

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.294 OF 2001

- Appellants** : **1] Smt. Kusumlata wd/o Krishna Kumar Shrivastava,**
Aged about 45 years, Occupation – Household.
- 2] Ku. Kanchan d/o Krishna Kumar Shrivastav,**
Aged about 26 years,
Occupation – Student & Household Work.
- 3] Ku. Sadhana d/o Krishna Kumar Shrivastava,**
Aged about 23 years,
Occupation – Student & Household Work.
- 4] Nitin Kumar s/o Krishna Kumar Shrivastava,**
Aged about 20 years, Occupation – Student.
- 5] Jitendra Kumar s/o Krishna Kumar Shrivastava,**
Aged about 18 years, Occupation – Student.
(Original Claimants/Petitioners)

-- Versus --

- Respondents** : **1] Shri Govindram D. Thapar,**
Aged Major, Occupation – Truck Owner,
Makosa Bagh, Nagpur (Dead),
Through L.Rs.
- 1-a Shri Ramesh Govindram Thapar,**
Clarke Town, Byramji Town, Mekosabag,
Nagpur.
- 2] Baburao s/o Kashinath Dongre,**
Aged – Major, Dirver,
C/o Respondent No.1, Mekosabagh, Nagpur.
- Deleted as per order
dated 01/10/2002

3] ~~Nagorao Zharuji Kale,~~
~~Aged – Major, Conductor,~~
~~C/o Respondent No.1, Mekosabagh, Nagpur.~~
- 4] National Insurance Co. Ltd.,**
Division No.1, Firdos Chamber, Wardha Road,
Nagpur.

5] Coromondal India Products India Ltd.,
B, Coromondal India House,
62, Surr Tank Road, Chitput,
Madras - 600 013.

6] The New India Insurance Company Limited,
Branch No.710201, Karnataka Bank Building,
1st Floor, Madras : 600 001
(Original Respondents)

Shri N.P. Lambat, Advocate for the Appellants.
Shri S.D. Sirpurkar, Advocate for Respondent No.4.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 1st MARCH, 2021.

ORAL JUDGMENT :-

The Appellants herein have assailed the judgment and award, dated 09/01/2001 in Claim Petition No.221/1989. By the impugned judgment, the Motor Accident Claims Tribunal, Nagpur (hereinafter shall be referred to as the 'Claims Tribunal' for short) dismissed the Claim Petition filed by the Appellants under Section 110-A of the Motor Vehicles Act, 1939 (hereinafter shall be referred to as the 'Act' for short) mainly on the ground that the Appellants had failed to prove rash and negligent driving by the driver of the offending vehicle.

02] The Appellants shall be hereinafter referred to as the 'Claimants'. They had filed the Claim Petition alleging that Krishna Kumar Shrivastava, the husband of Claimant No.1 and father of Claimant Nos.2

to 5, had expired as a result of injuries sustained in a motor vehicular accident involving Truck bearing No.MTG-1535. The Claimants have alleged that the said accident was caused due to rash and negligent act of the driver of the Truck. The Claimants have claimed that the deceased was working as 'Technical Sales Officer' with M/s. Coromandal India Products India Limited (Respondent No.5) and was earning salary of Rs.2,000/- per month. It is stated that the deceased was the only earning member of the family. The Claimants, therefore, claimed total compensation of Rs.12,54,700/- under different heads from the owner and insurer of the offending vehicle as well as the owner and insurer of the motorcycle driven by the deceased himself.

03] The driver, owner and insurer of the offending vehicle of the Truck bearing No.MTG-1535 denied that the accident was caused due to rash and negligent act of the driver of the truck. It is averred that while the Truck was proceeding towards Nagpur, the tyre got punctured and as such the driver was compelled to park the vehicle on the left side of the road. It was stated that there was sufficient visibility at the place of the accident and the lights of the truck were lit. It is alleged that the Motorcycle driven by the deceased dashed against the rear side of the Truck due to his rash and negligent driving. These respondents, therefore, denied their liability to pay any compensation to the Claimants.

04] The Tribunal, after considering the evidence adduced by the Claimants as well as by the driver, owner and the insurer of the offending vehicle, recorded a finding that the truck was parked by the side of the road since the tyre of the truck was punctured. The Tribunal held that the tail lights of the truck were lit and that there was sufficient visibility at the place of the accident. The Tribunal held that the deceased had not kept sufficient safe distance and that the motorcycle had collided against the stationary vehicle due to rash and negligent driving of the deceased. The Tribunal, therefore, held that the driver owner and insurer of the Truck cannot be held responsible for the accident and consequently are not liable to pay any compensation to the deceased. Being aggrieved by this judgment, the Claimants have preferred this appeal under Section 173 of the Act.

05] Learned Counsel for the Claimants has submitted that the evidence of CW-2, who is an independent eye-witness, clearly indicates that the truck was parked on the road without tail lights. He further submits that the evidence of CW-2 sufficiently proves that the accident was caused due to negligent act of the driver of the offending vehicle in parking the Truck on the highway without reflectors in contravention of Rule 138 of the Central Motor Vehicles Rules, 1989 and Regulation 28 of the Motor Vehicles (Driving) Regulations, 2017. He, therefore, submits that the Tribunal was not justified in dismissing the Claim Petition.

06] On the issue of quantum of compensation, learned Counsel for the Claimants submits that the evidence on record amply proves that the deceased was 44 years of age and that he was drawing salary of Rs.1,900/- per month. He submits that in view of the dictum of the Apex Court in National Insurance Company Ltd. vs. Pranay Sethi & others - 2018(3) Mh.L.J. 70 as well as Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram - (2018) 18 SCC 130, the Claimants are entitled for total compensation of Rs.5,52,250/-.

07] Shri S.D. Sirpurkar, learned Counsel for respondent No.4 submits that based on the evidence on record, the Tribunal has rightly arrived at a conclusion that the accident was caused due to rash and negligent driving of the deceased and as such the Claimants are not entitled for any compensation.

08] I have perused the record and considered the submissions advanced by learned Counsel for the respective parties. The points for my consideration are - (i) Whether the Claimants have proved that the accident was caused due to rash and negligent act of the driver of the offending vehicle? and (ii) Whether the Tribunal was justified in rejecting the claim?

09] It is not in dispute that the offending vehicle i.e. Truck bearing No. MTG-1535 was proceeding from Wad Dhamna towards Nagpur. The tyre of the Truck got punctured near Cotton Research Institute, Amravati Road, Nagpur. The driver of the Truck, therefore, parked the vehicle by the side of the road. The deceased, who was riding a Motorcycle bearing No.TMM-9553, was also proceeding towards Nagpur. The Motorcycle driven by the deceased collided on the rear side of the truck.

10] The evidence of CW-2 indicates that the truck was parked without parking lights or reflectors. Though, he has stated that there was street lights and he could see the Truck at a distance about 50 feet, it has come in his evidence that he was travelling from the opposite direction. The street lights were in front of the Truck, hence, it was possible for him to see the vehicle. There is no evidence to indicate that there was sufficient visibility towards the rear side, so as to enable the deceased to see that Truck. It may be also mentioned that Section 122 of the Act provides that no person in-charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers. Rule 138(4)(c) of the Central Motor Vehicles Act, 1989 casts a mandate on the driver of every vehicle to carry triangles of specified size with a red

reflecting surface for keeping in front and rear of the vehicle in case the vehicle is stranded on the road. Regulation 28 of the Motor Vehicles (Driving) Regulations, 2017 further provides that in case a vehicle with more than two wheels has broken down at a place where it can be recognised in time as a stationary obstacle, the hazard warning lights of the vehicle shall be switched on immediately and on highways and major roads with fast speed, reflective traffic warning triangles shall be placed at a distance of fifty meters behind the broken-down vehicle. The object of these provisions is to ensure safety of the other road users and to avoid crash risks.

11] In the instant case, the evidence of the driver and the conductor does not indicate that they had complied with these mandatory provisions. In fact, it is evident that non-compliance of these mandatory provisions mainly not putting hazard lights, tail lights or any reflectors at a distance of 50 feet from the rear side of the vehicle, had resulted in the accident. The Tribunal was, therefore, not justified in attributing negligence to the deceased and consequently declining to grant any compensation to the Claimants.

12] As regards the quantum of compensation, the evidence on record reveals that the deceased was 44 years of age. The

Claimants have placed on record salary certificate at Article-A. A perusal of which shows that the deceased was earning Rs.1,900/- per month i.e. Rs.22,800/- per annum. Having regard to the age of the deceased and that he was on fixed salary, an addition of 25% of the actual income will have to be made towards future prospects. Furthermore, considering the number of dependents, one forth deduction would have to be made towards the personal expenses of the deceased. Thus, the total income of the deceased works out to Rs.21,375/-. Applying a multiplier of 14, loss of dependency works out to Rs.2,99,250/-.

13] Claimant No.1, being the widow, is entitled for compensation of Rs.40,000/- towards spousal consortium and in view of the decision of the Apex Court in Magma General Insurance, Claimant Nos.2 to 4, being minor children, are entitled for compensation of Rs.40,000/- each towards loss of parental consortium. In addition, the Claimants are also entitled for compensation of Rs.15,000/- each towards loss of estate and funeral expenses. Thus the Claimants are entitled for total compensation of Rs.5,29,250/- with interest at the rate of 7.5% per annum from the date of petition till the date of final realization.

14] The Respondent-Insurance Company shall deposit the compensation before the Tribunal within three months. The Tribunal shall disburse the amount to Claimants in equal proportion.

15] Appeal stand allowed in the above terms. There shall be no orders as to costs.

(SMT. ANUJA PRABHUDESSAI, J.)

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