IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1750 OF 2017

. The New India Assurance Co. Ltd.,
D.O.No.1, Adalat Road, Aurangabad,
Through its Authorized Signatory,
Ravikant Rajendra Yadav,
Age: 26 years, Occu.: Service,
R/o.Aurangabad. ….Appellant
(Orig.Resp.No.1)

Versus

1) Kum.Deepika Rishikesh More
Age: 28 years, Occu.: Education,
R/o.Central Bank Colony, Sut-Girni Road,
Shrirampur, Tq.Shrirampur,
District Ahmednagar. ….Respondent
(Orig. Claimant)

2) Narayan Gahinath Ghule
Age: 45 years, Occu.: Driver,
R/o. : Infront R.T.O. Office,
Karna Nagar, Peth Road,
Panchavati, Nashik. …..Respondent
(Orig.Resp.No.2)

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Advocate for Appellant : Mr. M.M. Ambhore
Advocate for Respondent no.1 : Mr.Tushar Shinde h/f.
Mr.Chandrakant K. Shinde
Advocate for Respondent No.2 : Mr. Pawan K. Ippar

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 16 JUNE, 2026
PRONOUNCED ON : 18 JUNE, 2026

JUDGMENT :-

1. Insurance Company (original respondent no.1) hereby challenges judgment and award dated 31-10-2015 passed in MACP No.354 of 2009 which was an injury claim instituted by claimant in the backdrop of suffering road traffic accident on 18-05-2009.

2. Above numbered MACP was instituted by respondent no.1 herein (original claimant) by invoking Section 166 of the Motor Vehicles Act, on premise that on 18-05-2009, while she was returning from Nashik, after attending marriage ceremony, in a Maruti Alto Car bearing No.MH-17 Q-1432, in the vicinity of village Dodi Bk., Tq.Sinnar, said Car was given dash by Truck bearing No.MH-15 AG-3487 coming from opposite direction causing grievous injuries to the claimant resulting into permanent disability to her right eye and therefore, she filed above claim petition under various heads, against original respondent no.1 insurer of the vehicle and original respondent no.2, driver of the truck.

After appreciating oral and documentary evidence adduced by the parties, the learned Tribunal by judgment and order dated 31-10-2015 allowed her claim petition directing respondent nos.1 and 2 to jointly and severally pay Rs.9,20,000/- under distinct heads

with interest @ 9% per annum.

Feeling aggrieved by the same, original respondent no.1 (Insurance Company) has preferred instant appeal.

3. Mr.Ambhore, learned counsel for the appellant would point out that, claimant (respondent no.1 herein) was a student studying in 11th Standard. That, there was no question of she earning independently, however, learned Tribunal has considered her notional income to the tune of Rs.5,000/- which in his consideration is excess. According to him, learned Tribunal, at the most, ought to have considered Rs.3,000/- as notional income prevailing at that time.

4. He further pointed out that, learned Tribunal failed to consider and appreciate evidence adduced by the driver of the Truck wherein it has come that Car driver was rather rash and negligent and responsible for the said accident. That, learned Tribunal, in its entire judgment, has failed to discuss evidence of driver of Truck and for said reason also he seeks indulgence of this Court in appeal. According to him, there is 50% contributory negligence on the part of Car driver also.

5. Inviting attention of this Court to the impugned judgment, he

submitted that, learned Tribunal also erred in considering 50% amount of income as future prospects as according to him, only 40% of income ought to have been considered towards future prospects.

For all above reasons, he prays to allow the appeal by setting aside impugned judgment and award.

6. In answer to above, learned counsel for respondent no.1 (original claimant) would submit that, there is no dispute that claimant was a student. However, he submits that, she had suffered severe injuries including injury to the right eye which resulted in permanent loss of vision. He pointed out that, there is a witness, who issued permanent disability certificate Exh.60 and therefore, learned Tribunal has rightly considered the same.

7. As regards to grant of notional income to the tune of Rs.5,000/- is concerned, it is his submission that same is also meager as in cases of similar nature, Hon'ble Apex Court has considered grant of notional income to the tune of Rs.10,000/-. The same having not been considered by learned Tribunal, he prays for enhancement of compensation by considering above notional income.

8. As regards to submission of learned counsel for appellant on

the point of contributory negligence of car driver also, according to him, merely because there was head on collision between two vehicles, it is no good ground to draw inference that there was contributory negligence on the part of Car driver also. He would emphasize that claimant was travelling in the Car as a passenger and she was not responsible for driving and therefore, there was no question of contributory negligence. In support of such contention, he seeks reliance on the judgment of the Hon'ble apex court in the case of ***Sushma v. Nitin Ganpati Rangole and Others****, 2024 INS 706*.

9. Heard. Perused the record.

10. Above numbered claim petition was instituted by present respondent no.1, who admittedly in the title clause itself declared her occupation as a "student". After the accident, claimant claims to be treated at Saswade Eye Clinic, Aurangabad as well as at L.V. Prasad Eye Institute at Hyderabad i.e. on account of injury to right eye and she is unable to see with the said eye. She has examined Dr.Parag Namdeo Tupe at exh.41, who has issued permanent disability certificate exh.60 and therefore, there is indeed evidence to show that claimant suffered permanent disability to right eye.

11. In claim petition, notional income was ascertained as Rs.10,000/- for computation of compensation, but learned Tribunal has considered the same as Rs.5,000/-. According to learned counsel for respondent no.1 (claimant), Rs.10,000/- ought to have been considered as notional income by the learned Tribunal. Going by the averments in petition, claimant has merely stated that she was studying in 11th standard. In paragraph no.3 of the cross-examination, the claimant has admitted that she has completed her graduation in B.A. Therefore, taking into account the educational qualification of the injured, this Court is of the opinion that, the learned Tribunal has correctly considered notional income of injured as Rs.5,000/- per month.

12. With regard to contention of the learned counsel for appellant that 50% negligence ought to have been considered on the part of the driver of the Car, learned counsel for respondent no.1 (Claimant) has rightly relied on the Judgment of the Hon'ble Apex Court in the case of ***Sushma*** (supra) and submits that, injured was a passenger in the Car and negligence on the part of driver of the Car cannot be vicariously attached to the passenger of the vehicle.

In the case of ***Sushma*** (supra), in paragraph 19, the Hon'ble

Apex Court has observed that "*contributory negligence on the part of a driver of the vehicle involved in the accident cannot be vicariously attached to the passengers so as to reduce the compensation awarded to the passengers or their legal heirs as the case may be*."

Therefore, this Court is of the view that, as injured was travelling as a passenger in the Car, negligence on the part of Car driver, cannot be vicariously attached to her.

13. So far as submission of learned counsel for the appellant that the learned Tribunal has considered 50% amount towards future prospects is concerned, as at the time of incident, the injured was a student and due to accident, she has lost vision of her right eye, this Court is of the opinion that the learned trial Court has correctly considered 50% amount of income towards future prospects.

14. Perused the judgment under challenge. The learned Tribunal has correctly appreciated available evidence. There is no illegality or infirmity in the said judgment, therefore, there is no need to interfere in the same. There being no merits in the appeal, the same deserves to be dismissed. Accordingly, following order is passed :

ORDER

(I) First Appeal stands dismissed.

(II) Original Claimant is permitted to withdraw the amount lying in this Court, if any, alongwith interest accrued thereon.

(ABHAY S. WAGHWASE)
JUDGE

SPT