



**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY BENCH AT NAGPUR, NAGPUR.
FIRST APPEAL NO.1626 OF 2019**

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| <p>1 Sunita Rajeshsingh Rajput, aged 32 years,
Occup.Household,</p> <p>2 Sahil Rajeshsingh Rajput, aged 10 years,
occup.Nil, Minor through next friend
mother i.e. Appellants no.1.</p> <p>3 Babrusingh Laxmansingh Rajput, aged 70
years, occup.Nil.</p> <p>4 Sau.Durgabai Babrusingh Rajput, aged
about 65 years, Occup.Nil, All R/o
Nimbari, tq.Malkapur, Distt.Buldana</p> | <p><u>APPELLANTS:</u>
(Ori.Non applicant
NO.1 on R.A.</p> |
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-Versus-

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| <p>1. Rajendra Mahadeorao Kolambe,
R/o Plot No.51, Adiwasi Layout, Suraksha
Nagar, Dattawadi, Nagpur.</p> <p>2. National Insurance Company Ltd., D.O.4,
No.40,Balraj Dhantoli, Nagpur 440012.</p> | <p><u>RESPONDENTS</u></p> |
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Mr.A.P.Chaware, Advocate for Appellants.

Mr.V.P.Maldhure, Advocate for Respondent No.2.

CORAM: NEERAJ P. DHOTE, J.

DATED: 16.03.2026.

ORAL JUDGMENT :-

1. This is an Appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, "MV Act"), by the Original Claimants against the Judgment and Award dated 07.07.2017 passed by the learned Motor Accident Claims Tribunal, Buldhana in Claim Petition No.255 of 2012

holding the deceased 50% responsible for the Motor Vehicular Accident.

2. Deceased Rajeshsingh was the husband of the Appellant No.1, father of the Appellant No.2 and son of Appellant Nos.3 and 4. The deceased was driving the motorcycle on 25.11.2011 from Bodwad to Malkapur road. The deceased was going towards Malkapur from Harankhed. Eicher D.C.M Truck which was owned by the Respondent No.1 and insured with Respondent No.2, Insurance company was coming from the opposite direction. The Accident occurred due to head-on collision between the motorcycle and the said Eicher D.C.M Truck. The accident was reported to the Police Station and Crime case to be registered against the driver of the said Eicher D.C.M Truck.

3. The Appellants approached the Learned Tribunal with the above referred Claim Petition. In support of their Claim Petition, the Appellants brought on record the police papers. No evidence was led by the Respondents. On the basis of the police papers, particularly, the spot panchnama, learned Tribunal came to the conclusion that, it was the accident out of 50% contributory negligence on the part of the deceased and the driver of the Eicher D.C.M Truck.

4. It is submitted by the learned Advocate for the Appellants that, no eye witness was examined in respect of the said accident. The offence

was registered against the Eicher D.C.M Truck and therefore, the learned Tribunal committed error in holding that, it was the case of contributory negligence. In support of his submissions, he relied on the decision in the Case of *Jiju Kuruvila and ors. Vs. Kunjuamma Mohan and ors. (with other connected matters) reported in (2013) 9 SCC 166*, wherein there was no evidence on record to suggest any negligence on the part of the deceased. The Ext. B-2 “scene Mahazar” also did not suggest any rash and negligent driving on the part of the deceased. It was observed that, in absence of direct or corroborative evidence, the Court cannot give any specific findings about the negligence on the part of an individual.

5. It is submitted by the learned Advocate for the Insurance Company, Respondent No.2 that, in absence of any evidence of the eye witness, the learned Tribunal has rightly considered, the spot panchnama and held that, it was the case of 50% contributory negligence. He submits that, the spot of accident was the straight road and the break marks of the Eicher D.C.M Truck shows that, the driver tried to avoid the accident. He submits that, no interference was called for in the impugned Judgment and Award.

6. Undisputedly, in the case at hand, none of the parties have examined the eye witness to the accident. In the aforesaid case relied upon

by the Advocate for the Appellants, there was independent eye witness, who was accompanying the deceased during the journey on the fateful day. In absence of any direct evidence in respect of the Motor Vehicular Accident, the learned Tribunal considered the police papers and particularly the spot panchnama having the sketch of the spot of accident. The learned Tribunal on the principle of '*res ipsa loquitur*' decided the Claim Petition. The spot panchnama, which is the part and parcel of the Police papers on record clearly shows the break marks of the Eicher D.C.M Truck for about Fifteen (15) fts. The sketch on the spot panchnama also shows the break marks of the Eicher D.C.M Truck. The sketch map and the spot panchnama clearly shows that, the spot of the incident was in the middle of the road. From the close reading of the spot panchnama, it appears that, the Truck driver had taken his vehicle towards the left side and the break marks are slightly beyond the half portion of the road. It indicates that, the Eicher D.C.M Truck was being driven slightly from the other half part of the road. The direction of the Eicher D.C.M Truck as shown in the spot panchnama indicates that, had it been on its proper side i.e left side, the accident would have been avoided. At the same time, the sketch map do not show that, the deceased was on his proper side i.e. left side. There is the observation by the learned Tribunal that, the Eicher

D.C.M Truck was in the high speed. From this material on record, the contributory negligence of the driver of the Eicher D.C.M Truck would be 75%. This is the reasonable and possible inference which flows from the spot panchnama. Thus, the impugned judgment and Award needs modification. Hence the following order is passed.

ORDER

- i) The Appeal is partly allowed with no order as to costs.
- ii) The observation by the learned Tribunal in respect of the contributory negligence is modified from 50% to 75% and 25% between the driver of the Eicher D.C.M Truck and the deceased respectively.
- iii) The learned Tribunal has quantified the compensation of Rs.14,09,000/-. The Appellants would be entitled for 75% of the said amount with consequential interest as directed by the learned Tribunal.
- iv) The enhanced amount be deposited by the Insurance Company within a period of eight (8) weeks in this Court.
- v) The Judgment and Award stands modified accordingly.
- vi) The R and P be sent back to the learned Reference Court. The Appeal stands disposed of.

(NEERAJ P. DHOTE, J.)