

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 193 OF 2012

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|---|---|----------------|
| 1. Smt. Vimal Harishchandra Bandgar |] | |
| Age 45 years, Occu-Household |] | |
| 2. Amol Harishchandra Bandgar |] | |
| Age 27 years, Occu-Nil |] | |
| 3. Prasant Harishchandra Bandgar |] | |
| Age 19 years, Occu-Nil |] | |
| 4. Smt. Sheshabai Keraba Bandgar |] | |
| Age 68 years, Occu-Nil, |] | |
| All residing at Ule, Tal-South Solapur, |] | |
| District-Solapur. |] | |
| A/p. Pathari, Tal-North Solapur, |] | |
| Solapur-Solapur |] |Appellants |
| Versus | | |
| 1. Rajesh Ramdas Jadhav |] | |
| Age adult, Occu-Business, |] | |
| R/o. Opp. Gurultai Mangal, Karayalaya Station |] | |
| Road, Bijapur, Pin 521 307 (Karnatak) |] | |
| 2. National Insurance Company Ltd. |] | |
| (Summons to be served on its Branch Office at |] | |
| Datta Chowk), Subharai Tower, Solapur. |] | ...Respondents |

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Mr. R.S.Alange, Advocate for the Appellants.
 Ms. Harshada Rane, Advocate for Respondent No.2.

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CORAM : SHIVKUMAR DIGE, J.
DATE : 22nd DECEMBER, 2023

JUDGMENT :

1. This appeal is preferred by the appellants/claimants for enhancement of the compensation.
2. It is contention of the learned counsel for the appellants that the

Tribunal has considered 50% contributory negligence of the deceased and on that basis compensation is awarded, which is not proper. He submitted that, offending truck was stationed on state highway without putting indicators on. It was dark, as there were no signs of stationed truck, deceased who was riding on motorcycle gave dash to the stationed truck from back side. Learned counsel further submitted that the Tribunal has deducted 1/3rd amount for personal expenses, it should be 1/4th. The Tribunal has not awarded future prospects though the deceased was permanent Government employee and he was 40 year old. Hence, requested to allow the appeal. In support of his submission, learned counsel for the appellants has relied on *Anil Purshottam Sharma vs. Smt. Monica Jignesh Parekh, 2023 0 Supreme (Bom) 442*.

3. Learned counsel for respondent No.2/Insurance Company vehemently submitted that the accident occurred due to sole negligence of the deceased as he dashed the stationed truck from back side. Learned counsel further submitted that an offence was registered against the deceased. It has come in the police papers that branches of tree and stones were put on road behind the truck to show that the truck was stationed. Learned counsel further submitted that in spot panchanama, it is mentioned that the driver of offending truck had stated to the police that he had put indicators of the said truck on and he was replacing the

tyre. It shows that the accident occurred due to sole negligence of the deceased. Learned counsel further submitted that though there are four claimants but claimant Nos. 2 and 3 are shown as major and these claimants cannot be considered as dependents of the deceased. Learned counsel further submitted that the postmortem report shows that the age of the deceased was 45 years and in claim petition the age of the deceased was mentioned as 45 years so the age considered by the Tribunal is proper and no interference is required in it. Learned counsel further submitted that while calculating the salary of the deceased the Tribunal has not deducted the income tax and professional tax. Learned counsel further submitted that the claimants failed to prove the negligence of the driver of the truck and it was burden on the claimants to prove the negligence of the driver, police papers show that there was negligence of the deceased, he was not wearing helmet. She further submitted that the spot panchanama shows that the brake marks of the motorcycle were appearing on the road. It shows that the deceased was driving the motorcycle in a rash and negligent manner and in a high speed. The judgment and order passed by the Tribunal is legal and valid and no interference is required in it.

In support of her submissions, she relied on Supreme Court Cases *Ranjana Prakash & Ors. Vs. Divisional Manager & Anr., in Civil*

Appeal No. 6110 of 2011; Oriental Insurance Co. Ltd. Vs. Premrata Shukla & Ors. in Appeal (Civil) No. 2526 of 2007; Machindranath Kernath Kasar Vs. D.S. Mylarappa & Ors. in Appeal (Civil) No. 3041 of 2008; Raj Rani & Ors. Vs. Oriental Insurance Co. Ltd. & Ors., in Civil Appeal No. 3317-3318 of 2009; Nishan Singh & Ors. Vs. Oriental Insurance Company Ltd. through Regional Manager and Ors. in Civil Appeal No. 10145 of 2016 and decision of Aurangabad Bench of this Court in M/s. Shriram General Insurance Company Limited Vs. Chandrakala Atmaram Mohite & Ors., in First Appeal No. 02757 of 2017.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Solapur (for short “**the Tribunal**”). It is claimant’s case that on 29.12.2006, deceased Harishchandra Bandgar was riding on motorcycle bearing No. MH-25/E-6646. He was proceeding from Solapur to Tulzapur. On the said road, truck bearing registration No. KA-49/4089 was parked on the road without putting on any parking signals. Another truck came from opposite side with full lights and Harishchandra could not see the said truck which was parked on the road and gave dash to the parked truck, due to said dash, Harishcnandra died on the spot.

5. It is contention of learned counsel for the appellants/claimants that the Tribunal should not have considered 50% contributory negligence

of the deceased, whereas it is the contention of learned counsel for the respondent No.2 / Insurance Company that, accident occurred due to sole negligence of the deceased and as per the observations of this Court in the case of *Anil Purshottam Sharma(supra)*, the precautions were taken by the driver of truck.

6. While dealing with this issue, the Tribunal has observed that there was contributory negligence of 50% of the driver of offending truck and 50% negligence was of the deceased. I am unable to understand the observations of the Tribunal in respect of putting 50% contributory negligence on the deceased, as it has come on record that the truck was stationed on State highway. It has come on record that the truck was parked on the left side of the road and not on kaccha road. Accident occurred around 7 p.m., it was dark, deceased could not see the said truck. The police prepared spot panchanama immediately after the accident. It is at Exhibit-38. In spot panchanama, it is not mentioned that parking lights or indicators of the said truck were on. In my view, when any vehicle is stationed on the road as per the provisions of Central Vehicles Rules, it is obligation on the driver of said vehicle to put on parking lights or indicators of said truck.

“ Section 15 in the Rules of the Road Regulations, 1989:

15. Parking of the vehicle:-

(1) Every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause

danger, obstruction or undue inconvenience to other road users and the manner of parking is indicated by any sign board or markings on the road side, he shall park his vehicle in such manner.

(2) A driver of a motor vehicle shall not park his vehicle:

- (i) at or near a road crossing, a bend, top of a hill or a humpbacked bridge;
- (ii) on a foot-path;
- (iii) near a traffic light or pedestrian crossing;
- (iv) in a main road or one carrying fast traffic;
- (v) opposite another parked vehicle or as obstruction to other vehicle;
- (vi) alongside another parked vehicle;
- (vii) on roads or at places or roads where there is a continuous white line with or without a broken line;
- (viii) near a bus stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant;
- (ix) on the wrong side of the road;
- (x) where parking is prohibited;
- (xi) away from the edge of the footpath.”

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“Regulation 28 of the Motor Vehicles (Driving) Regulation:
Vehicle breakdown:

In case a vehicle with more than two wheels has broken down at a place where it can be recognised in time as a stationary obstacle,-

(i). the hazard warning lights of the vehicle shall be switched on immediately;

(ii). on highways and major roads with fast speed, reflective traffic warning triangles shall be placed at a distance of fifty meters behind the broken-down vehicle; and In present case, it shows that the driver of the said Truck has clearly violated all the rules and regulations of the Central Motor Vehicle Rules, Motor Vehicle Rules and the Rules of the Road and Regulation, 1989, and Regulations made under the Act.”

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“When any vehicle is stationed on the road at night time, as per Rule 109 of the Central Motor Vehicles Rules, 1989, proper precautions are necessary to be taken. It reads thus:-

109. Parking light:-

[Every construction equipment vehicle, combine harvester and motor vehicle] and every motor vehicle other than motor cycles and three wheeled invalid carriages shall be provided with one

white or amber parking light on each side in the front. In addition to the front lights, two red parking lights one on each side in the rear shall be provided. The front and rear parking lights shall remain lit even when the vehicle is kept stationary on the road:

Provided that these rear lamps can be the same as the rear lamps referred to in rule 105 sub-rule (2): [Provided also that construction equipment vehicles [and combined harvesters], which are installed with food light lamps or sports lights at the front, rear or side of the vehicle for their off highway or construction operations, shall have separate control for such lamps or lights and these shall be permanently switched off when the vehicle is travelling on the road.]”

These rules states that front and rear parking lights shall remain lit when the vehicle is kept stationary on the road. In the present case, the truck was stationed on the highway but no parking lights were on. As per the Central Vehicle Rules, reflective traffic warning triangles shall be placed at a distance of fifty meters behind the broken-down vehicle. In the present case, no such triangles were kept, it shows that the driver of said truck has clearly violated the rules and regulations of the Central Vehicles Rules. The spot panchanama is at Exhibit-38, it shows that the offending truck was stationed on the road and some stones and branches of tree were kept on the back side of the truck. In this panchanama, it is not mentioned that the parking lights of the truck were on. In the said panchanama, it is mentioned that the driver of the truck had informed police that the parking lights of the said truck were on, but to prove this fact the driver of truck did not enter into witness box nor police papers supports the statement of driver. Though in the spot

panchanama, it is mentioned that stones and branches of the tree were kept behind the truck but accident occurred in the night time, so it was obligatory on the driver of the truck to put on the parking lights of truck or place reflective traffic warning triangles behind the truck but it was not done. Had there been parking light signals of said truck, the deceased definitely could have been able to see the same from some distance and the accident would not have occurred. The contents of FIR and spot panchanama do not show that tail lamps of the truck were on. Considering evidence on record, I do not see merit in the contention of learned counsel for respondent No.2 that it was burden on the claimants to prove the negligence of driver of the truck and offence was registered against the deceased and I set aside the observations of the Tribunal that there was 50% contributory negligence of the deceased in the said accident and I hold that the accident occurred due to sole negligence of the truck driver.

7. It is the contention of learned counsel for the respondent No.2 that claimant Nos. 2 and 3 are shown as major. These claimants cannot be considered as dependent of the deceased. To prove income of the deceased, the claimant No.1 has examined herself. She has stated that all the claimants were depending on the earning of the deceased. In my view, though the claimant Nos. 2 and 3 were shown as major, they were

dependent on the earning of the deceased and their occupation is shown as Nil, hence I do not see merit in the contention that they are not dependent. It is the contention of the learned counsel for the respondent No.2 that at the time of accident, the deceased was not wearing helmet. In my view the respondent/Insurance Company has not preferred appeal against the Judgment and Order of the Tribunal nor this issue was raised before the Tribunal, hence, I do not see merit in it. I have gone through all the case laws cited by learned counsel for the respondent/Insurance Company. The facts of cited cases and present case are different. As in the present case, it is proved that the driver of offending truck has not followed the provisions of Central Motor Vehicles Rules and Regulations and to prove his case, he did not enter into witness box.

8. The Tribunal has deducted 1/3rd amount for personal expenses. There are four claimants, it should be 1/4th, hence, I am considering 1/4th amount for personal expenses. The Tribunal has not awarded future prospects. The deceased was a Government employee and he was 40 year old. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700(SC)***, the claimants are entitled for future prospects. The Tribunal has considered age of deceased at 45 years on the basis of age mentioned in the claim petition. The copy of service book is produced on record, it is at Exhibit-33, in which date of

birth is shown as 15.12.1966. The accident took place on 29.12.2006, therefore, on the day of accident deceased was 41 years of age. The service book is authentic document which shows real birthdate of the deceased. Hence, I am considering the age of deceased as 41 years.

The Tribunal has awarded consortium amount on lower side. 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)*, each claimant is entitled to Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

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

Particulars	Rs.	Entitlement
Monthly Income	Rs.	11,552.00
- (Professional Tax + Income Tax)	Rs.	600.00
Total	Rs.	10,952.00
Annual Income	Rs.	1,31,424.00
30 % future prospects	Rs.	39,427.00
Total	Rs.	1,70,851.00
1/4 th deduction for personal expenses	Rs.	42,713.00
Total	Rs.	1,28,138.00
Rs.1,28,138 X 15 (Multiplier)	Rs.	19,22,070.00
Consortium (Rs.48,000/- X 4 claimants)	Rs.	1,92,000.00
Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
Total	Rs.	21,50,070.00
Less compensation awarded by the Tribunal	Rs.	6,95,000.00

Enhanced amount	Rs.	14,55,070.00
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Considering the above calculations, claimants are entitled for enhanced amount of Rs.14,55,070/-.

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

ORDER

- i. The appeal is allowed.
- ii. The appellants/claimants are entitled for enhanced amount of Rs.14,55,070/- @ 7.5% interest per annum from the date of filing of claim petition till realisation of the amount. Out of this amount, Rs.2,28,000/- is consortium amount, the claimants are entitled for interest @ 7.5% per annum on this amount from 1st November 2017 till realisation of the amount.
- iii. The respondent No.2 / Insurance Company is directed to deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.
- iv. The appellants/claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

- v. The appellants/claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

11. The appeal is disposed of.

(SHIVKUMAR DIGE, J.)