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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 662 OF 1997

1. Shri. Madhukar Gundoji Kangale)
2. Malati Madhukar Kangale)
3. Aruna Madhukar Kangale)
4. Manisha Madhukar Kangale)
5. Kiran Madhukar Kangale)....Appellant
(Original Claimant)

Versus

1. Chandrakant Mansingrao Kadam)
2. The New India Assurance Company Ltd,)
Kolhapur.)
- 3 Shri Shamrao Bapu Patil)
(matter dismissed as against Resp. No. 3)
as per Registrar Order dated 05/02/2002)Respondents
(Original Opponents)

Ms. Harvinder Kaur Rogi i/b Shri. S. R. Ganbavale for the Appellant
Mr. Onkar Nagvekar i/b P. R. Arjunwadkar for the Respondent No. 1.
Ms. Shalini Shankar for the Respondent No.2.

CORAM : S. G. DIGE, J.

DATE : 9th MARCH 2023.

JUDGMENT :

1. This appeal is preferred by original claimants against dismissal of claim petition.

2. Brief facts of the case are as under.

On 3 March, 1985 deceased Pradip Kangale was returning home from his school on bicycle. When he came in front of Mahalaxmi Co-operative Bank, at Tarabai Park, Kolhapur. Tractor bearing registration no. MXC-8610-cum; trailer no. MXL-4956 came from opposite direction and gave dash to the cycle of deceased, the rear right wheel of the said tractor ran over the body of the deceased. The deceased died on the spot. The offence was registered against the driver of the offending tractor.

3. The claimants file claim petition for getting compensation before the Motor Accident Claims Tribunal, Kolhapur (for short the Tribunal), the tribunal has dismissed the claim, against the said judgment and order this appeal.

4. It is contention of learned counsel for the appellant that tribunal has dismissed the claim without any sufficient reason. The evidence produced on record was not considered by the tribunal. Learned counsel further submits that offending tractor gave dash to the deceased, offence was registered against the driver of tractor but this fact is not considered by the tribunal. Deceased was meritorious student, no future prospects and consortium awarded by the tribunal. Hence, requested to allow the appeal.

5. It is contention of learned counsel for the respondent no. 2 that the accident was occurred due to sole negligence of the deceased, while dismissing the claim petition the tribunal has considered all the aspects, no interference is required in it. Learned counsel for the respondent no. 1 submits that the offending vehicle was insured with respondent no. 2.

6. I have heard all learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal, while dismissing the claim claimants. The tribunal has observed that claimants have not proved that the accident in question had occurred due to the rash

and negligent driving of the opponent no. 3 i.e. driver of offending tractor. I am unable to understand the reasoning given by the tribunal, as FIR of the said Accident was registered against the driver of offending tractor which is at Exhibit-33, the spot panchanama is at Exhibit-'40' rough sketch map is at Exhibit-49. The tribunal has observed that there was negligence of deceased. I have perused the spot panchanama at Exhibit-'40' and rough sketch map at Exhibit-'49' . The Exhibit-'40' doesn't show that deceased was negligent, rather it shows there was negligence of the driver of offending in the said accident. Mere on the basis of document negligence of the deceased considered by the tribunal is erroneous, moreover the driver of the offending tractor did not step in to witness box to prove the negligence of the deceased. Hence, I hold that the accident was occurred due to sole negligence of the driver of the offending tractor. The tribunal has considered monthly income of deceased at Rs. 15,000/- per annum. I do not find any infirmity in it. At the time of accident deceased was 15 years old so proper multiplier is 18 considering the above calculations. the claimants are entitled for following compensation.

Notional Income of deceased	Rs. 15,000/- p.a.
40% Future Prospect	+ Rs. 6,000/-
	Rs. 21,000/-
1/2 dependence	- Rs. 10,500/-
Multiplier	Rs. 10,500/- X 18
	Rs. 1,89,000/-
Loss of Consortium	+ Rs. 44,000/-
	+ Rs. 44,000/-
Loss of estate & Funeral expenses	+ Rs. 33,000/-
Total	Rs. 3,10,000/-

The claimants are entitled for compensation of Rs. 3,10,000/-.

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

ORDER

- i. Appeal is allowed.
- ii. The claimants are entitled for compensation of Rs. 3,10,000/- at the 7.5% per annum from filing of application till realization of the amount. Out of this amount of Rs. 1,21,000/- is consortium amount. The claimants are entitled 7.5% interest on this amount from

1/10/2017 till realization.

- iii. The Respondents are directed to deposit compensation amount along with accrued interest thereon within six weeks after receipt of the order.
- iv. Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

(S. G. DIGE, J.)