

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

FIRST APPEAL NO.1194 OF 2012

1. Smt.Sayali Sachin Savant	}	
2. Aryan Sachin Savant	}	
Both R/at Haripur, Taluka-Mira,	}	
District-Sangli	}	Appellant

V/s.

1. Shri.Vishnu Anand Patil	}	
R/o. Nagaon, Taluka-Tasgaon,	}	
District-Sangli.	}	
	}	
2. M/s.B.G. Chitale,	}	
Bhilawadi, Taulka-Palus, District-Sangli	}	
	}	
3. The New India Assurance Co. Ltd	}	
Branch-Mata Building, Ambedkar Road,	}	
Sangli.	}	
	}	
4. Sulochana Krishna Savant	}	
R/at Radewadi, Taluka-Palus,	}	
District-Sangli.	}	
	}	
5. Krishna Atmaram Savant	}	
R/at Radewadi, Taluka-Palus,	}	
District-Sangli.	}	Respondents

Mr.Nagesh V. Chavan, for the Appellant.

Mr.Siddharth Shtole i/b Mr.A.M. Kulkarni, for the Respondent No.2.

Mr.S.M. Dange, for Respondent No.3.

Mr.Jayant J. Bardeskar, for Respondent Nos.4 and 5.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st DECEMBER 2023

JUDGMENT :-

. This Appeal is preferred against the judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Sangli, against the dismissal of the Claim Petition.

2. It is contention of the learned counsel for the Appellant that, the deceased was riding the motor cycle and he was dashed by the milk tanker. The offence was registered against the offending milk tanker, but the Tribunal has wrongly concluded that, the said accident occurred due to sole negligence of deceased and on that basis Claim Petition is dismissed, which is erroneous.

3. The learned counsel further submitted that, deceased was 30 years young person. He was doing milk business. The Tribunal has considered his monthly income at Rs.3,000/-, it should be Rs.6,000/-. Hence, requested to allow the Appeal.

4. It is contention of the learned counsel for Respondent-Insurance Company that, on the basis of the evidence the Tribunal came to the conclusion that, accident occurred due to sole negligence of the deceased. In spot panchnamma it is mentioned that, accident was occurred due to sole negligence of the deceased, driver of the tanker had applied break and deceased himself gave dash to the tanker. The learned counsel further submitted that, the income of deceased considered at Rs.3,000/- it is on higher side and no income proof was produced on record. The judgment and order passed by the Tribunal is legal and valid and no interference is required in it.

5. The learned counsel for Respondent Nos.4 and 5 submitted that, appropriate order be passed.

6. I have heard both learned counsel. Perused judgment and order passed by Motor Accident Claims Tribunal ('The Tribunal' for short), Sangli.

7. It is Claimants case that, on 18th September 2006 at 10.30 p.m. deceased was proceeding on his Kawasaki Bajaj Motorcycle bearing No.MH-10-R-7981 Bhilawadi to Astha.

When he reached near Subhash Nagar Pick up shed, one milk tanker bearing No.MH-10-A-9849 came from opposite direction in high speed. The driver of said vehicle was driving in rash and negligence manner and gave dash to the motorcycle of the deceased. The deceased sustained serious injuries and died on the spot. The Claimants filed Claim Petition for getting compensation. The Tribunal has observed that, no evidence was produced on record by the Claimants to prove the negligence of the driver of the offending tanker. From spot panchnamma it shows that, the accident occurred due to negligence of the deceased, on that ground the Tribunal has dismissed the Claim Petition. I am unable to understand the reasons given by the Tribunal for dismissing the Claim Petition, as admittedly the accident occurred at 10.30 p.m. and there was no one to witness the said accident. The Tribunal has heavily relied on the evidence given by the driver of milk tanker and spot panchnamma. It is apparent that, no one can depose himself, as driver of tanker has stated that the accident occurred due to negligence of deceased. The spot panchnamma does not show

the negligence of deceased, it shows that, both vehicles had applied breaks and there were break marks of milk tanker and motorcycle.

8. In evidence of driver of offending vehicle Mr.Vishnu Patil, he has stated that, deceased was driving the vehicle under influence of alcohol and his bike was slipped on road and it skidded on road towards his truck and dashed to his truck. There is no evidence on record to show that, the deceased was under the influence of liquor. It shows that, driver of offending tanker was not telling truth. Moreover, from spot panchnamma it does not appear that, the motorcycle was skidded on the road. In fact it shows that, there were break marks of the motorcycle. It shows that, the evidence of driver of milk tanker is not trustworthy. Due to accident deceased died on the spot. The accident occurred at 10.30 p.m. It was dark night.

9. Considering these facts in my view, the accident occurred due to contributory negligence of driver of both the vehicles. It appears, to avoid liability, driver of offending truck has stated that deceased was under influence of liquor, but this

fact is not proved by the any evidence. Considering evidence on record I am fixing 75% liability on driver of offending tanker and 25% on deceased. The Tribunal has considered the income of deceased at Rs.3,000/- per month. The Claimant No.1 has stated that, deceased was doing milk business and he was getting Rs.7,500/- per month. To prove the contentions of the Claimants, they have examined PW-2 Jitendra Taravi, he has stated that, deceased used to give milk in his dairy and this witness would give Rs.7,000/- to Rs.7,600/- monthly to the deceased. Nothing elicited in the cross-examination of this witness. PW-3 Kuldip Thorat, he has stated that, deceased used to give milk daily to him and he would give Rs.800/- to Rs.900/- monthly to deceased. Considering the evidence of these witnesses, as well as it has come on record that, deceased was doing milk business. I am considering monthly income at Rs.4,000/- per month. As per view of the Hon'ble Apex Court in the case of *National Insurance Co. Ltd. vs. Pranay Sethi*¹, the Claimants are entitled 40% future prospects. As per view of the

¹ 2017 ACJ 2700 (SC)

Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd. Vs. Nanu Ram²*, the Claimants are entitled for consortium amount

10. Considering these calculations the Claimant's are entitled for following compensation.

Particulars	Amount
Monthly Income	Rs.4,000.00
40% future prospects	Rs.1,600.00
Total monthly Income	Rs.5,600.00
Annual Income 5600 X 12	Rs.67,200.00
Rs.67,200/- X 17(multiplier)	Rs.11,42,400.00
¼ Deduction for personal expenses	Rs.2,85,600.00
Net Income	Rs.8,56,800.00
Deductions towards 25% contributory negligence of deceased	Rs.2,14,200.00
Future loss of income to family	Rs.6,42,600.00
Consortium (Rs.48,000/- x 4 (claimants))	Rs.1,92,000.00
Funeral Expenses and Loss of Estate (Rs.18,000/- + Rs.18,000/-)	Rs.36,000.00
Total Compensation	Rs.8,70,600.00
Less NFL Compensation paid	Rs.50,000.00
Net Compensation Payable	Rs.8,20,000.00

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

² 2018 ACJ 2782 (SC)

ORDER

- (i) The Appeal is allowed.
- (ii) The Claimant's are entitled for compensation of Rs.8,20,000/- @ 7% interest per annum from date of filing the Claim Petition till realization. Out of this amount Rs.2,28,000/- is consortium amount, the Claimant's are entitled for 7% interest per annum on this amount from 1st November 2017.
- (ii) The Respondent/Insurance Company shall deposit compensation amount with interest within eight weeks. The Claimant's are permitted to withdraw it along with interest.
- (iii) The Respondent Nos.4 and 5 are the parents of the deceased, out of the compensation amount 30% amount along with accrued interest thereon be given to Respondent Nos.4 and 5. The learned counsel for the Claimant's has not objection for it.
- (iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)