

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 387 OF 2005

1. Zilla Parishad, Beed.
Through Chief Executive
Officer, Beed.
2. Executive Engineer
Rural Water Supply,
Zilla Parishad, Beed.
3. The Deputy Engineer
Mechanical, Geological Survey
and Development Authority,
Nagar Road, Beed.

Appellants.

Versus

1. Latabai w/o Shivaji Kadam
Age : 27 yrs, occu.: household
R/o Saundana, Taluka Patoda
District Beed.
2. Shubhangi d/o Shivaji Kadam
Age : 2 yrs, occu.: nil
Under guardianship of mother
i.e. respondent No.1 Latabai
3. Anusayabai w/o Ramdas Kadam
Age : major, occu.: household
R/o Saundana, Taluka Patoda,
District Beed.
4. Narayan s/o Gopinath Avhad
Age : major, occu.: truck driver
R/o Namdeonagar, Near new
Shivaji Vidyalaya, Beed.
5. Ramdas s/o Deorao Kadam
Age : 50 yrs, occu.: agri.,
R/o Saundana, Taluka Patoda,
District Beed.

6. National Insurance Co. Ltd.
Through Divisional Manager,
Hajari Chambers, Station Road,
Aurangabad.

Respondents.

Mr. K.B. Jadhvar, Advocate for the appellants.
Mr. M.S. Shaikh, Advocate holding for
Mr. S.S. Deshmukh, Advocate for respondent Nos.1 to 3.
Mr. M.M. Patil (Beedkar), Advocate for respondent No.4.
Mr. R.C. Bora, Advocate holding for
Mr. P.P.Bafna, Advocate for respondent No.6.

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 17th October 2018.

Judgment pronounced on : 24th October 2018.

JUDGMENT.

1. This appeal is directed against judgment and award passed by Motor Accident Claims Tribunal, Aurangabad (hereinafter referred to as "Tribunal") in Motor Accident Claim Petition No.141/2002 where compensation of Rs. 4,00,000/- (Rupees Four Lakh) was awarded with interest at the rate of Rs.9% per annum from the date of filing of petition till realization of compensation amount.

2. Appellant No.1 is Zilla Parishad, Beed, appellant No.2 is the Executive Engineer, Rural Water Supply, Zilla

Parishad, Beed and appellant No.3 is the Deputy Engineer, Mechanical, Geological Survey and Development Authority, Beed. Respondent Nos.1 to 3 are the original claimants, respondent No.4 is the driver of offending truck bearing registration No. MHQ-1549 who was in service of appellant No.1 – Zilla Parishad. Respondent No.5 is the owner of motorcycle involved in the accident and respondent No.6 is the Insurance Company of the motorcycle.

3. Shorn off unnecessary details, the facts leading to institution of this appeal by original respondent Nos.1 to 3 are that on 21.03.2002 at about 9.00 to 9.30 p.m. deceased Shivaji Ramdas Kadam (hereinafter referred to as “deceased”) was driving his motorcycle bearing registration No. MH-23-C-8949 towards his residence at village Saundana, by Keij to Manjarsumba road. When he reached to Nandur Ghat, that time offending truck was parked on tar road on left portion of the tar road, without keeping indicators or parking blinkers on. At that relevant time, even the electricity of that area was disconnected for some unknown reasons and there was darkness on the road. The deceased could not locate the truck parked on the tar road

and dashed against it from its rear cleaner's side and died on the spot due to accidental head injuries. Therefore, motor accident claim petition came to be filed by the original claimants.

4. Hereinafter for clarity and to avoid confusion the parties are referred to as per their status in the original claim.

5. Respondent Nos.1 to 3 resisted the claim petition and admitted occurrence of the accident and involvement of offending truck and motorcycle of the deceased in the above-said motor vehicular accident as well as accidental death of deceased. These respondents took all possible pleas and denied their liability to pay compensation. It is alleged by these respondents that due to rash and negligent driving of the motorcycle by deceased, the above-said accident took place.

6. Even respondent No.4 resisted the claim petition and denied his rash and negligent act.

7. After considering the evidence placed on record by respective parties, the Tribunal passed above-said order and exonerated respondent Nos.5 and 6. However, the joint and several liability to pay compensation of Rs. 4,00,000/- was saddled on respondent Nos.1 to 4.

8. Heard Mr. Jadhavar, learned Counsel for the appellants and Mr. M.S. Shaikh, learned Counsel for the original claimant (respondent Nos.1 to 3). Mr. M.M. Patil, the learned Counsel represented driver of the offending truck and Mr. R.C. Bora argued as a Counsel for respondent No.6.

9. Learned Counsel for the appellants submits that at the time of accident respondent No. 4 driver had gone to his residence for dinner for a short period, and therefore, the truck was parked on the left side of the road and it was in stationary condition at the time of accident. His submission is that due to rash and negligent driving by the deceased his motorcycle collided against the stationary truck from cleaner side, which indicates his rash and negligent driving. He submits that the indicators and parking blinkers were on at the time of accident, and therefore, liability cannot be saddled on respondent Nos.1 to 4.

10. In reply, learned Counsel for the original claimants submits that two eye witnesses have categorically stated before the Court regarding parking of truck on the tar road and disruption of electricity in the area at the relevant time of the

accident. He submits that the truck was left in stationary condition without keeping its parking blinkers or indicators on and without keeping the cleaner of the truck present to watch safety of the truck. Therefore, only because the deceased collided from the backside of the truck, inference cannot be drawn that the accident occurred due to rash and negligent driving by the deceased.

11. His next submission is that the deceased being owner of more than 4 Acres agricultural land, his notional income cannot be less than Rs. 5,000/- per month. Considering the young age of the deceased at the time of accident, even loss of income due to future prospects should be considered. His next submission is that under conventional heads extremely meager compensation is awarded by the Tribunal, and therefore, though respondent Nos.1 to 3 have not filed cross objection, this Court can determine reasonable and fair compensation and enhance it in accordance with law.

12. Learned Counsel for respondent No.4 – driver of the offending vehicle supports the arguments submitted by learned Counsel for the appellants.

13. Learned Counsel for Insurance Company submits that there was no negligence on the part of motorcycle driver, and therefore, liability was rightly not saddled on the Insurance Company and owner of the motorcycle. In the alternate his submission is that the deceased being borrower of the motorcycle, the policy of insurance does not cover liability of the deceased. He placed reliance on the judgment in the case of **“Ningamma and another Vs. United India Insurance Co. Ltd.” (2009 AIR SCW 4916)**.

14. Occurrence of the accident, when then offending truck was parked on the road and due to dash given by the motorcycle, from its rear side, is an admitted fact. Only the question to be determined is whether the driver of offending truck had taken minimum necessary precautions while parking the truck on the road or by left side of the road. If the driver had taken necessary precautions while parking the truck, then certainly the deceased can be held guilty of negligence, who dashed against the stationary truck from its rear side.

15. To substantiate their contention, claimant Latabai Kadam (PW-1) stepped in witness box. However, from her cross-

examination it becomes clear that she is not an eye witness of the occurrence. Therefore, her testimony is of no help to establish rash and negligent act of the driver of offending truck. However, the claimants have also examined Anurudra Redekar (PW-2) whose residence is at the distance of 50 to 60 ft. from the spot of accident. This witness has categorically stated that on 21.03.2002 at the time of the accident, the electricity provided to that area was disconnected and since evening the truck was parked on left side of the road without keeping on parking lights. According to this witness, the truck was loaded with bore-well machine. He has also made it clear that no red flag was hoisted on the backside of the truck and the accident occurred due to rash and negligent act of the truck driver. He also claimed that he informed the police at Neknoor Police Station about the accident when he reached on the spot after hearing loud noise of accidental impact. He also claimed that he filed complaint to Neknoor Police Station on 22.03.2002 about the accident.

16. The version of Anurudra Redekar (PW-2) is also corroborated by Yakub Pathan (PW-3) whose floor mill is on the southern side of tar road where the accident occurred. He has

also repeated that on the date of the accident at night hours there was no electricity supply in that area and one truck, which was loaded with bore-well machine, was left on the tar road without keeping on the parking lights or indicators. According to this witness, at the time of occurrence he was sitting in the door of his floor mill. From his cross-examination only it has been brought on record that the truck driver (respondent No.4) was his neighbour and at the time of accident the parked truck covered some portion of Kachcha road and tar road.

17. Even Redekar (PW-2) stood constant and successfully faced the cross-examination. From his cross-examination only it has been brought on record that this witness did not mention in his complaint to Police Station regarding disruption of electric supply in that evening and non hoisting of red flag and not keeping the parking lights on by the truck driver. However, these admissions do not affect credibility of this witness, because such minute details need not be mentioned in the complaint application regarding occurrence of the accident. From his cross-examination it becomes clear that the truck was parked on tar road in such a manner that both rear wheels of the truck were on

tar road. In his cross-examination it has been brought on record that the truck was parked on left side, but on tar road and that was not the spot for parking the vehicle. He has made it clear that had the driver parked the truck on Kachcha road, then the accident could not have occurred.

18. Thus, the clinching evidence of these two eye witnesses (PW-2 and PW-3) is definitely sufficient to prove that on the date of accident there was total darkness on the road and truck was parked on tar road on left portion of the tar road without keeping parking blinkers on. Even no cleaner was watching or guarding the parked truck with loaded heavy machinery. Parking of the truck on tar road which is not the place of parking itself amounts to rash and negligent act of respondent No.4, who is the driver of original respondent Nos.1 to 3. So also, not keeping parking lights or parking blinkers on, is certainly rash and negligent act on the part of the driver of offending truck. Therefore, though driver of offending truck namely Narayan Avhad (DW-1) claims that he kept parking lights on and instructed his cleaner to wait near truck, the evidence of two eye witnesses falsifies the contention of driver. Narayan

Avhad (DW-1) has also admitted that the truck was loaded with bore-well machine and he left the truck after parking it, for taking dinner at his residence.

19. It is to be noted that even the evidence of two eye witnesses (PW-2 and PW-3) is corroborated by spot panchnama (Exh.42) with map of the spot of accident, which clearly shows that the offending truck was parked on the tar road and not by the side of the tar road, on Kachcha road. The spot panchnama also indicates that there was only steel angle for indicator. The spot panchnama does not show that indicator light was in broken condition or even was in existence. The spot panchnama does not show the parking blinkers of that truck. Therefore, the spot panchnama supports the version of two eye witnesses regarding parking the truck by its river on tar road, on left portion of the tar road without keeping on indicator light or parking blinkers. This evidence on record is certainly sufficient to hold that the accident occurred only due to rash and negligent act of respondent No.4- driver of the offending vehicle. Driving of motorcycle by deceased by left side of the tar road in darkness is certainly normal course of safe driving, and therefore, the

learned Tribunal rightly exonerated the motorcycle owner and its Insurance Company from all liabilities.

20. My conclusion is that the Tribunal has rightly saddled the entire joint and several liability on respondent Nos.1 to 4, who are owners and driver of the offending truck.

21. Regarding the quantum of compensation, age of the deceased is relevant. The School Leaving Certificate (Exh.48) of the deceased shows that his date of birth was 10.08.1974. The date of accident is 21.03.2002. Thus, on the date of death the deceased was 27 years old. Therefore, in view of the guidelines issued by the Apex Court in the case of **“Sarla Varma & Ors Vs. Delhi Transport Corp. & Anr.”**, (AIR 2009 SC 3104), the multiplier of “17” will be applicable in the case at hand.

22. The record of right (Exh.49) shows that the deceased was owner of one-fourth share in 36.18 Acres agricultural land. The crop statement shows yield of cash crop of cotton, chilly, Soyabean, Udid, etc. Therefore, certainly considering the holdings in possession of deceased and good quality of that agricultural land, his notional monthly income cannot be less than Rs. 6,000/-. In the case of **“Syed Sadiq Vs. Divisional**

Manager, United India Insurance Co. Ltd.” (AIR 2014 SC 840) the Apex Court assessed the notional income of Vegetable Vendor at the rate of Rs. 6,000/- per month. Therefore, considering this ratio, I hold that notional income of the deceased was Rs. 6,000/- per month.

23. Deceased was below the age of 40 years at the time of his death. Therefore, in view of the guidelines issued by the Apex Court in the case of **“National Insurance Co. Ltd. Vs. Pranay Sethi and others” [(2017) 16 SCC 680]**, the deceased being self employed person below the age of 40 years, 40% income should be added in his monthly income. Therefore, considering the loss of future prospects of the deceased and after adding 40% monthly income, the monthly income of the deceased is assessed as Rs.8,400/- (6000 + 2400). Thus, the annual income of the deceased is Rs. 1,00,800/-.

24. In view of the verdict of **“Sarla Varma” (supra)**, one-third income is to be deducted from the annual income of deceased towards his personal expenses as there are three dependents. Therefore, after deducting one-third amount from the annual income of the deceased, the amount for determination

of loss of dependency is assessed as Rs. 67,200/- (1,00,800 – 33,600). After applying multiplier of “17”, the amount towards loss of dependency is calculated as Rs. 11,42,400/- (Rupees Eleven Lakh Forty Two Thousand and Four Hundred).

25. In addition to the above compensation, in view of the verdict of the Apex Court in the case of “Pranay Sethi” (supra), the claimants are entitled to the following compensation under conventional heads:

Loss of consortium	:- Rs. 40,000/-
Loss of estate	:- Rs. 15,000/-
Funeral expenses	:- Rs. 15,000/-

26. Thus, the claimants are entitled to the following compensation under different heads.

Loss of dependency	:-	Rs. 11,42,400/-
Loss of consortium	:-	Rs. 40,000/-
Loss of estate	:-	Rs. 15,000/-
Funeral expenses	:-	Rs. 15,000/-

Total	:-	Rs. 12,12,400/-
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(Rupees Twelve Lakh Twelve Thousand and Four Hundred)

27. The claimants are entitled to interest on the above-mentioned compensation amount at the rate of Rs. 9% per annum from the date of filing of petition till realization of entire compensation amount. This compensation amount shall be inclusive of the amount received under the head "No Fault Liability".

28. Considering the advanced age of claimant No.3 Anusayabai Ramdas Kadam, while apportionment of the amount of compensation, only an amount of Rs. 1,00,000/- to be paid to her and the remaining amount is to be equally distributed between claimant Nos.1 and 2. The amount payable to minor claimant No. 2 Shubhangi shall be invested in fixed deposit in her name through her mother claimant No.1 Latabai, in any Nationalized Bank till claimant No.2 attains majority. The amount payable to claimant No.1 Latabai shall be paid to her by issuing separate account payee cheque.

29. In view of the verdict of the Apex Court in the case of **"Jitendra Khimshankar Trivedi and others Vs. Kasam Daud Kumbhar and others"** [2015 (4) SCC 237] even in absence of cross-objection, this Court can determine fair and

reasonable compensation and award enhanced compensation in the appeal preferred by owner and driver of the offending vehicle.

30. In the result, First Appeal No. 387 of 2005 is dismissed. However, the award passed by the Tribunal in Motor Accident Claim Petition No. 141/2002 is modified as under :-

“(I) M.A.C.P. No.141/2002 is allowed with costs.

(II) Respondent Nos.1 to 4 do jointly and severally pay an amount of Rs. 12,12,400/- (Rupees Twelve Lakh Twelve Thousand and Four Hundred) to claimant Nos.1 to 3 with interest thereon at the rate of Rs. 9 % per annum from the date of filing of the petition till realization of the entire compensation amount. This amount shall be inclusive of the amount received under the head “No Fault Liability”.

(III) On depositing the compensation amount in the Tribunal, an amount of Rs. 1,00,000/- (Rupees One Lakh) with proportionate interest thereon, be paid to claimant No.3 Anusayabai w/o Ramdas Kadam by issuing separate account payee cheque through Tribunal.

(IV) The remaining compensation amount be equally distributed between claimant Nos.1 and 2. The entire amount of the share of minor claimant No.2 Shubhangi be invested in the fixed deposit in her

name through her mother claimant No.1 Latabai, in any Nationalized Bank of the choice of claimant No.1, till claimant No.2 attains majority. Claimant No.1 Latabai will be at liberty to receive quarterly interest on this fixed deposit amount on behalf of claimant No.2.

(V) The amount payable to claimant No.1 Latabai be paid to her by issuing account separate payee cheque in her name through Tribunal.

(VI) Deficit Court-fees be recovered from the claimants.

(VII) Award be drawn up accordingly.

31. Appellants shall pay costs of this appeal to respondent Nos.1 to 3.

32. The appeal is disposed of in the above-said terms.

(SUNIL K. KOTWAL)
JUDGE

vdd/