

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2568 OF 2011

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The New India Assurance Co. Ltd.,)
 New India Building, 87, M. G. Road,)
 Fort, Mumbai - 400 020)....Appellant
 (Orig. Opponents No.4)

Versus

1. Smt. Sushila Narayan Kapade (widow),)
 Aged 35 years.)
2. Sanjay Narayan Kapade)
 (Son of deceased), Aged 20 years,)
3. Savita Narayan Kapade)
 (Daughter of deceased), Aged 30 years,)
4. Ajay Narayan Kapade)
 (Son of deceased), Aged 29 years,)
5. Smt. Tulshibai Sukhdeo Kapade)
 Now aged 73 years)
 All residing at Limboniya Bag, Indira Nagar,)
 Room No. 17, Govandi, Mumbai - 400 043)
6. Bony Travels,)
 12, Ghansham Patil building)
 Dawood Baug Road, Andheri (west),)
 Mumbai - 400 058)
 (Owner of Bus No. MMP - 3366)
7. Mr. T. Vishwanath Suryawanshi)
 At/Po. Shirur, Taluka - Shirur,)
 Dist - Pune)
 (Owner of Jeep Bearing No. MH- 12 E 8175)

8. The United India Assurance Co. Ltd.)
Stadium House, Veer nariman road,)
Mumbai - 400 020)Respondents

Ms. Saya Sureshbaba i/b Rakesh Kumar Singh for the Appellant
Mr. Yuvraj D. Patil for the Respondent Nos. 1 to 5.
Mr. Chandrakant N. Chavan for the Respondent No.8.

CORAM : S. G. DIGE, J.

DATE : 9th MARCH 2023.

JUDGMENT :

1. Being aggrieved and dissatisfied with judgment and order passed by the Motor Accident Claims Tribunal, Kalyan (for short 'the Tribunal) Appellant/Insurance Company preferred this appeal.

2. Brief facts of the case are as under.

On 7 June, 1994 at about 2:30 p.m. deceased was proceeding in a jeep when the said jeep was passing near Umbarmali Railway Power House on Bombay-Agra road at the relevant time one luxury bus bearing no. MMP-3366 came from opposite direction in high speed and negligent manner and dashed against the jeep due to said accident deceased died on the spot. The offence was registered

against the driver of offending bus.

3. It is contention of leaned counsel for the appellant that appellant is the insurer of jeep in which deceased was traveling the tribunal has observed that the said accident was occurred due to negligence of driver of offending bus in spite of that tribunal has fixed joint and several liability on the appellant company which is improper. Hence, requested to exonerate the appellant company from paying compensation.

4. It is contention of learned counsel for the respondent no. 8 insurer of offending bus that the accident was occurred due to sole negligence of the jeep driver and respondent no. 8 did not get opportunity to put their side, as matter is proceeded ex-parte against the respondent no. 8 (original respondent no. 3). Hence, respondent no. 8 is not liable to pay any compensation.

5. Learned counsel for the claimants submits that consortium amount is not awarded while awarding compensation, it be awarded.

6. I have heard learned counsels for all parties, perused judgment and order passed by the tribunal while deciding the issue of negligence the tribunal has observed that the accident was occurred due to rash and negligent driving of driver of offending bus. The FIR

is at Exhibit-'28' and spot panchanama is at Exhibit 30, these documents show that the accident was occurred due to sole negligence of driver of offending bus.

7. It is contention of learned counsel for the respondent no. 8 insurer of offending bus that matter was proceeded ex-parte against the respondent no. 8, it appears from record that the matter was proceeded ex-parte against the respondent no.8. The FIR in respect of said accident is filed against the driver of offending bus, the spot panchanama shows negligence of driver of offending bus, as well as the driver of offending bus did not step into the witness box which proves that the accident was occurred due to negligence of the driver of offending bus, deceased was traveling in the jeep and appellant is the insurer of that jeep. The accident occurred head on collision hence, I am fixing 75% liability on respondent no. 8 i.e. insurer of offending bus and 25% on appellant/insurance company. The tribunal has not awarded the consortium amount. It is settled principle of law that the claimants are entitled for just and pay compensation. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)*** claimants are entitled for Rs. 44,000/- with 10% increase as consortium

amount. There are five claimants the consortium amount comes to Rs. 2,20,000/-. The claimants are entitled Rs. 16,500 for funeral expenses and Rs.16,500/- for loss of estate total of it comes to Rs. 33,000/-. The claimants are entitled for additional amount of Rs. 2,53,000/-. The tribunal has awarded the Rs, 8,000/-, as consortium amount if it deducts from it comes to Rs. 2,45,000/-.

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

ORDER

- i. Appeal is allowed .
- ii. The respondent no. 8 shall pay 75% amount out of compensation amount awarded by the tribunal along with accrued interest thereon.
- iii. The appellant shall pay 25% amount out of compensation amount along with accrued interest thereon.
- iv. The claimants are entitled for additional compensation of Rs. 2,45,000/- @ 7.5% per annum from 1st October, 2017 till realization of the amount. The respondent no. 8 and appellant shall pay the consortium amount as 75% and 25%

proportionally.

- v. The appellant and respondent no. 8 are directed to deposit the additional amount as per their share within four weeks along with accrued interest thereon.
- vi. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
- vii. The appeal stands disposed of.

(S. G. DIGE, J.)