2026:BHC-NAG:5385

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

FIRST APPEAL NO.760/2015

HDFC Ergo General Insurance Co. Ltd.,
4th Floor, Shriram Tower, Kingsway,
Sadar, Nagpur, Tah. & Distt. Nagpur. ... Appellant

- Versus -

1. Holan Wd/o Pralhad Raut,
Aged about 30 years., Occu. Household.

2. Pradip S/o Pralhad Raut,
Aged about 25 months, Occu. Nil.

3. Kapoorabai W/o Mehtar Raut,
Aged about 45 years, Occu. Household.

4. Mehtar S/o Modkan Raut,
Aged about 50 years, Occu. Labour.

5. Sadhana D/o Pralhad Raut,
Aged about 07 years., Occ. Nil,
through Guardian Holan Pralhad Raut.

All R/o Zaliya, Tah. Salekasa,
Distt. Gondia.

6. Ashok S/o Dharamdas Dongre,
Aged about Major, Occu. Vehicle Owner,
R/o Kawadi, Tah. Salekasa,
Distt. Gondia.

7. Ganesh S/o Tarachand Tulshikar,
Aged about Major, Occu. Driver,
R/o Sakritola, Tah. Salekasa,
Distt. Gondia. ... Respondents

WITH
FIRST APPEAL NO.1023/2015

1. Holan Wd/o Pralhad Raut,
A/a. about 29 years., Occu. Household.

2. Pradip S/o Pralhad Raut,
A/a. 6 years, Occu. Student.

3. Kapoorabai W/o Mehtar Raut,
A/a. 44 years, Occu. Household.

4. Mehtar S/o Modkan Raut,
A/a. 49 years, Occu. Labour.

5. Sadhana D/o Pralhad Raut,
A/a. 4 years., Occ. Student.

Applicant Nos.2 and 5 are minors and Represented by their Natural Guardian Mother i.e. Applicant No.1.

All R/o Zaliya, Tahsil Salekasa,
Distt. Gondia (Maharashtra) ... Appellants

- Versus -

1. HDFC Ergo General Insurance Co. Ltd.,
4th Floor, Shriram Tower, Kingsway,
Sadar, Nagpur, Tah. & Distt. Nagpur.

2. Ashok S/o Dharamdas Dongre,
Aged Major, Occu. Vehicle Owner,
R/o Near Bus Stop Sakritola, P.O.
Stagam, Tahsil Salekasa,
District Gondia.

3. Ganesh S/o Tarachand Tulshikar,
A/a Major, Occu. Driver,
R/o Sakritola, Tahsil Salekasa,
Distt. Gondia. ... Respondents

Mr. A.M. Kukday, Advocate for the Appellant.
Mr. R.M. Pande, Advocate for the Respondent Nos.1, 3 to 5.
..in First Appeal No.760/2015.
Mr. R.M. Pande, Advocate for the Appellants.
Mr. A.M. Kukday, Advocate for the Respondent No.1.
..in First Appeal No.7023/2015.

CORAM: NEERAJ P. DHOTE, J.
DATED : 1.4.2026.

ORAL JUDGMENT

The Appeal No.760/2015 is filed by the Insurance Company and the Appeal No.1023/2015 is filed by the Claimants. Both these Appeals are filed against the judgment and award dated 13.01.2015 passed by the learned Motor Accident Claims, Tribunal Gondia in Claim Petition No.67/2010 filed by the Claimants for compensation towards death of Pralhad Raut who was driving Tata Magic Vehicle No.MH-35/3493 while he was going from Deori to Amgaon. The learned Tribunal held 50% contributory negligence of deceased and awarded compensation of Rs.4,00,000/- with interest at the rate of 7% per annum.

2. Heard the learned Advocate for the Insurance Company and the learned Advocate for the Claimants. None for the other parties.

a. It is submitted by the learned Advocate for the Insurance Company that, the learned Tribunal wrongly considered 50% negligence on the part of the Tata 607 which was insured with the Insurance Company. The offence was registered against the deceased. The evidence of the eye-witness examined by the Claimants was discarded by the learned Tribunal. The Spot-Panchanama which was drawn in the Crime shows that, the vehicle of deceased gave dash to one pedestrian and thereafter gave dash to the Tata 607. The learned Tribunal did not appreciate the police papers in its right perspective. The accident took place due to complete negligence of the deceased and, therefore, the finding in respect of contributory negligence requires interference.

b. It is submitted by the learned Advocate for the Claimants that, the Insurance Company failed to examine the witnesses who were present on the spot of incident. The Respondent No.3 who was the Driver of the Tata 607 did not examine himself. The Spot-Panchanama shows that, the Respondent No.3 was responsible for the accident and the learned Tribunal has committed an error in holding that, the accident was the result of contributory negligence. In support of his submissions, he relied on the judgment in *Minu Rout and another V/s. Satya Pradyumna Mohapatra and others* Manu/SC/0912/2013 wherein the deceased was shown as the accused in the Charge-sheet which was filed and subsequently name of deceased was deleted from the Charge-sheet on the basis of stray answers elicited from the evidence of the witnesses examined therein the learned Tribunal held that, the deceased had also contributed in the accident. It was held that, the observations by the learned Tribunal was erroneous in law in absence of any legal evidence adduced by the Insurance Company to prove the plea taken by it that, the accident occurred due to negligence of the deceased.

3. With the assistance of both the sides perused the evidence on record. The Claimants examined the witness Mehtar S/o Korku Damahe as the eye-witness to the accident. Similarly, the Insurance Company examined Head Constable who reached on the spot of accident. The learned Tribunal, as is clear from the observations in para 22 discarded the evidence of both the witnesses examined by the Claimants and by the Insurance Company. The said observations

by the learned Tribunal are based on the evidence of the said two witnesses. No fault can be found with the said observations discarding the evidence of both the said witnesses.

4. The learned Tribunal answered the point of negligence on the basis of the police papers, particularly the Spot-Panchanama in which the sketch of spot of the incident showing the position of vehicles is shown. It was head on collision. The perusal of the said sketch from the Spot-Panchanama indicates that, the spot of accident was little towards the other half side of the road, which was the opposite side for the deceased’s vehicle. The evidence in the case at hand and the facts of the above referred judgment read upon by the learned Advocate for the Claimants are different. Undisputedly, the offence was registered against the deceased. However, the inference drawn by the learned Tribunal, cannot be faulted. There is one more aspect which needs mention. The Driver of the said Tata 607 was the party Respondent No.3 in the Claim Petition. Though he contested the Claim Petition by filing his written statement, he did not enter the witness box. When he himself was driving the vehicle Tata 607 which was one of the vehicles involved in the accident, he was the best witness to depose in respect of the accident. Since he did not examine himself, the only option before the learned Tribunal was to rely on the police papers. Under such circumstances, no interference is called for in the observations made by the learned Tribunal in respect of 50% contributory negligence.

5. It is submitted by the learned Advocate for the Claimants that, the deceased was Driver which was not disputed. Being the Driver,

the deceased was the skilled Labour. Though the Claimants claimed the monthly income of deceased at Rs.6,000/- per month, the learned Tribunal considered Rs.5,000/- per month. In the above referred judgment in which the accident was of November 2004 and deceased was the Driver, the per month income of decease therein was considered Rs.6,000/-. He further submitted that, the other compensation towards future prospects, consortium etc. be considered in the light of judgment of the Hon'ble Apex Court 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**.

6. It is submitted by the learned Advocate for the Insurance Company that, the learned Tribunal has rightly considered the monthly income of the deceased as Rs.5,000/- in absence of any evidence on record. The multiplier applied by the learned Tribunal was not as per the settled law and it should have been 17 instead of 18. He does not dispute the settled legal position in respect of future prospects, consortium and deductions towards the personal and living expenses etc.

7. Undisputedly, the deceased was the Driver. Since no income proof was brought on record by the Claimants, the learned Tribunal considered the monthly income of Rs.5,000/-. In the above referred judgment in which the accident was of 2004 and the deceased was Driver, income of Rs.5,000/- was considered. In the case at hand

accident is of July 2010. Considering these aspects, the per month income of deceased at Rs.6,000/- can safely be accepted. In view of the above judgment in Sarla Verma (supra), the applicable multiplier would be 17 instead of 18. In view of the above referred decision in Pranay Sethi (supra), 40% addition will have to be made towards the future prospects. The Claimants would be entitled for consortium at the rate of Rs.40,000/- each, and Rs.15,000/- each towards the loss of estate and funeral expenses.

8. The learned Advocate for the Claimants submitted that, 7% interest granted by the learned Tribunal is on lower side. He relied on the decision in *Asha Verman and others V/s. Maharaj Singh and others* **(2025) 11 SCC 389** wherein the interest at the rate of 9% was awarded. It is needless to state that, the interest rate of the nationalized banks keep on fluctuating. The accident was of 2010. Therefore, no interference is called for in the interest rate granted by the learned Tribunal.

9. In view of the above observations, the compensation is recalculated as under:-

Sr. No.	Heads	Amount
1	Per month income of the deceased	Rs.6,000/-
2	Annual income of the deceased	Rs.72,000/- (Rs.6,000/- x 12)
3	40% addition towards future prospects	Rs.28,800/-
4	Total annual income of the deceased	Rs.1,00,800 (Rs.72,000+Rs.28,800/-)
5	Minus 1/4th deduction towards personal expenses	Rs.25,200/-

6	Amount after applying multiplier of 17	Rs.12,85,200/- (Rs.75,600/- x 17)
7	Consortium of Rs.40,000/- per Claimant for five (5) Claimants	Rs.2,00,000/-
8	Rs.15,000/- each for loss of estate and funeral expenses	Rs.30,000/- (Rs.15,000 + Rs.15,000/-)
9	Total amount of compensation	Rs.15,15,200/- (Rs.12,85,200/- + Rs.2,00,000/- + Rs.30,000/-)

i) As there was contributory negligence of both the vehicles including that of deceased, the Claimants shall be entitled to 50% compensation of Rs.15,15,200/- i.e. Rs.7,57,600/- with the same rate of interest as granted by the learned Tribunal. The apportionment of the compensation would be as follows:-

(ii) Appellant No.1 (Widow) Rs.5,07,600/- + interest,

(iii) Appellant No.2 (Son) Rs.62,500/- + interest,

(iv) Appellant No.5 (Daughter) Rs.62,500/- + interest,

(v) Appellant No.4 (father) Rs.62,500/- + interest,

(vi) Appellant No.3 (mother) Rs.62,500/- + interest,

(vii) The amount towards enhanced compensation be deposited within two (2) weeks by the Appellant Insurance Company before the learned Tribunal.

(viii) The Appeals stand disposed of in the above terms with no order as to costs.

(ix) Record and proceedings be sent back to the learned Tribunal.

(NEERAJ P. DHOTE, J.)

Tambaskar.