

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

First Appeal No. 162 of 2000

- 1) Nagnath s/o Bharamshetti Jakkapure
Age Major,
Occupation : Nil
R/o 49/80, Bhawani Peth,
Hanuman Nagar, Solapur.
 - 2) Bebi w/o Nagnath Jakkapure,
Age 43 years,
Occupation : Household,
R/o As above.
- .. Appellants.**

Versus

- 1) Suresh Shripal Magdum,
Age Major,
Occupation : Business
R/o 6th Lane, Jayshingpur,
District Kolhapur.
 - 2) United India Insurance Co. Ltd.
First Floor, Ram Mandir,
Jayshingpur,
District Kolhapur.
 - 3) The New India Assurance Co. Ltd.
Hutatma Smruti Mandir Complex,
Solapur.
- .. Respondents.**

Shri. N.B. Patil - Raiwadikar, Advocate, for appellants.

Shri. D.V. Soman, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 31st JULY 2014

JUDGMENT:

1) The appeal is filed against the judgment and award of Claim Petition No.193/1994 which was pending before the Claims Tribunal, Osmanabad. The original claimants have challenged the decision of the Tribunal on two grounds. The Tribunal has held that deceased, son of the claimants, was also negligent in the accident and the Tribunal has reduced the compensation by 20%. The Tribunal has granted compensation but is not a per the claim and on that ground also the decision is challenged. Both the sides are heard.

2) The accident took place on 8-7-1994 at 2.30 p.m. on National Highway No.9 - between Solapur and Omerga. The deceased was driving a Maruti van and the van was proceeding towards Omerga side. It is contended that a truck, bearing No.MH-09/A-9113 which was coming towards Solapur gave dash to the Maruti van and the accident took place. It is contended that, the accident took place due to fault of the truck driver. Vinod, son of the claimants, died in that accident.

3) It is the case of the claimants that age of the deceased was 23 years and by working as driver he was nearing Rs.1500/- per month. It is contended that both the claimants were depending on the deceased for their livelihood. Age of the father was 49 years and that of the mother was of 43 years at the relevant time. Compensation of Rs.2,00,000/- was claimed.

4) The Insurance Company of the truck filed written statement and it denied everything and it contended that the claimants need to be put to the strict proof of the contentions made by them. It denied that the truck driver caused the accident. It contended that the accident took place due to the fault of the deceased.

5) Only the claimants gave evidence. Father examined himself but he has no personal knowledge regarding the incident. The claimants examined one eye witness Mahesh Kasture. He has given evidence that he was travelling in the van at the relevant time and the accident took place due to the fault of the truck driver. He has given evidence that the truck was being driven in high

speed and after coming to the wrong side of the road it gave dash to Maruti van. He has given evidence that due to dash given by the truck, the van was pushed to backside to the extent of 100 to 150 ft. It was suggested to him in the cross-examination that there was fault on the part of the deceased but he has denied it.

6) The claimants have relied on police paper also. The police papers like FIR show that the police blamed the truck driver for the accident. Report was given by a police officer on the information collected from witness Mahesh Kasture. The spot panchanama shows that Solapur - Omerga road is West - East. As the van was proceeding towards Omerga side, North side was correct side for the van. South side was the correct side for the truck. The panchanama shows that due to the impact, the Maruti van was dragged to western side upto the distance of 8 ft and the wheel marks were found on eastern side. Front portion of the van was damaged. Driver side portion of the truck had given dash to the Maruti van. After the impact, the truck was facing to south when initially it was proceeding to western side.

These circumstances show that the impact took place in the lane which was for the van. In view of this circumstance and as there is direct evidence of the eye witness, it was necessary for the other side to show that there was fault on the part of the deceased. There was no evidence in rebuttal. In spite of these circumstances, the Tribunal has held that there was negligence on the part of the deceased to the extent of 20%. This Court holds that the Tribunal has committed error in giving such finding and that finding needs to be set aside.

7) Claimant No.1, father of the deceased, gave evidence on the income of the deceased. He has deposed that monthly salary of the deceased was Rs.1500/- and he was aged about 23 years. The deceased was unmarried. The accident took place in the year 1994, just before the amendment to the Motor Vehicles Act. In view of the introduction of section 163-A in MV Act, presumption became available that annual income of a person was around Rs.15,000/- when there was no specific evidence on the income of the deceased. This Court holds that in the present case also the annual income was Rs.15,000/-.

The deceased was unmarried. He would have spent one-half amount for himself. Thus, there was annual loss of Rs.7500/- to the claimants. In view of the age of the mother which was 43 years, 14 can be adopted as the multiplier for calculating the loss of dependency. The total loss of dependency comes to Rs.1,05,000/-. Amount of Rs.2000/- can be given under the head of funeral expenses. Amount of Rs.10,000/- can be given under the head of loss of estate and loss of love and affection. Thus total amount of compensation comes to Rs.1,35,000/-. The Tribunal has awarded compensation of Rs.53,740/-. Thus, the judgment and award of the Tribunal needs to be modified to enhance the compensation.

8) In the result, the appeal is allowed with no order as to cost. The judgment and award is modified to make compensation of Rs.1,35,000/- (rupees one lakh thirty five thousand only). The interest at the rate of 8.5% will be payable on the enhanced amount of compensation and it will be payable from the date of registration of the proceeding till date of realization. The apportionment and disbursement is to be made as per the award made by the

Tribunal. The decision about contributory negligence of the deceased is set aside. Award is to be prepared accordingly.

Sd/-
(T.V. NALAWADE, J.)

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