, Occ: Household
 (Original claimant no.1)
2. Kausthubh Gopal Madavi
 Aged 13 years, Occ: Student
 (Original claimant no.2)
3. Ku. Sneha Gopal Madavi
 Aged 11 years, Occ: Student
 Respondent nos.2 and 3 are minors,
 through their guardian respondent no.1
 (Original claimant no.3)
 R/o Hanuman Nagar, Tukum,
 Chandrapur.
4. Sanjeet Ramanand Yadav
 Aged major, Occ: Owner,
 R/o Guggus Colliery No.1,
 Ghuggus, Chandrapur.

...RESPONDENTS
 (Ori. Respondent no.1)

 Shri Sandeep Marathe, Advocate for appellant.
 Shri R.M. Tahaliyani a/w Ms Ragini Karni Swami, Advocates for
 respondent nos.1 to 3.

CORAM:- M.W. CHANDWANI, J.
DATED :- 15.10.2025

ORAL JUDGMENT:

1. The appeal challenges the judgment and order dated
 29.07.2022 passed by the learned Member, Motor Accident Claims

Tribunal, Chandrapur (for short, “**Tribunal**”) in M.A.C.P. No.145/2017 whereby, the Tribunal allowed the claim petition filed by respondent nos.1 to 3 granting compensation of ₹30,62,500/- on account of death of Suresh Sheshrao Sonone who died in vehicular accident on 24.01.2017.

2. Though, there are various grounds raised in the appeal, the principal submission of the learned counsel for the appellant is that the Tribunal has assessed the income of the deceased on the higher side without considering the contributory negligence on the part of the deceased.

3. The learned counsel for the appellant vehemently submitted that respondent nos.1 to 3 failed to prove the income of the deceased. According to him, in the month of March 2016, the deceased was paid ₹11,620/- and in the very next month, the salary is shown as ₹25,000/- per month which does not appear to be convincing; however, the Tribunal has not considered this aspect. According to him, the accident is a head on collision which itself goes to suggest that there is some negligence on the part of the deceased. However, the Tribunal has not considered this aspect as well. He vehemently submitted that the deceased has

contributed to the negligence to the extent of 25% at the least. Hence, he sought reduction in the compensation.

4. *Per contra*, the learned counsel for respondent nos.1 to 3 vehemently submitted that the Tribunal has considered all these aspects and has given cogent reasons for discarding the submission of the appellant. According to him, in the month of March the deceased worked only for 15 days and therefore, the salary was shown as ₹11,620/-. He further submitted that just because the accident was a head on collision that does not necessarily mean that the deceased has contributed to it. To buttress his submissions, he seeks to rely upon the decision of this Court, in the case of the ***New India Assurance Company Ltd. Vs. Jankabai Babruwan Bhawal and others***¹.

5. Having heard the learned counsels for the respective parties and having gone through the impugned award, it transpires that respondent nos.1 to 3 have examined PW2- Rajendra Krushna Waghade, who used to work at Sanjivani Bahuddeshiya Seva Sahakari Sanstha Maryadi, Chandrapur. Perusal of his evidence would reveal that the deceased started working with PW2 from 16.03.2016 till the date of accident. Since, the deceased started

¹ First Appeal No.02694/2017 (dated 05.11.2019) (Bench at Aurangabad)

working with PW2 from 16.03.2016, there is no reason for this witness to pay the salary for that entire month and therefore, the deceased was paid only ₹11,620/- for the month of March, 2016. Therefore, there is no substance in the argument of the learned counsel for the appellant that the salary was deliberately increased from ₹11,620/- to ₹25,000/- for getting excess compensation. Therefore, the Tribunal was justified in relying on the version of PW2 and assessed the income of deceased at ₹25,000/- per month.

6. This takes me to the next submission with regard to contributory negligence. It is a matter of record that the accident is a head on collision. The police investigation reveals that the truck driver was negligent and the Tribunal, by relying upon the investigation, observed that the truck driver was at fault. To prove contributory negligence, it was incumbent upon the Insurance Company to examine the driver of the vehicle but the appellant did not take any efforts to do so. Moreover, even the appellant did not enter into the witness box. Though, the appellant pleaded contributory negligence in the written statement but it failed to prove the same. Therefore, the reliance placed by the Tribunal on the decision of this Court in the case of *Jankabai* (supra) cannot be said to be misplaced.

7. There is no merit in the appeal. Resultantly, the appeal is **dismissed**.

8. The amount deposited by the appellant is permitted to be withdrawn by respondent nos.1 to 3. However, the amount falling in the share of respondent nos.2 and 3 be invested in any nationalized bank in the form of Fixed Deposit till they attain the age of majority.

(M.W.CHANDWANI, J.)

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