

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 2401 of 2005

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|---------------------------------|---|---------------------|
| 1. Mahananda Dhondiram Chavan, |) | |
| Age 37 yrs., Occu. Household, |) | |
| 2. Prithviraj Dhondiram Chavan |) | |
| Age 23, Occu. Education. |) | |
| 3. Vishal Dhondiram Chavan |) | |
| Age 22 yrs, Occu. Education |) | |
| All R/o. Jawahar Chowk, Sangli. |) |Appellants |
| | | (Orig. Petitioners) |

Versus

- | | | |
|---------------------------------------|---|-------------------|
| 1. Saradar Mohamad Pathan |) | |
| Age Major, Occu. Owner, |) | |
| R/o. Shri Sai Co-op. Housing Society, |) | |
| A-13, Sarlaskar Park, Kolhapur. |) | |
| 2. The New India Assurance Co. Ltd. |) | |
| Shahupuri, Kolhapur, |) | |
| (Summons on Div. Office, Mata |) | |
| Buildg. Ambedkar Road, Sangli. |) | |
| 3. Popat Jayawant Vhanmane |) | |
| Age 27 yrs., Occu. Driver, |) | |
| R/o. Junoni, Tal. Sangola, |) | |
| District – Solapur. |) | |
| 4. Bhamabai Kashinath Chavan |) | |
| Age 64 yrs., Occu. Household, |) | |
| R/o. Jawahar Chowk, Sangli. |) |Respondents |
| | | (Orig. Opponents) |

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

Ms. S. S. Dwivedi, Advocate for the Respondent No.2-Insurance Company.

CORAM : S. G. DIGE, J.
DATE : 23rd FEBRUARY 2023.

Judgment :

1. This appeal is preferred by the appellants/claimants for enhancement of compensation.

2. It is contention of learned counsel for the appellants that the Tribunal has considered contributory negligence of the deceased at 70%, which is improper. Learned counsel further submits that deceased was earning Rs.5000/- per month but the Tribunal has considered the monthly income of deceased at Rs.3,000/- which is on lower side. Learned counsel further submits that the accident had occurred due to sole negligence of the driver of the offending truck, which was parked on road without putting any indicator or signal on but this fact is not considered by the Tribunal. Future prospects and consortium amount are not awarded. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent that the said accident had occurred due to sole negligence of the deceased as he was in high excessive speed and he could not control his speed and dashed against the stationary truck. The liability fixed on the deceased by the Tribunal is proper. Learned

counsel further submits that deceased was a labourer. The income considered by the Tribunal is proper. Hence, requested to dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal (for short "the Tribunal"). In respect of the contributory negligence, the Tribunal has fixed 70% negligence of the accident on deceased and 30% on the driver of the offending truck which was stationed on the road. The accident had occurred at 7.30 pm on 16th October 2000 when the deceased along with his friends Mahadeo Salunkhe and Yusug Shaikh was proceeding in jeep bearing No. MH-10-C-941. The deceased was driving the jeep. They left Bevnur for Sangli around 5.30 pm and started to proceed from Pandharpur Road. Around 7.30 pm when they were within the limits of village - Kerewadi, Deceased -Dhondiram was driving the jeep in moderate speed and by the left side of the road. There was a truck ahead of the jeep at the distance of 50-60 feet. At the spot of the accident, another truck came from the opposite direction. As it was dark, all the vehicles had put on their head lights. The driver of the opposite truck instantly put on a dazzling full head lights before crossing the

truck going ahead of the jeep. After the truck crossed, the said headlights of the opposite truck focused on the jeep. Dhondiram gave dim-ful signal but the opposite truck driver did not pay any heed. Dhondiram's eye sight got dazzled due to the said head lights and he decided to take his jeep to extreme left by reducing the speed. He turned the jeep slightly to his left side in order to avoid dash from the truck coming from opposite direction. The said truck passed at very fast speed but the jeep dashed to offending truck parked on the side of the road. That truck was bearing No. MH-09-A-6970. The said offending truck was covering more that half of the eastern side of the tar road. The left side wheels of the said truck were at the distance of about 3 ft. on the tar road from the eastern side. It had no front wheels and axle. The front body had touched the road and the hind opening portion i.e. the rear plank was hanging over the number plates. It had no radium glasses. No proper precautions were taken by the driver of the offending truck to give indication that, the said truck had been parked on the road. No person was guarding the said truck. Neither the danger lights nor the stones were put. Thus, the truck was parked in most dangerous position due to which the jeep dashed into the parked truck. In the said accident, deceased Dhondiram and others got seriously injured.

Due to injuries, Dhondiram died. Offence was registered against the driver of the offending truck.

5. While dealing with the issue of negligence, considering the evidence on record, the tribunal has observed that it was duty on the part of Dhondiram to have waited before the stationary truck because the obstacle was in his half portion. He ought to have allowed the truck from opposite direction to pass and then proceed to overtake. After passing of the opposite truck, everything would have been cleared for him but it seems that he was not in controlled speed but in excessive speed and therefore, could not control his vehicle. The Tribunal further observed that there was violation by opponent No.3 of Section 120 of Motor Vehicles Act for having left his vehicle in dangerous position on public highway. There is violation of Rule 15(2) (iv) and (xi) of Rules of Road Regulations, 1989 on same point. Further there is violation of Rule 3 of Maharashtra Motor Vehicles Rules i.e. Rule 23(1) and 249. The truck was left in unguarded position. The rear plank was kept hanging and rear reflectors could not be seen due to hanging plank. No danger light was put. Stones were not put by the side of the truck. All these acts also amount to and contribute to the accident.

However, the major portion is that of Dhondiram. In spite of violation of these rules, acts and omissions on the part of Opponent No.3, Dhondiram could have avoided the accident in the similar way as the truck going ahead of him had passed safely. On that basis, the Tribunal has held contributory negligence of Dhondiram at 70% and 30% on the driver of the offending truck. I am unable to understand the observations of the Tribunal.

It is has come on record that the offending truck was stationed on the road in dangerous condition and without any parking lights or indicators in on condition. It has come on record that deceased Dhondiram took the jeep on left side of the road when the opposite truck came in fast speed and he flashed the head lights on his face and to avoid that, he took his jeep towards left side. At that time, he dashed against the offending truck. Had there been indicators or signals on of offending truck, Dhondiram could have applied brake immediately by seeing it or he could have noticed it from long distance as there was dark but he could not see stationary offending truck in dark and he dashed against it. It shows that there was negligence of offending truck driver. Hence the percentage of negligence considered by the Tribunal is not proper. Hence, I am

considering 70% negligence on the offending truck driver and 30% negligence on Dhondiram as speed of the jeep of Dhondiram was high.

7. In respect of the issue of the income of the deceased, to prove the income of the deceased, the claimant No.1 – Mahananda Chavan examined herself at Exhibit “34”. She has stated that at the time of accident, her husband was 47 year old and he used to do agricultural labour in the fields of pomogranate, jujube, betel leaves and grape gardens. He used to earn about Rs.100 to Rs.150/- per day. He used to get monthly income at Rs.3,000/-. She further submitted that they were getting certain grains income from their agricultural land. To support the evidence of PW1 - the claimants have examined PW-3 – Dattu Vhanmane, employer of the deceased – Dhondiram. He stated that deceased Dhondiram used to come to his land for labour work. He used to pay Rs.125- to Rs.150/- per day. Nothing is elicited in the cross-examination of this witness. Considering the evidence on record, the Tribunal has considered Rs.3,000/- per month as the income of deceased.

8. In my view, it has come on record that the deceased had

his own agricultural land and he was getting income from it as well as he was getting Rs.125/- to Rs.150/- per day for his work. The Tribunal has considered the income of the deceased on lower side, it should be Rs.3500/- per month. Hence, I am considering this income as per month income of deceased.

9. The Tribunal has not awarded future prospects as per the view of the Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, the claimants are entitled for Rs.44,000/- as consortium amount with 10% increase and Rs.16500/- for funeral expenses and Rs.16,500/- for loss of estate.

10. In view of the above calculations, the claimants are entitled for following compensation :

Yearly Income of the Deceased	Rs.	42000.00
1/3rd deduction towards personal expenses	Rs.	14000.00
	Rs.	28,000.00
Plus Future Prospects @25%	Rs.	7000.00
Total	Rs.	35000.00
Age of the deceased was 47 years, so the multiplier is 13 (Rs.35000/-multiplied by 13)	Rs.	4,55,000.00
Consortium Rs.44,000/- multiplied by 3	Rs.	1,32,000.00

Funeral Expenses	Rs.	16,500.00
Loss to Estate	Rs.	16,500.00
Medical Expenses	Rs.	29,000.00
Total Compensation	Rs.	6,49,000.00
Deduction of 30% contributory negligence of the deceased (Rs.6,49,000.00 x 30%)		1,94,700.00
Less compensation already granted	Rs.	1,05,000.00
Enhanced Compensation Amount	Rs.	3,49,300.00

The claimants are entitled for enhanced amount of Rs.3,49,300/-.

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

ORDER

1. The appeal is allowed.
2. The claimants are entitled for enhanced amount of Rs.3,49,300/- at the rate of 7.5% interest per annum from date of filing claim petition till realisation. Out of this amount, the amount of Rs.1,65,000/- is for consortium and loss of estate and funeral expenses, the claimants are entitled interest @ Rs.7.5% on this amount from 1st October 2017 till realisation of the amount.
3. The respondents are directed to deposit the enhanced amount along with accrued interest thereon before the Tribunal within six weeks from the receipt of the order.

4. The claimants are permitted to withdraw the amount deposited by the respondents along with accrued interest thereon.

The appeal is disposed of.

12. Pending applications, if any, stand dispose of.

(S. G. DIGE, J.)