

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 694 OF 2002

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|--------------------------------------|------------------|
| 1. Rukmini Pundalik Bhandari |) |
| Age 34 years, Occ: Household |) |
| 2. Udaykumari Pundalik Bhandari |) |
| Age. 15 years, Occ: Education |) |
| 3. Shobha Pundalik Bhandari |) |
| Age. 13 years, Occ: Education |) |
| 4. Bharati Pundalik Bhandari |) |
| Age 10, years |) |
| (No. 2 to 4 minor through their |) |
| natural guardian Appellant No.1) |) |
| (Ori. Claimant No. 5 & 6 are deleted |) |
| as per order of Motor Accident |) |
| Claim Tribunal Sangli on Exh. 30) |)....Appellants |
| | (Ori. Claimants) |

Versus

- | | |
|-------------------------------------|------------------|
| 1. Nisar Husen Tahasildar |) |
| Age 37 years, Occ: Owner & Business |) |
| R/o. Shivaji Peth, H. No. 1965 |) |
| 'A' Ward, Kolhapur |) |
| 2. Deepak Nirmalnath Vankudre |) |
| Age 34 years, Occ: Driver & Owner |) |
| & Business, R/o. 'B' Mahadwar, |) |
| Kolhapur. |)....Respondents |
| 3. United India Insurance Co. Ltd. |) |

Kolhapur.)
(Summons to be served on its branch)
at Vakharbhag Sangli.)

Mr. T. S. Ingale for the Appellants.
Mr. Vaibhav Sugdare a/w Ms. Shraddha Pawar for the Respondent
No. 2.
Mr. P. M. Shah for the Respondent No.3.

CORAM : S. G. DIGE, J.

DATE : 17th FEBRUARY 2023.

JUDGMENT :

1. This appeal is preferred by the appellants/original claimants against the dismissal of claim petition.
2. It is contention of learned counsel for the appellants that the Tribunal has not considered, the evidence produced on record and wrongly come to conclusion that deceased was driving the scooter and he himself was negligent in accident, on that basis, claim was dismissed. The learned counsel further submits that the policy was comprehensive Insurance Policy. This fact is not considered by the Tribunal and observed that deceased is not entitled for compensation.

Deceased was a pillion rider. When the policy is comprehensive policy, the pillion rider is included in comprehensive policy.

3. Learned counsel further submits that the claimants had examined the pillion rider, who was sitting behind the deceased to prove that deceased was not riding scooter, whereas, the respondent no. 2 in present appeal was driving the scooter. The Investigating Officer of the said crime has also stated that respondent no. 2/Shri. Deepak Vankudre was driving the scooter but this fact is not considered by the Tribunal and, on wrong assumption, the Tribunal has concluded that deceased was driving scooter and dismissed the claim petition, which is illegal and improper.

4. Learned counsel further submits that deceased had shop in front of Mahalaxmi Temple, Kolhapur and he was earning Rs. 70 to 75/- per day. He was the only earning member of his family. Hence, requested to allow the appeal.

5. It is contention of learned counsel for the respondent no. 3 that the deceased along with two other persons were riding triple seat

on scooter. The tribunal has rightly held that deceased was riding the scooter as more injury was caused to deceased. The pillion rider did not file First Information Report regarding the accident. It was filed by the third person. The Tribunal has considered the evidence produced on record, on that basis, the Tribunal came to conclusion that deceased was riding the scooter and accident had occurred due to his negligence. The order passed by the Tribunal is legal and valid.

6. I have heard both learned counsel, perused judgment and order passed Motor Accident Claims Tribunal (for short 'the Tribunal'). The accident took place at about 1:00 a.m. on Sangli Kolhapur road. The deceased and his two friends were travelling on the scooter which was driven rashly and negligently in high speed by respondent no. 2 the scooter dashed against heap of stones kept on side of the road, deceased Pundalik received injuries to his vital organs and died on the spot.

7. While, dealing with the issue of negligence, the Tribunal has observed that respondent no.2 did not enter into witness box as well as the more injuries were causes to the deceased and minor

injuries were caused to respondent no. 2 and respondent no.3. It shows that deceased was riding the motorcycle. I am unable to understand, the observations of the tribunal when it has come on record that at the time of the accident Respondent No.2/Shri. Vankudre was driving the scooter. To prove the negligence of Respondent No.2/Shri. Vankudre. The claimants have examined Shri. Mahadeo Jadhav, who was pillion rider on the said scooter is examined at Exhibit-30. He has stated that on the day of accident, he along with deceased and Shri. Vankudre were travelling on the scooter Shri. Vankudre was driving the scooter in high speed. A motor vehicle was coming from opposite side, in attempt of avoiding that vehicle Shri. Vankudre could not control the speed of scooter, and he dashed against the heap of stones lying by the side of the road. Deceased Pundalik Bhandare was sitting in between Shri. Vankudre and this witness. After dashing against the heap of the stones, all of them fell down from the scooter. This witness and deceased were injured and became unconscious on the spot. Similarly Shri. Dipak Vankudre, who was driving the scooter also fell from the scooter and suffered injuries. The scooter was damaged, when this witness regained consciousness. He found that Pundalik was expired on the

spot while Dipak Vankudre was injured. This witness and Shri. Vankudre went to village Minache for giving Magalsutra. In cross examination, this witness has stated that he was telling Shri. Vankudre to drive the scooter slowly, but despite insistence of this witness, Shri. Vankudre was driving scooter speedily. This witness denied the suggestion that deceased Pundalik was driving the scooter.

8. The claimants have examined Sadashiv Sutar police Inspector, who investigated the matter at Exhibit-65. This witness has stated that in the investigation he found that respondent no. 2/Shri. Vankudre at the time of accident was driving the scooter. This witness also found that deceased Pundalik was sitting as a pillion rider between Shri. Vankudre and Mahadeo Jadhav. In investigation, this witness found that due to the high speed of scooter driven by respondent no. 2, accident had happened.

9. Nothing elicited in cross-examination of this witness to prove that deceased was driving the scooter at the time of accident. From the evidence of these two witness, it proves that at the time of accident respondent no.2 Vankudre was driving the scooter but on surmises and conjuncture, the Tribunal has held that deceased was

driving the scooter which is absolutely wrong. Hence, I hold that at the time of accident, respondent no.2 Vankudre was driving the scooter and deceased was sitting as pillion rider.

10. It has come on record that deceased was selling grams near Mahalaxmi Temple and he was earning Rs. 70 to 75/- per day. To prove the income of deceased, the claimants have examined Rukmini Bhandari at Exhibit -34. She has stated that her husband was conducting a shop for selling grams i.e. phutane and puff rice. To support the evidence of PW1/claimants examined Sudhakar Badnimuri at Exhibit-48. He has stated that after death of deceased his shop was closed and hence, this witness started the shop of deceased and he earned Rs. 125 to 150 per day. It has come on record, deceased was doing the business in front of as Mahalaxmi Temple and he was earning Rs. 70 to 75/- per day. Considering evidence on record, I am considering notional income of deceased at Rs. 2,000/- per month. Deceased was 20 years old at the time of accident, so proper multiplier is 17.

11. On the considering Rs. 2,000/- per month income of deceased, the personal deduction $\frac{1}{3}$ amount comes to Rs. 667/-. If

this amount is deducted from Rs. 2,000/-, it comes to Rs. 1333/- per month. If future prospects of 40% is added in it, it comes to Rs. $1,333 + 533 = \text{Rs. } 1866/-$. Thus, yearly income comes to Rs. $1,866 \times 12 = \text{Rs. } 22,392/-$. Deceased was 28 years old at the time of accident, hence, 17 is the proper multiplier. The total amount comes to Rs. $22,392 \times 17 = 3,80,664$. As per the view of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for Rs. 44,000/- as consortium amount, with 10% increase Rs. 16,500/- for funeral expenses and 16,500/- for loss of estate with 10% increase. There are four claimants so total of it comes to Rs. 1,76,000/- and Rs.33,000/- for funeral expenses and loss of estate. Total of this amount comes to Rs. 2,09,000/-. The total compensation comes to Rs. 5,89,664/-, the claimants are entitled for this amount.

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

ORDER

- i. Appeal is allowed.
- ii. The judgment and order passed by the tribunal is quashed and set aside.

- iii. The claimants are entitled for the compensation of Rs. 5,89,664/- at the rate of 7.5% per annum interest from the date of filing claim petition till realization of the amount. The respondent are directed to deposit the compensation amount along with accrued interest thereon, within six weeks from receipt of the order.
 - iv. The claimants are permitted to withdraw the deposit amount along with accrued interest thereon.
13. All pending applications stands disposed of.

(S. G. DIGE, J.)