

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

FIRST APPEAL NO. 1195 OF 2013

SHANTANU
SHANKARSA
DHUDUM

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|------------------------------------|---|
| 1. Shakuntala Hindurao Kumbhar |) |
| Aged: 40 years, Occ: Housewife |) |
| 2. Swati Hindurao Kumbhar |) |
| Aged: 21 years, Occ: Housewife |) |
| 3. Sheetal Hindurao Kumbhar |) |
| Aged: 19 years, Occ: Housewife |) |
| 4. Shubham Hindurao Kumbhar |) |
| Aged: 19 years, Occ: Housewife |) |
| 5. Harshvardhan Hindurao Kumbhar |) |
| Aged: 08 years, Occ: Housewife |) |
| 5. Rajvardhan Hindurao Kumbhar |) |
| Aged: 08 years, Occ: Housewife |) |
| Appellant No.1 is natural guardian |) |
| of Appellant Nos. 4 to 6. |) |
| All resident of Plot No.B/2-1, |) |
| Pandurang Nagari, Devkar Panand, |) |
| Kolhapur. |) |

....Appellants
(Orig.Claimants)

Versus

- | | |
|-------------------------------------|---|
| 1. Vilas Balkrushna Ubare |) |
| Aged: 50 years, Occ: Business |) |
| R/o. 258, Bhagyarekha, R. K. Nagar, |) |
| At Post. Morewadi, Tal: Karveer |) |
| Dist. Kolhapur. |) |

2. Cholemandal M. S. General Insurance)
Company Limited)
1446, 13/C, Ward, 5th Floor,)
Empire Tower, Opp. Titan Showroom)
Dasara Chowk, Kolhapur.)

....Respondents
(Org. Respondents)

Mr. Jayant j. bARDESKAR, Advocate for the Appellant.
Mr. Rajesh Kanojia, Advocate for the Respondent Nos. 1 & 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 29th JANUARY, 2024.

Oral Judgment. :

1. The issues involved in this appeal are contributory negligence of 50% fixed on the deceased and consortium amount awarded on lower side.

2. It is contention of learned counsel for the Appellants/Claimants that accident occurred due to sole negligence of the driver of offending Santro Car but this fact is not considered by the Tribunal and has fixed 50% contributory negligence on the deceased, which is

erroneous. Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent No.2/Insurance Company that it has come on record that deceased was riding on motorcycle and while over taking tractor trolly, the deceased gave dash to the Santro Car. There was no negligence of the driver of Santro Car but, Tribunal has fixed 50% liability on Santro car. Learned counsel further submitted that accident occurred due to sole negligence of the deceased. The order passed by the Tribunal is legal and valid and no interference is required in it.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Kolhapur (for short "the Tribunal").

5. It is claimant's case that on 8th February, 2009 deceased Hindurao Kumbhar was riding on his motorcycle

registration No. MH-09-BG-5066 from village Talve to Kolhapur, at that time one tractor trolly was proceeding ahead of his motorcycle, he tried to over take the said tractor by giving proper indicator. When, he was proceedings ahead, the Santro Car which was coming from opposite direction came in excessive and high speed and it was being driven rashly and negligently by the driver of the car and gave dash to the motorcycle of the deceased. The said car dragged motorcycle of the deceased for few distance and ran away. Due to dash the deceased sustained injuries and died on the spot. The offence was registered against the driver of Santro Car.

6. To prove the defense, the driver of Santro Car Tushar Ubare examine himself at Exhibit-63, he has stated that on the day of accident, he was driving the said car in moderate speed on Ratnagiri - Kolhapur road. At the relevant time, one person riding on motorcycle suddenly came from backside of tractor trolly and gave dash to his car. By giving dash the said motorcycle rider fell on ground. Due to fear of people he ran away from the accident place.

To prove the negligence of car driver, the claimants have examined Baburao Chaughule eye witness to the incident, he has stated that he saw the accident. At the relevant time, he was going on the said road, he saw that one motorcycle tried to over take the tractor trolley at that time one Santro Car came from opposite direction in rash and negligently manner and gave dash to the motorcycle of the deceased and dragged him for some distance and then ran away. He has stated that accident occurred due to negligence of the car driver. Nothing elicited in the cross-examination of this witness to disbelieve his evidence.

7. While dealing with the issue of negligence, the Tribunal has considered that there was 50% negligence of the car driver and 50% negligence of the deceased in the said accident. I am unable to understand the observations of the Tribunal regarding 50% negligence of the deceased as, the eye witness Baburao Chaughule, who is independent witness, who has seen the accident, has stated that accident occurred due to sole negligence of the driver of

offending car. Moreover, it has come on record that offending car dragged the deceased for some distance. It shows that the offending car was in high and excessive speed and the driver of offending car could not control his car immediately. The spot panchanama shows that there were brake mark of the Santro Car of 10 feet but, this fact is not considered by the Tribunal.

8. Considering the evidence on record, I hold that there was negligence of 75% of the driver of offending car and 25% of the deceased instead of 50% as held by the Tribunal. While awarding the compensation, the Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for Rs.48,000/- for consortium amount and Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

9. Considering the above calculations, the claimants are entitled for following compensation.

Monthly Income	Rs.5993/-
Annual Income Rs.5993/- X 12	Rs.71,916/-
Yearly income of LIC	Rs.32,070/-
Yearly income from agriculture	Rs.20,000/-
Total Yearly Income	Rs.1,23,986/-
Add: 10% future prospects	Rs.12,398/-
Total	Rs.1,36,384/-
1/3 deduction	Rs.34,096/-
Total Income	Rs.1,02,288/-
Multiplier Rs.1,02,288/- X 11	Rs.11,25,168/-
Deduction of amount received from LIC	Rs.1,00,000/-
Total	Rs.10,25,168/-
Consortium Rs.48,000/- X 6 (claimants)	Rs.2,88,000/-
Funeral Expenses	Rs.18,000/-
Loss of estate	Rs.18,000/-
Total	Rs.13,49,168/-
Deduction 25% negligence of deceased	Rs.3,37,292/-
Total Compensation	Rs.10,11,876/-
Less awarded by the Tribunal	Rs.5,77,239/-
Enhanced amount	Rs.4,34,637/-

10. In view of above, I pass following order;

ORDER

- i. Appeal is allowed.
- ii. The claimants are entitled for enhanced amount of Rs.4,34,637 @ 7.5% per annum from date of filing claim petition till realisation of the amount, out of this amount Rs.3,24,000/- is consortium amount. The claimants are entitled @ 7.5%

interest on this amount from 1st November, 2017, till realisation of the amount.

- iii. The Respondent No.2/Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within six weeks after receipt of the order.
- iv. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

- 11. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)