

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.303 OF 2001

1. Smita Bhikan Patil	}	
2. Mayur Bhikan Patil	}	
3. Pratibha Bhikan Patil	}	
Appellant Nos.2 and 3 minor by their	}	
guardian Appellant No.1.	}	
All R/at Upasadan Station Road, Dhule	}	
	}	...Appellant

Versus

1. Jankiran Balu Tak	}	
R/at Theatre Road, Satish Bakery, Yeola,	}	
District-Nashik	}	

2. Balu Bhimasa Tak (Since deceased Thr.	}	
Legal Heirs and Representative 2(a) to 2(c)	}	
	}	

2(a) Smt. Anjanabai Baburao Tak	}	
Died on 15.05.2000	}	

2(b) Shri.Jankiram Baburao Tak	}	
R/at Theate Road, Yeola, District-Nashik	}	
	}	

2(c) Smt.Lata Rahul Bagde	}	
R/at Mahadeo Complex, Ahmednagar,	}	
District-Ahmednagar	}	

2(d) Shri.Prakash Baburao Tak	}	
(Since Deceased Thr. Legal Heirs)	}	

2(d)(i) Sau.Renuka Sidhartha Alkule }
 R/at A-9-11, S.K.F. Housing Society, }
 Opp. Kamji Hotel, Chinchwad, }
 Pune-411 003. }

2(d)(ii) Kumari Soali Prakash Tak }
 R/at Theatre Road, Yeola, District-Nashik }

2(d)(iii) Kumari Bhagyashri Prakash Tak }
 R/at Theatre Road, Yeola, District-Nashik }

2(d)(iv) Kumari Dhanashri Prakash Tak }
 R/at Theatre Road, Yeola, District-Nashik }

2(e) Mangala Raju Sagle }
 R/at Nimgaon Railway Station, District- }
 Nanded }

2(f) Shri.Sunil Atul Bidkar }
 R/at Sahayog Colony, At and Post Beed, }
 District-Beed. }

3. National Insurance Company }
 3, Modilal Street, Calcutta-700 071. }

...Respondent

Mr.D.S. Mhaispurkar a/w H.S. Pawaskar and S.M. Mangaankar,
 for the Appellant.

Ms.Rukmini Khairnar i/b Mr.Pramod N. Joshi, for Respondent
 Nos.2(b), 2(d)(ii), 2(d)(iii), 2(d)(iv), 2(f).

Ms.Poonam Mital, for Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4 MAY 2023

JUDGMENT :-

. This Appeal is preferred by Appellants-Claimants against dismissal of Claim Petition.

2. It is contention of learned counsel for the Appellant that accident occurred due to sole negligence of the driver of truck i.e. Respondent No.2. But Tribunal has not considered this fact and the Tribunal has held that accident occurred due to negligence of deceased. The learned counsel further submits that when accident occurred at that time, the truck was stationed in the middle of the road near the white strip. The accident occurred at 12.00 a.m. midnight. No indicators or parking light of the said truck were on, no reflectors were there and this fact is mentioned in the spot panchnamma, but Tribunal has not considered it, which is erroneous.

3. The learned counsel further submits that deceased was running petrol pump and had agricultural land. He was earning Rs.1 lakhs per year and he was also getting Rs.50,000/- per annum as income from agricultural land. But Tribunal has not considered this fact and on surmises and conjectures held that the accident occurred due to negligence of the deceased and dismissed the Claim Petition which is erroneous, hence, requested to allow the Appeal.

4. It is contention of the learned counsel for Respondent Nos.1 and 2 that deceased gave dash to the truck from back side, which was stopped on road due to traffic jam. The Tribunal has correctly held that the accident occurred due to negligence of deceased. After the accident Respondent No.2 immediately went to the Malegaon Police Station and filed a complaint against the deceased, for rash and negligent driving. The Police investigated the complaint and recorded statements of witnesses and also conducted spot panchnamma. From the statement's of witnesses Kamal Kha Pathan and Bapuji Chintaman Sonvane, it reveals that accident occurred due to mistake of deceased.

5. The learned counsel further submits that the witnesses examined by the Claimants before the Tribunal were not eye witnesses. They did not see incident of accident. The accident occurred when the said road was blocked and many trucks were stopped on road due to blockage. When Respondent No.2 stopped his truck due to traffic jam, immediately car of the deceased dashed to the backside of the said truck. When accident occurred, at that time, engine of the truck was on. Hence, the brake lights of truck were on. In spot panchnamma, there is overwriting regarding absence of parking light and reflectors and these sentences are inserted after thought in spot panchnama and the Tribunal has dealt with it in the judgment. The learned

counsel further submits that the Tribunal has considered all the aspects while dismissing the Claim Petition. No interference is required in it.

6. It is contention of learned counsel for Respondent No.3-Insurance Company that Insurance Company is liable to pay compensation of Rs.1,50,000/-, as the premium was paid of that amount only.

7. I have heard all learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Nashik (for short 'The Tribunal').

8. While dealing with the issue of negligence the Tribunal has observed that the driver of the Maruti car brought his vehicle in a high speed from the backside. He could not have considered traffic on the road and though there was blockage of truck, he tried to overtake the truck and took his vehicle ahead but he must have seen the coming vehicle and therefore, he might have tried to take his vehicle in a row, but as he was in high speed he might have dashed driver side of the truck. No negligence can be attributed on the part of the driver of the truck and deceased himself caused the accident.

9. I am unable to understand the observations made by

the Tribunal about negligence of deceased as admittedly, the said truck was stationed on the middle of the road. It has come on record that the truck was stationed near the dividing line of the road and there was kachha road on the left side of the road but Respondent No.2 did not station his truck on kachha road. He stopped his truck near the dividing line, if other vehicle was to go ahead, then that vehicle had to overtake the stationary truck of Respondent No.2. The other side of the dividing line was for the vehicle which are coming from opposite direction. It is contention of learned counsel for the Respondent Nos.1 and 2 that truck was stationed on left side of the road. I do not agree with this contention, as record shows said truck was stationed on road near dividing line. There was kacha road adjacent to main road, but said truck was not stationed on kacha road. It is contention of learned counsel for Respondent Nos.1 and 2 that said truck had stopped behind other trucks which were already stopped. In my view, though other trucks were stopped on road, it does not mean that Respondent No.2 can stop his vehicle negligently on middle of road, when there was kacha road adjacent to main road. It proves that said truck was negligently stationed on middle of the road.

10. Now question remains who was negligent for said accident, deceased or Respondent No.2 (driver of the said truck). It is contention of learned counsel for Respondent Nos.1 and 2

that due to traffic jam other trucks were stopped on the road hence Respondent No.2 stopped his truck behind them.

11. In my view, when Respondent No.2 was aware that there was traffic jam he could have stopped his truck on the kaccha road, but it was not done and it was stopped in the middle of road.

12. To prove their case, the Claimants have examined PW-2 Bapuji Sonavane at Exhibit-58. This witness has stated that he was driving truck on 3 January 1988, and coming from Dhule to Bombay, by Agra Road. On Agra Road near Sainegaon, there is petrol pump owned by Shri.Kalantri. The truck No.MHQ-6083 was standing on wrong side facing Malegaon. Some trucks were also parked to the left side of the road near Kalantri Petrol Pump. There were no lights to the said truck. There were no lights or reflectors to the said truck. He saw Maruti car dashed to the said truck from the rear side. The stepney which is to be fitted into the rear bracket is always protruding outside. Had it been there, accident to such an extent to the car would not have occurred.

13. In cross examination, this witness stated that the said truck and the car were facing in the same direction. This witness admitted that he was serving with the deceased one and half years

to two years prior to the accident. When this witnesses reached to the spot, accident had already taken place.

14. To prove the negligence of Respondent No.2, the Claimants have examined PW-3 Balaram Radhakisan Sharma, Panch of spot panchnamma at Exhibit-61. He has stated that on 3rd January 1988, Malegaon Taluka police had called him to act as a panch at Sayane on Agra Road. Another panch Rajaram was also present there. The total width of pakka road is 24' feet with a kachha road of 8' feet on either side. There are white strips dividing the pakka road. The truck No.MHQ-6083 was standing on the right side of white dividing line and on left side, there is a Kalantri Petrol Pump. The said truck was standing on the wrong side of the road. Both wheels of said truck of cleaner side were on dividing white line. There were no parking lights on. There were no reflectors. There was bracket without any stepney. Maruti Car bearing No.DDC-1665 was still in a standing position, three feet behind the truck. He admits the contents of the panchnamma at Exhibit-62. In cross-examination this witness denied the suggestion that the said truck was the last truck in a row of other trucks.

15. It is contention of learned counsel for Respondent Nos.1 and 2 that accident occurred due to negligence of deceased. To prove the defence, the Respondent No.2 examined himself at

Exhibit-72. He has stated that on the day of accident i.e. on 3rd January 1988 at about 12.00 a.m. in midnight near Malegaon at Petrol Pump of Mr.Kalantri, the road was blocked particularly left side of the road was blocked by which this witness was going to Nashik. About 7 to 8 vehicles were standing because of blockage of the road just behind each other. This witness was not aware of the reason for blockage. This witness stopped his vehicle taking it to the left side behind the vehicle which was already standing on the left side of the road. When truck of this witness was stationed, just within five minutes, one vehicle came from the back side and dashed against his truck. This witness got down from truck to see what had happened. He found that one Maruti car had dashed his truck. It was in oblique condition. It's front portion was near the truck and back portion was on the middle of the road. This witness went to the Police Station at Malegaon and lodged complaint. This witness further stated that the accident took place due to the negligence of the driver of the Maruti car. At the time of the accident, the truck was having a tail lamps, parking lights, reflectors on. When this witness stopped the truck, all lights of the back side of truck were on.

16. In cross-examination, this witness admitted that he had stopped the truck just before 5 to 10 minutes of the accident. From the evidence of driver of said truck, DW-1 it reveals that, he had stopped his truck due to blockage of the traffic and after

stationing the truck, the accident occurred within 5 to 10 minutes. This witness has further stated that the engine of the truck was on when accident occurred.

17. In my view, when driver of the truck himself admits that accident occurred after 5 to 10 minutes of stopping his truck on road behind other truck, there was blockage due to traffic jam, it is hard to believe that after 5 to 10 minutes of stopping of truck the engine of his truck was in on condition. By seeing traffic jam, this witness must have turned off the engine of the said truck. Moreover, though this witness states that parking light, reflector and brake lights of the said truck were on but his statement is falsified by the contents of spot panchnama.

18. The spot panchnama is at Exhibit-62. In this panchnama it is mentioned that there were no parking lights, no tail lamps or reflectors on the said truck. This fact is proved by the evidence of PW-3 panch witness Balaram Sharma who has stated that there were no parking lights or reflectors to the said truck.

19. It is contention of learned counsel for Respondent Nos.1 and 2 that, the lines sentence regarding not having reflectors and parking lights to the truck were inserted later on in the spot panchanama, in my view, spot panchmma was prepared

in presence of two panchas immediately after the accident. Only two panchas and investigating officer can be told about insertion of lines/sentences in spot panchnamma or not. PW-3-Panch witness in his cross-examination specifically stated that there was no erasers and insertion in between the lines in the spot panchnamma. Moreover, Respondent Nos.1 and 2 could have examined Investigating Officer to prove the insertion of sentences in spot panchnamma or they could have filed the complaint against the Investigating Officer about insertion of two lines/sentences before the appropriate authority or could have filed application before the Tribunal but it was not done. Moreover, the spot panchnamma was prepared immediately after accident. The panchas are independent witnesses. The investigating officer has no reason to insert the line/sentences in spot panchnamma. Hence, I do not see merit in contention of learned counsel for Respondent Nos.1 and 2 that two sentences regarding not having parking lights and reflectors to the said truck were inserted later on in the spot panchnama.

20. From the evidence on record, it reveals that the said truck was stationed in middle of the road near white line when there was space on kaccha road. Moreover, there were no tail lamps, parking lights and reflectors to the said truck. The engine of said truck was not on. It was midnight i.e. 12.00 a.m, the deceased could not have imagined that the truck was stationed in

the middle of the road as there were no signs of stationing of the truck i.e. parking light, reflectors and brake lights. Considering the evidence on record, I hold that there was 60% negligence of Respondent No.2 i.e. truck driver and 40% negligence of deceased, as vehicle of deceased was in high speed, he could not control speed of his car immediately before dashing to the truck.

21. To prove the income of deceased, the Claimants examined Claimant No.1 Smita Patil wife of deceased at Exhibit-36. She has stated that her husband was running petrol pump. She further stated that her husband owned 13 to 14 acres of land at Shridhane Village and her husband was looking after the agriculture land. He was paying Income Tax to the extent of Rs.10,000/-. Noting elicited in cross-examination of this witness.

22. The Tribunal while dealing with the issue of income of deceased has considered yearly income of deceased at Rs.58,179/-. I am considering the same income. The Tribunal has deducted 40% loss from this income as wife of deceased stated in her evidence that she has suffered loss in income due to death of her husband. In my view, the said loss was after death of deceased, but before death of deceased it was income. Hence, I am considering 40% loss as income of deceased. The deceased owned 13 to 14 acres land. The Tribunal has considered Rs.6,000/- per annum as agricultural income of deceased. I am

considering the same. As per view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd V/s. Nanu Ram¹***, each Claimants is entitled for Rs.40,000/- consortium amount with 10% increase and Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate with 10% increase.

23. In view of the above calculations, the Claimants are entitled for following calculation.

Actual Income (Minus Tax paid - Rs. 2,098/- Future Prospects @ 40% Rs.56,081/- Agricultural income (as held by MACT)	Rs.58,179/- Rs.22,432/- Rs.6,000/- -----	
Total income	Rs.86,611/-	
Less 1/4th for personal expenses	Rs.21,653/-	
Net Income	Rs.64,958/-	
Since age was 33 years multiplier of 16	Rs.64,958/-x16	Rs.10,39,328/-
Add funeral expenses Loss of Estate Loss of consortium @ 40,000/- per Claimant @ 10% Add : 10%	Rs.16,500/- Rs.16,500/- Rs.1,32,000/-	
Total		Rs.1,65,000/-
Total Compensation Payable		Rs.12,04,328/-
Deduction towards 40% contributory negligence of deceased		Rs.4,81,731/-
		----- Rs.7,22,597/- =====

The Claimants are entitled for Rs.7,22,597/-. Out of this amount, Insurance Company is liable to pay Rs.1,50,000/- as

1 2018 ACJ 2782 (SC)

premium of this amount was paid. The Respondent Nos.1 and 2 are liable to pay amount of Rs.5,72,597/-.

24. In view of above, I pass following order.

ORDER

- (i) The Appeal is allowed.
- (ii) The Claimants are entitled for compensation of Rs.7,22,597/- @ 7.5% per annum from the filing of the Claim Petition. Out of this amount Respondent Nos.1 and 2 shall pay an amount of Rs.5,72,597/- @ 7.5 per annum from the filing of the Claim Petition, till realization of amount to the Claimants.
- (iii) The Respondent No.3 shall pay the amount of Rs.1,50,000/- @ 7.5% per annum from the date of filing Claim Petition till realization of amount to the Claimants.
- (iv) The Respondents shall deposit the compensation amount of their share along with interest thereon within eight weeks after receipt of the order.
- (v) The Claimants are permitted to withdraw the deposited amount.
- (vi) All pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)