

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.207 OF 2021

1. Shri. Anil Purshottam Sharma,
2. Reliance General Insurance Co. Ltd. ... Appellant
- V/s.
1. Smt. Monica Jignesh Parekh,
2. Master Arnav Jignesh Parekh,
3. Shri. Vasant Trambaklal Parekh. ... Respondents

WITH
CROSS OBJECTIONS (XOB) (STAMP) NO.14237 OF 2017
IN
FIRST APPEAL NO.207 OF 2021

1. Smt. Monica Jignesh Parekh,
2. Master Arnav Jignesh Parekh,
3. Shri. Vasant Trambaklal Parekh. ... Appellants
- V/s.
1. Shri. Anil Purshottam Sharma,
2. Reliance General Insurance Co. Ltd. ... Respondents

Ms. Poonam Mital for Appellant.

Ms. Varsha Nichani a/w Mr. Vijay S. Sardal for Respondent Nos.1, 2 and 3.

CORAM : SHIVKUMAR DIGE, J.

DATED : 8 MARCH, 2023

JUDGMENT:

1. Being aggrieved and dissatisfied with the judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short "the Tribunal"), the Appellant-Insurance Company preferred this Appeal. The Claimants have also preferred Cross Objection for

enhancement of compensation. As both the Appeal and Cross Objections are out of same accident, hence I am deciding it by this common judgment.

2. It is claimants case that on 19th February 2010 at about 9.00 p.m., deceased was proceeding towards Mumbai by Pune-Mumbai Express Highway in his Motor Car No.MH-04-BQ-5161. He was driving his motor car with full care and caution. When he reached near Kilometer Stone No.16 within the vicinity of Panshil Village, District-Raigad at that time, the driver of Motor Truck No.MH-22-N-591 had negligently stationed his vehicle on the road without switching on the parking and signal lights during the night time and without keeping any stones around the stationed vehicle, the driver and cleaner no where in sight, leaving the vehicle dangerously unguarded in the busiest lane, i.e. Lane No.1, on the Expressway, and at 9.00 p.m. on that day, there was so much fog due to which the deceased could not see the offending vehicle stationed in the 1st lane, as there was no indication of a truck having stopped, the deceased's car rammed into the truck and literally the car and the deceased both got stuck below the truck. The deceased was rushed to the nearby hospital but he succumbed to his injuries on the next day while under treatment, the accident occurred solely due to the gross negligence of the driver of offending Truck.

3. It is contention of learned counsel for the Appellant-insurance company that the FIR in respect of the said accident was registered against the deceased, but the Tribunal has considered 40% contributory negligence of the deceased which is improper. It should be 100% negligence of the deceased, as deceased hit the stationary vehicle from back side. Learned counsel further submits that the Tribunal has awarded exorbitant and excessive compensation, under the head of loss

of love and affection at Rs.1,00,000/, consortium @ Rs.1,00,000/-, Rs.25,000/- for funeral expenses and Rs.25,000/- for loss of estate. Hence, requested to allow the Appeal.

4. It is contention of learned counsel for the Respondent Nos.1 to 3/Claimants that accident occurred at 9.00 p.m. on express highway. The driver of offending truck had stationed the offending truck in first lane which was meant for travel of fast cars only. Moreover, no indicators or parking lights were put on when the said offending truck was parked in first lane. Accident occurred due to sheer negligence of the driver of offending truck. Had there been parking light or indicator of the said offending vehicle truck on, the accident would not have occurred. No stones were kept behind the offending truck to point out that the said truck was stationary. Deceased may not have spotted the stationary truck as there was dark and no indicators of said truck were on, he would not have expected any truck is stationed on the said first lane. Hence, he hit the said truck from behind. Though the head lights of the car were on, but it cannot be said that due to night time and fog on road, the said truck was visible or not. As per the provisions of the Motor Vehicles Act, 1988, it was the duty of driver of offending truck to put the indicators and parking light of the said truck in on condition. In spite of that, Police registered the FIR against the deceased which is improper. In spot panchanama, it is not mentioned that the parking light and indicators of the offending truck were on. Learned counsel further submits that when accident occurred, at that time, driver and cleaner of the said offending truck were not present. The Tribunal has fixed 60% liabilities on the driver of offending truck and 40% on the deceased which is improper. Hence, requested to dismiss the Appeal and allow the Cross Objection.

5. I have heard both learned counsel. Perused judgment and order passed by the Tribunal. In respect issue of negligence the Tribunal has observed that F.I.R. was lodged against the deceased, the offending truck was stationed on lane 1 of Expressway meant for fast vehicles. No parking lights, indicators of offending truck were on, hence the Tribunal has held contributory negligence of driver of offending vehicle at 60% and 40% of the deceased. There was no eye witness to the incident, hence perused spot panchanama and F.I.R. The spot panchanama is at Exhibit-26. In this panchanama, it is mentioned that offending truck was stationed on lane no.1, the lane one on Expressway is for fast vehicles only, the trucks are not supposed to drive on this lane. In spot panchanama, it is not mentioned that parking lights or indicators of the offending truck were on. No stones were placed around the truck. It was burden on the Respondents to prove these facts, but no witness was examined by the Respondents. In F.I.R. Exhibit-25, it is mentioned that, after accident enquiry was made with driver of offending truck, he has stated to the police that, truck was broke down on road, hence it was stopped, at that time one car gave dash to the truck from back side, but to prove this fact driver of offending truck did not step into witness box. Moreover, the information of accident was not given by the driver of offending truck to the police, police came to know about the accident incident through police control room. Had the truck broken down on road and immediately thereafter the deceased had given dash, brake lights of the truck should be on, but when police visited the accident spot, after accident, in F.I.R. it is not mentioned that driver of truck was present there, it shows that to avoid liability of accident driver has stated that after broken down of truck, immediately deceased gave dash to the truck.

6. The Tribunal has considered 60% negligence of driver of offending truck and 40% negligence of deceased. In my view, while fixing the negligence the Tribunal has not considered the rules and regulations for parking of vehicles. Rule 15 of the Central Motor Vehicles Rules, 1989, it states about parking of vehicle; it reads thus:-

“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.”

.....

“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.”

.....

“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 offhighway or construction operations, shall have separate control for such lamps or lights and these shall be permanently switched of when the vehicle is travelling on the road.]”

7. This Rule states that, front and rear parking lights shall remain lit when the vehicle is kept stationary on the road. In the present case, it was not done nor it is proved before the Tribunal that proper precautions were taken by the offending Truck Driver. The truck was stationed on lane one which was supposed to for fast vehicles. Hence, the observation of learned Tribunal fixing the liability of 40% on deceased is wrong and I am setting aside this observation and I hold that the driver of offending truck was sole negligent for the said accident. Though the Police filed FIR against the deceased. In my view, while registering F.I.R. against deceased, police have not considered Motor Vehicle Rules and truck was stationed on Lane No.1. In respect of awarding compensation for consortium, it is awarded Rs.1,00,000/- to Claimant No.1 and as a loss of love and affection awarded Rs.1,00,000/- to the Claimant Nos.2 and 3, Rs.25,000/- for funeral expenses and Rs.25,000/- for loss of estate. Total comes to Rs.2,50,000/-, as per the view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram**, reported in (2018 ACJ 2782 (SC)) each Claimants are entitled for Rs.44,000/- as consortium and Rs.16,500/- for loss of estate and Rs.16,500/- for loss of funeral expenses. There are three claimants. Total comes to Rs.1,65,000/-, if this amount deducts from the consortium amount of

Rs.2,50,000/- awarded by the Tribunal, it comes to Rs.85,000/-. It is excess amount. The Tribunal has considered Rs.69,50,000/- as 40% contributory negligence. As observed earlier that accident occurred to the sole negligence of driver of offending truck. The claimants are entitled for this amount. If amount of Rs.85,000/- deduct from this amount, it comes to Rs.68,65,000/-. The claimants are entitled for this amount.

9. In view of above, I pass following order:-

- (i) Appeal No.207 of 2021 is partly allowed.
- (ii) The excess amount awarded under head of loss of love and affection and consortium amount is reduced.
- (iii) The Cross Objection is allowed.
- (iv) The Claimants are entitled for the enhanced compensation of Rs.68,65,000/- @ 7.5% from the date of filing the Application, till its realisation of the amount. The Respondents are directed to deposit enhanced amount alongwith accrued interest within eight weeks from receipt of order of this Court.
- (v) The Claimants are permitted to withdraw deposited amount along with accrued interest thereon. The statutory amount be transmitted to the Tribunal.
- (vi) The parties are at liberty to withdraw it as per rule.
- (vii) First Appeal and Cross Objections are disposed of.
- (viii) Pending Applications, if any, disposed of.

(SHIVKUMAR DIGE, J.)