



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

FIRST APPEAL NO.437/2015

1. Smt. Rekha Suresh Shegokar,
aged about 37 years.

2. Ritesh Suresh Shegokar,
aged about 17 years.

Minor through Natural Guardian
Mother Appellant No.1-Smt. Rekha
Suresh Shegokar.

3. Pranesh Suresh Shegokar,
aged about 18 years.

4. ~~Sau. Kaushalya Kisanrao Shegokar,~~
~~aged about 19 Yrs.~~

5. ~~Kisanrao Shivram Shegokar.~~

Deleted as per order
dated 08.03.2024 passed
by Registrar (J.).

All R/o Borgaon Munju,
Tah. and Distt. Akola.

... Appellants
(Ori. Appellants)

- Versus -

1. Sk. Hanif Sk. Rauf,
aged abut 34 years, Occu. Driver,
R/o Rasulabad , Tah. Arvi,
Distt. Wardha.

2. Niyajoddin Husnoddin Quazi,
R/o 135, Rasulabad, Tah. Arvi,
Distt. Wardha.



3. The Oriental Insurance Company Ltd.,
Jayshree Bhavan, Near Indira Market,
Vanjari Chowk, Wardha 442 001.

... Respondents
(Ori. Non-Applicants)

Mr. S.A. Mohta, Advocate for the Appellant.
Mr. N.P. Dolas, Advocate h/f. Mr. Mohd. Ateeque, Advocate for the
Respondent Nos.1 and 2.
Mr. Lalit Limaye, Advocate for the Respondent No.3.

CORAM: NEERAJ P. DHOTE, J.
DATED : 10.02.2026.

ORAL JUDGMENT

This is an Appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "M.V. Act") by the original claimants. They are aggrieved by 50% contributory negligence attributed to the deceased by the learned Tribunal and on the point of quantum. The learned Tribunal has decided the claim petition by the judgment and award dated 20.09.2014 awarding compensation of Rs.9,35,000/- with interest at the rate of 7.5% per annum.

2. Heard the learned Advocate for the Appellants, learned Advocate for the Insurance Company and the learned Advocate for the Respondent Nos.1 and 2. With their assistance perused the papers.

3. It is submitted by the learned Advocate for the claimants that this appeal is filed on two grounds (i) 50% contributory negligence and (ii) quantum. He submits that, the offending vehicle was the truck and the crime was registered against the driver of the truck.



The spot-panchanama shows that, the accident took place in the middle of the road. The learned Tribunal ought not to have considered the contributory negligence on the part of the deceased. He submitted that, though there was Income Tax Returns of the deceased filed on record by the claimants, the learned Tribunal considered the income of the deceased at Rs.180,000/-. He submitted that, the Appeal be allowed by setting aside the observations of 50% contributory negligence and the income of the deceased as per last Income Tax Return be considered.

4. It is submitted by the learned Advocate for the Insurance Company and the learned Advocate for the Respondent Nos.1 and 2 that, the learned Tribunal has rightly appreciated the material available on record. No eye witness was examined by the claimants. The spot-panchanama shows the brake marks of the car which was being driven by the deceased and, therefore, 50% contributory negligence of the deceased is rightly considered by the learned Tribunal. As regards the quantum, he submitted that, the evidence on record goes to show that, the business of the deceased was continued and looked after by the widow and, therefore, there was no loss of earning after the death. It is submitted that, no interference was called for in the judgment and award passed by the learned Tribunal.

5. As regards the aspect of the contributory negligence is concerned, undisputedly, none of the parties have examined eye witness to the accident. The claimants relied on the police papers in support of their claim petition. The relevant document from the



police papers is the spot panchanama below Exh.34. The said spot panchanama is having sketch of the spot of incident. Close scrutiny of the said sketch shows that, the spot of accident was almost in the middle of the road, slightly towards the southern side of the road. The deceased was travelling from east towards west and the truck was coming from west and proceeding towards east. The sketch shows the tyre marks from the northern side of the road coming towards the southern side road. This indicates that, the car which was being driven by the deceased had gone on the wrong side and thereafter it was taken towards the proper side and the accident took place. There are no brake marks on the side of the truck. Undisputedly, the time of accident was between 08.00 p.m. to 08.30 p.m. The learned Tribunal appreciated the spot panchanama and recorded the finding that, the deceased was 50% negligent in the accident. The relevant observations on the point of negligence is in paragraph Nos.11 to 14. The said paragraphs from the judgment of the learned Tribunal are reproduced below:-

“11. Site of the collision is almost in the middle of the road for the truck proceeding towards the east, there were no brake marks behind the truck. Likewise, there were no brake marks towards the East. Those marks were to the North East from the site of the collision and over the Northern side slope of the road. Obviously therefore two vehicles had, after the collision proceeded to the North Eastern side on the road. The car had got caught under the front wheel buffer of the truck and it was not released from the grip till the end when the glass had broken.

12. In absence of oral evidence, both the learned advocates put their interpretations to the circumstances indicated by the spot panchanama. As stated above, according to the learned advocate for the claimants,



after giving dash the truck had pushed back the car driven by the deceased towards North East. On the other hand, the learned advocate for the Insurance Company submitted that the car, in an attempt to overtake another vehicle, had crossed to the wrong side of the road and then taken a diagonal turn applying the brakes to avoid collision with incoming truck. It was because of that, tyre marks were left but unfortunately the car had collided against the truck. Therefore, according to him, the entire fault was that of the deceased.

13. The burden to prove rashness and negligence is naturally on the claimants. Though there was no eye witness to the accident, the claimants could have brought on record evidence about the width of the road, the length of the site of collision (GHATNASTHAL) from the North and Southern boundaries of the road and so on. This is required because except the poorly drawn spot panchanama and the sketch attached to it, there is no other evidence to adjudicate the question of rashness and negligence. The road had slopes on both the sides and it is not possible to overrule either or accept either of the arguments in its entirety. It is significant to note that there were no brake marks to the West side of collision from which direction the truck was proceeding. Obviously, it was not required to brake its speed. The fact that pieces of glass were lying only at the farthest end of the brake marks is also significant. If there was a head on collision at the site indicated as "GHATNASTHAL", pieces of glass ought to have been found there.

14. Apart from the above, one thing is clear. There was a head on collision between two vehicles almost in the middle of the road. In the circumstances, it is not possible to hold that the truck driver alone was responsible for the accident. If rashness and negligence is to be attributed, both the drivers shall have to be held equally responsible for the accident. Therefore,



this is a fit case to hold that the truck driver and deceased had equally contributed by their rash and negligent driving for the accident and consequent death of the deceased. The issue no.1 is, therefore, answered as proved and no.2 as partly proved.”

6. The re-appreciation of the spot-panchanama shows that, the conclusion drawn by the learned Tribunal is reasonable and possible one. The spot-panchanama do not show that, the accident took place due to the entire negligence of the truck driver. The observations recorded by the learned Tribunal in respect of the negligence are borne out of the material available on record and I see no reason to differ with the same and the same is upheld.

7. As regards the aspect of quantum is concerned, the evidence on record goes to show that, the deceased was running the Trading Business under the name and style ‘M/s. Shri Gajanan Services, Akola’ which provided the services for Sony Products. To prove the income of the deceased, the claimants relied on the Income Tax Returns of the deceased, for the Assessment Years 2009-2010, 2010-2011 and 2011-2012. The last Income Tax Return shows that, the Total Income of deceased was Rs.2,40,876/-. The evidence of the widow of deceased shows that, after the death of her husband, she was looking after the business. There were 12 to 14 labourers in the shop. Technicians were doing the work of repairing the TV, Radio and other appliances and some times they are sending the appliances to the concerned Company for repairing. The earlier Technicians were working in their shop. The service station of the Sony Company was still with them. This evidence on record goes to



show that, after the deceased, the proprietary concern was functioning and there was no total loss to the claimants. However, there could be some loss of supervision. The learned Tribunal considered the evidence available on record and accepted the yearly loss of income of Rs.18,00,000/- i.e. Rs.15,000/- per month. The observations of the learned Tribunal shows that, the deceased was holding certificate of Technical Institute, Akola for repairing TV, Radio and Amplifiers. Considering the evidence on record loss of earning to Rs.15,000/- per month, towards the supervision loss appears to be reasonable and proper.

8. Both the sides agree that, the learned Tribunal has not considered the future prospects and consortium in the light of decisions in *Sarla Verma (smt) and ors. V/s. Delhi Transport Corporation and anr.*, (2009) 6 SCC 121, *National Insurance Company Limited V/s. Pranay Sethi and ors.*, (2017) 16 SCC 680 and *Magma General Insurance Co. Ltd. V/s. Nanu Ram @ Chuhru Ram*, (2018) 18 SCC 130. In the light of the above decisions, there has to be addition of 25% towards the future prospects and Rs.40,000/- each towards Consortium. The Amount of compensation is accordingly re-calculated as under:-

Sr. No.	Heads	Amount
1	Amount of yearly Income of the deceased	Rs.15,000/- x 12 = Rs.1,80,000/-
2	Amount of Future Prospects (25% of the yearly Income)	Rs.1,80,000/- + Rs.45,000/- = Rs.2,25,000/-
3	Amount towards 1/3rd Deductions	Rs.2,25,000/- ÷ 3 = Rs.75,000/- Rs.2,25,000/- Rs.75,000/ = Rs.1,50,000/-
4	Amount after applying	Rs.1,50,000/- x 15 = Rs.22,50,000/-



	Multiplier of '15'	
5	Deduction towards 50% contributory negligence	Rs.11,25,000/-
6	Amount of Consortium for 3 Appellants	Rs.40,000 x 3 = Rs.1,20,000/-
7	Total amount of compensation (5+6)	Rs.12,45,000/-

9. In view of the above, following order is passed.

ORDER

- (i) The Appeal is partly allowed.
- (ii) The impugned award stands modified to the extent that, the Respondent Nos.1 to 3 shall pay to the Appellants a sum of Rs.12,45,000/- with the same rate of interest as directed by the Tribunal.
- (iii) The Appellant No.1-wife would be entitled for Rs.8,45,000/- and remaining amount be apportioned equally between two sons.
- (iv) The amount of Rs.9,35,000/- which is already deposited by the Insurance Company be adjusted in the above referred enhanced compensation amount which is quantified above.
- (v) The remaining amount be deposited in this Court within a period of eight (8) weeks.
- (vi) Record and proceedings be sent back to the learned Tribunal.

(NEERAJ P DHOTE, J.)