

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1403 OF 2002**

- 1 Appasaheb Baburao Patil
aged 57 years, Occ.Agriculture
 - 2 Shakuntala Appasaheb Patil
Aged 50 years, Occ. Household
 - 3 Amar Appasaheb Patil
Aged 26 years, Occ. Student
All Residents of Arag, Taluka-Miraj,
District Sangli
versus
-Appellants/
(Orig. Claimants)
-
- 1 Bhagwan Singh S/o. Pannalal
Adult Occ. Transport Business
R/o. Mahavirpura, Gurgaon,
New Delhi.
 - 2 The Oriental Insurance Company
City Branch Office, 33, G-8,
Hoskhas, New Delhi 110014
(Insurance Policy No.212709/
31/11/03171/93 valid till 20/12/93)
(Summons to be served on its branch
at Station Road, Sangli.)
 - 3 Phulsingh Jaganathaji Yadav
Adult, Occ. Driver
C/o. Mahavirpura, Gurgaon,
New Delhi.
-Respondents/
(Orig. Opponents)

Mr. Tejpal S. Ingale, Advocate for the Appellants.

Ms. Poonam Mittal, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 20th MARCH 2023.

Oral Judgment :

1. This appeal is preferred by claimants against the dismissal of the claim petition by Motor Accident Claims Tribunal, Sangli (for short "the Tribunal").

2. The brief facts of the case are as under :

On 17th September 1993 at about 11.15 p.m., when deceased was proceeding towards medical college library from Mission Hospital, which is on Miraj - Pandharpur Road on his scooter, at the same time, offending tanker was stopped on the road without any signals. The deceased gave dash to the said tanker from backside and died due to injuries. The claimants filed claim petition before the Tribunal for getting compensation. The Tribunal dismissed the claim petition, against it, this appeal.

3. It is contention of learned counsel for the appellants/claimants that the Tribunal has taken hyper-technical

view and held that the accident occurred due to negligence of deceased, and dismissed the claim petition, which is improper. Learned counsel further submits that the driver of the offending tanker did not step into the witness box to prove that the offending tanker was stationed on the side of the road and there was negligence of the deceased. Learned counsel further submits that claimants have examined eye-witness to prove the negligence of the driver of the offending tanker but it was not considered by the Tribunal. Learned counsel further submits that deceased was homeopathic doctor and he was driving scooter in moderate speed. Hence, requested to allow the appeal.

4. In support of his submission, learned counsel for the appellant has relied on decisions of the Hon'ble Apex Court in **Sunita & ors. Versus Rajasthan State Road Transport Corporation (2020) 13 SCC 486, Bimla Devi & Ors versus Satbir Singh and ors (2013) 14 SCC 345,** decision of this Court in **National Insurance Co. versus Mansi Swapnil Deokar (2020) (1) MLJ 312 and Narayan s/o. Kothiramji Bhawane versus Motor Accident Claim Tribunal, Nagpur 2004 (3) Mh.L.J.**

5. It is the contention of learned counsel for the respondent-Insurance Company that no FIR was lodged against the driver of the offending tanker. Without FIR, negligence of driver of offending tanker cannot be considered. Learned counsel further submits that it has come in the police papers that at the time of accident, the parking lights of the said tanker were in on condition. The Tribunal has considered all the aspects and, on that basis, the claim petition is dismissed. The order passed by the Tribunal is legal and valid and no interference is required in it.

6. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

7. While dismissing the claim petition, the Tribunal has observed that the only inference has to be drawn that offending tanker was parked on correct side by exhibiting signals, the deceased could not control his scooter and due to some other reason, it dashed against the stationary tanker. So the evidence of the claimants' side is not convincing or sufficient to conclude that the rash and negligent driving of opponent No.3 i.e. driver of the offending tanker resulted in the accident. The Tribunal further observed that on the other hand, it is certain that the accident was

result of rash and negligent driving of the deceased himself.

I am unable to understand the observation of the Tribunal as admittedly, the offending tanker was stationed on the road. There is dispute about the parking lights of the offending tanker were in on condition or not. The complaint in respect of the accident was filed by the driver of the offending tanker. In the said complaint, he has mentioned that his vehicle was stationed by the side of road and parking lights were on. It is significant to note that though there was death of one person i.e. -deceased, the police have not registered FIR. Accidental Report was registered and spot panchanama was prepared. In spot panchanama, it is mentioned that parking lights of the said tanker were on. The claimants have examined eye-witness, who had witnessed the incident – Shri Suresh Punadikar at Exhibit – “51”. He has stated that on 17th September 1993, he was proceeding on scooter, there was one scooter ahead of him. One tanker was following the scooter of this witness. The said tanker went ahead the scooter of this witness and stopped on left side of the road. The scooter which was ahead of this witness went underneath the tanker. After the accident, this witness parked his scooter, he saw scooterist was lying in injured

condition, the driver and cleaner of tanker got down, they saw the incident, and ran away from the spot after switching on the indicator and parking lights. This witness was fumbled, he took vehicle numbers and left the spot. On 3rd day of the accident, this witness had been to Miraj City Police Station and reported the matter. The accident was result of fault on the part of tanker driver. In cross-examination, this witness stated that he felt it necessary to carry the injured to the hospital by seeing his blood, he did nothing, mission hospital was half k.m. from the incident spot. This witness denied the suggestion that he did not witness the incident nor police recorded his statement. From the evidence of this witness, it reveals that he witnessed the incident. This witness reported to the police about the incident but the police did not take cognizance of it. Now the question remains, whose evidence is to be believed, driver of the offending vehicle or the eye-witness who was examined before the Court. Admittedly, the driver of the offending vehicle did not step into the witness box to prove that parking lights of the offending tanker were in on condition. Moreover, the police has not registered the FIR. Accidental Death (A.D.) was registered. It is contention of learned counsel for respondent – Insurance Company that as no FIR was registered in respect of the incident, the

claimants are not entitled for compensation. In my view, non-registration of FIR cannot be a ground to deny compensation to the claimants. It was part of job of the police officer to register the FIR in respect of the cognizable offence. In the present case, the complaint was lodged by the driver of the offending tanker himself stating that one person dashed against the backside of his tanker and died. In spite of that, police did not register the FIR. So the act which the police was supposed to do, having not done, cannot be a ground to deny compensation to the claimants. The Hon'ble Apex Court in the case of **National Insurance Co. Ltd. vs. Chamundeshwari & Ors. 2021 SCC Online SC 849** has observed that if any evidence before the Tribunal in claim petition runs contrary to the contents of the police papers like F.I.R, the evidence which is recorded before the Tribunal in respect of actual happening of accident in the absence of rebutted evidence has weightage.

8. In the present case, it has come on record that offending tanker was stationed on road and deceased dashed against it. It was 11.15 pm, the driver of the offending truck did not step into the witness box to prove negligence of deceased nor to prove that parking lights or indicators of tanker were on. The claimants have

examined eye-witness who has stated that accident occurred due to negligence of the driver of offending truck. Considering the evidence on record and observation of Hon'ble Apex Court in the above referred judgment, I am considering 75% negligence of the driver of the offending tanker and 25% of the deceased.

9. To prove the income of deceased, the claimants examined claimant No.1-father of deceased. He has stated that deceased was BHMS Doctor and he started his clinic at Arag in the name and style of "Patil Clinic". He was paying rent of Rs.1,000/- for the said premises. He had spent Rs.40,000/- for furniture. Deceased was earning Rs.7,000/- per month. Working hours of deceased's clinic were from 8.00 am to 1.00 pm and from 2.00 pm to 8.30 pm. Nothing elicited in his cross-examination about income of deceased. Admittedly, deceased was BHMS Doctor. He was earning Rs.7,000/- as monthly income but considering the evidence that he had started his clinic only four months before the accident, I am considering his notional income at Rs.5,000/- per month. At the time of the accident, deceased was 24 year old, so he is entitled for 40% future prospects, multiplier applicable is 18 and deduction of 1/2 amount for personal expenses.

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

Notional Income of deceased (per month)	Rs. 5,000.00
Yearly Income (Rs. 5,000 x 12)	Rs. 60,000.00
Personal expenses deduction ½th as deceased being bachelor	Rs. 30,000.00
Total Income	Rs. 30,000.00
Future prospects 40% of income as the age of deceased was below 24 years.	Rs. 12,000.00
Total Income	Rs. 42,000.00
Rs 42,000/- x 18 (multiplier)	Rs. 7,56,000.00
Filial Consortium for Applicant No.1	Rs. 44,000.00
Filial Consortium for Applicant No.2	Rs. 44,000.00
Funeral Expenses	Rs. 16,500.00
Loss of Estate	Rs. 16,500.00
Total Compensation	Rs. 8,77,000.00
Deduction towards 25% contributory negligence of deceased	Rs. 2,19,150.00
Compensation payable	Rs. 6,57,750.00

The claimants are entitled for compensation of Rs.6,67,750/-.

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

ORDER

1. The appeal is allowed.
 2. The claimants are entitled for the compensation amount of Rs.6,57,750/- @ 7.5% interest from the date of filing claim petition till realisation of the amount. Out of this amount, an amount of Rs.1,21,000/- is consortium amount, the claimants are entitled 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.
 3. Respondent No.2-Insurance Company shall deposit the compensation along with accrued interest thereon within six weeks from the receipt of this order.
 4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
11. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)