

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****FIRST APPEAL NO. 693 OF 2011**

Nita Narendra Nadgouda

Age – 45 years, Occ – Housewife,

R/at 28/157, Pradhikaran, Nigidi, Pune

.... Appellant

Versus

1. M/s. Garuda Carriers and Shipping (P) Ltd.

Branch Office – Mahesh Kunj Gandhi Baug,
Nagpur.

Head Office – No. 18, 3rd Floor, Narang
Chambers, N.R.Road, Bangalore

2. The New India Assurance Co. Ltd. Having its
office at 1st Floor, Gopal Krishna Bhavan,
Rani Jhansi Square, Sitaduldi, Nagpur-440012

3. The New India Assuance Co. Ltd.

Regional Office – Behind Padale Palace,
Nal Stop, Near Karve Road, Erandwane, Pune

..... Respondents

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Mr. Yogesh Pande, Advocate for the Appellant.

Mr. Devendranath S. Joshi , Advocate for Respondent No.2.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 30th NOVEMBER, 2023.

JUDGMENT :

1. By this Appeal, appellant is seeking enhancement of compensation.

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

3. On 17.12.2003 at around 9.15 p.m. the deceased was proceeding on his Bajaj Kawasaki Caliber motorcycle bearing No. MH-14-Z-2825 towards chakan in moderate speed. When his motorcycle reached near village Sudwadi in front of Kalbhor Vasti on Talegaon Chakan road, at that time, one truck/trailer bearing No. KA-01A-1981 was stationed on the road without parking lights on. The driver of the offending truck did not take care to put any sign or signal of the stationed truck. The deceased could not see the said truck due to dark night and gave a dash to it from behind and sustained multiple injuries. He succumbed to injuries. The Claim Petition was filed for getting compensation by claimant/Appellant before the Motor Accident Claim Tribunal, Pune (for short “**the Tribunal**”). The Tribunal has fixed contributory negligence of 65% on deceased and 35% on driver of stationed truck.

4. It is contention of learned counsel for appellant that the trailer/truck was stationed on road without putting parking lights on. It was dark night, the deceased could not see the said stationed truck and gave dash to it from behind. There was sole negligence of the driver of the trailer but this fact was not considered by the Tribunal. Hence requested to allow the appeal. He relied on Judgment of ***Mohini Mohanrao Salunke Vs. Ramdas Hanumant Jadhav¹***.

1 2022 Livelaw (Bom) 428

5. It is contention of learned counsel for the respondent – Insurance Company that offence was registered against the deceased for causing the said accident. It shows that there was no negligence of the driver of the truck/trailer and there was negligence of deceased himself. The Tribunal has considered this fact, and on that basis, Judgment and Award is passed which is proper and no interference is required in it.

6. I have heard both the learned Counsel. Perused the Judgment and Order passed by the Tribunal. Admittedly truck / trailer was stationed on road and accident occurred around 9:30 p.m. It is significant to note that the driver of the truck / trailer has not examined himself or any witness to prove that he had taken proper care to avoid the accident. The parking lights of the said truck were not on. It was the duty of the driver of the offending truck to put on the parking lights when the truck was stationed on the road. As per Rule 109 of the Central Motor Vehicle 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 also that construction equipment vehicles [and combined harvesters], which are installed with fog light lamps or spot 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.]”

7. This Court in the case of *Mohini Mohanrao Salunke (supra)* has held that it is duty of the driver of stationed truck to take proper precautions, when truck is stationed on the road. But it appears that in present cast it was not taken. But this fact has not been considered by the Tribunal and has wrongly fixed 65% liability on deceased which is erroneous. Hence, I am setting it aside and I am holding that there was 100% negligence of the driver of the truck.

8. The Tribunal has observed that appellant is entitled for total amount of Rs.11,93,760/- out of this amount 65% amount is reduced as a contributing negligence of deceased. As I held that there was no contributory negligence of deceased, hence appellant is entitled for amount of Rs.11,93,760/-. The Tribunal has not awarded consortium amount, as per the view of the Hon'ble Apex Court in the case of ***Magma General Insurance Co Ltd versus Nanu Ram***². The claimant is entitled for Rs.44,000/- as consortium amount, Rs.16,500/- for loss of estate and Rs.16,500/- for loss of funeral expenses. The total amount comes to Rs.12,70,760/-.

9. The Tribunal has awarded Rs.4,35,816/-. If this amount is deducted from amount of Rs.12,70,760/-, it comes to Rs.8,34,944/-. The

² 2018 ACJ 2782 (SC)

claimants are entitled for this amount.

10. Learned counsel for the appellant on instruction submits that appellant/claimant will not claim future prospectus by filing any petition as this Court has fixed 100% liability on the driver of truck. His statement is accepted.

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

ORDER

- (i) The Appeal is allowed.
- (ii) Appellant is entitled for the amount of Rs.8,34,944/- @ 7% interest per annum from the date of filing of the claim petition till realisation of the amount.
- (iii) Respondent-Insurance Company shall deposit the enhanced amount along with interest within four weeks after receipt of the order. Appellant is entitled to withdraw the amount after depositing by Respondent-Insurance Company.

12. The Appeal is disposed of.

(SHIVKUMAR DIGE, J.)