

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 865 OF 2014

1.Smt Tanjila Ikhalak Patel	}	
Age-24 yrs., Occu.- Household,	}	
	}	
2.Bibiayesha Ikhalak Patel	}	
Age-4 yrs. Occu.- Nil.	}	
	}	
3.Simab Ikhalak Patel	}	
Age-18 yrs, Occu. -Nil	}	
	}	
4.Ujama Ikhalak Patel	}	
Age-17 yrs, Occu.- Nil	}	
	}	
5.Ruhnisa Abdukadar Patel	}	
Age-69 yrs, Occu- Household	}	
R/o- Aurwad,	}	
Tal. Shirol, Dist. Kolhapur.	}	

.....Appellants
[orig.. Petitioners
Claimants

Versus

1.Kumar Yuvraj Patil	}	
Age-32 yrs, Occu. Truck Driver,	}	
R/o- Malhar Peth, Savarde,	}	
Tal- Phaltan, Dist- Kolhapur	}	
	}	
2.Vijay Vishwambar Shete,	}	
Age-Adult, Occu- Owner,	}	
R/o-Rukadi, Tal- Hatkanangale,	}	
Dist. Kolhapur.	}	
	}	
3.The New India Insurance Co. Ltd,	}	
Kolhapur Branch Office, Kolhapur	}	

.....Respondents
(Org. Opponents)

...
Mr. Tejpai Ingale Advocate for the Appellant.
Mr. Sandeep S. Jinsiwale Advocate for the Respondents.
...

CORAM : S. G. DIGE, J.

DATE : 6TH FEBRUARY, 2023.

JUDGEMENT :

1. Being aggrieved and dissatisfied by the judgment and order passed by Motor Accident Claims Tribunal, Kolhapur (for short "The Tribunal"). The appellants'/original claimants' preferred this appeal.

2. Brief facts of the case are as under:

3. On 3rd April 2010 at about 11:30 a.m. deceased Ikhalak was riding on his motor cycle and going to Janta Bazar square to Tembalai Naka, Railway fata in slow speed and observing the traffic rules, he was driving his motorcycle on left side of the road. At the relevant time one truck bearing registration no. MH-09-BC-5577 came in rash and negligent manner and in high speed. The driver

of the said truck overtook the motor cycle of deceased and suddenly took his truck towards left side of the road and dashed the motorcycle of deceased from back side of the truck. By said dash, deceased lost balance and fell down on road, the left side tyre of the truck crushed the body of deceased. The deceased died on the spot. The offence was registered against the driver of offending truck. The claimants filed claim petition before Motor Accident Claims Tribunal, Kolhapur (for short "the Tribunal") for getting compensation. The Tribunal has dismissed the claim petition, against said judgment and order this appeal.

4. It is contention of learned counsel for appellants that tribunal has erred in holding that claimants failed to prove that driver of the offending truck drove the vehicle in rash and negligent manner.

5. Learned counsel further submits that the documentary evidence produced on record such as spot panchnama, FIR shows that there was negligence of the truck driver, but Tribunal has not considered this fact. The accident had occurred when the driver of offending truck tried to overtake the motor cycle of deceased. So, no

question of negligence of deceased arise. The deceased was 36 years old at the time of accident. He was working as a Deputy Head Master in Urdu-Marathi school at Kolhapur. His salary was around Rs. 24, 876/- per month. Deceased was the only earning member of his family.

6. Learned counsel further submits that the driver of offending truck i.e. Respondent No.1 examined himself to prove the negligence of deceased. In examination-in-chief, he has stated that when he was driving the truck, on the left side of the road, there was space of 5 to 6 feet on tar road. But Tribunal has not considered this fact and fixed sole negligence on the deceased. Hence, requested to allow the appeal.

7. Learned counsel for respondent vehemently submits that there was 100% negligence of the deceased. Deceased tried to overtake the offending truck from the left side of the said truck which was illegal while overtaking the said truck, deceased gave dash to the rear side of truck and fell on ground and suffered injuries. There was no negligence of the driver of offending truck.

8. Learned counsel further submits that initially first information was filed by the driver of the offending truck, in the said FIR, it is mentioned how the accident occurred.

9. Learned counsel further submits that the driver of offending truck examined himself at Exhibit 56, he has stated that accident had occurred due to sole negligence of the deceased and nothing is elicited in his cross examination to prove his negligence. The order passed by the Tribunal is legal and valid. The driver has been absolved from the criminal offences levelled against him. It proves that he was innocent. Hence, requested to dismiss the appeal.

10. I have heard both learned counsel. Perused judgment and order passed by the Tribunal. The Tribunal has dismissed the claim petition of the claimants. While dismissing the claim petition, Tribunal has observed that the panchanama Exhibit 28 shows that the handle of motor cycle was bent. It strongly indicate that deceased drove his vehicle in rash and negligence manner and wrongly overtook the offending truck. Though, it is case of the claimants that the offending truck overtake the motor cycle of

deceased and suddenly came to left side. Due to which accident occurred, but evidence produced on record does not support the contention of claimants. On these observations, the Tribunal has dismissed the claim petition. I am not agree with the findings given by the Tribunal, admittedly, the FIR was lodged by the driver of offending truck i.e. Respondent No.1. How he could give report against himself. It appears from record that in the investigation, police has found that the Respondent No.1 was trying to overtake the motor cycle of deceased and suddenly he took his truck towards left side of the road due to which accident occurred. Exhibit 28 spot panchnama shows that deceased had applied brake and there were brake of 12 feet on the road. It proves that deceased was riding the motor cycle on the left side of the road and all of sudden when Respondent No.1 took the truck on left side, deceased applied the brake of motor cycle. Had deceased been given dash while overtaking the truck, deceased would not have applied the brake of motor cycle and hit the truck straightly, but tribunal has not considered this fact. It is significant to note that the driver of offending truck (Respondent No.1) who examined himself, has stated in examination in chief that there was 5 to 6 feet space on the left side of the road. If there was space on the road then

deceased could have passed away easily without giving dash to the offending truck.

11. Considering evidence on record, in my view, the observations of the Tribunal regarding sole negligence of the deceased are wrong. As there was no eye witness to the incident. I am fixing 70% liability on Respondent No.1 i.e. driver of the offending truck and 30% liability on the deceased. It has come on record that deceased was working as Incharge Head Master in Municipal Urdu Secondary School at Kolhapur. The last drawn salary of the deceased was Rs. 18,578/- per month and after deducting professional tax of Rs.300/- and I.T. (TDS) 324/- net salary of deceased comes to Rs.17,954/- per month. I am considering this salary as monthly income of deceased. The salary certificate is at Exhibit 44K. There are five claimants. So, personal expenses deduction would be $\frac{1}{4}$. The deceased was permanent employee and at the time of accident, he was 36 years old. As per the view of Hon'ble Apex Court in the case of ***National Insurance Company Limited V/s Pranay Sethi & Ors.***¹ The Claimants are entitled for 50% future prospect. As per view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd vs Nanu***

1 (2017) 16 SCC 680

Ram Alias Chuhru Ram² each Claimants are entitled for Rs. 40,000/- consortium amount and amount of Rs. 15,000/- for funeral expenses and amount of Rs.15,000/- for loss of estate.

12. The claimants are entitled for compensation as per calculations mentioned below.

	Amount
Last drawn monthly salary of the deceased	Rs. 18,578.00
Less Profession Tax Rs.300/- and Income Tax Rs.324/-	Rs. 17,954.00
There being 5 claimants-1/4 deduction	Rs. 4,488.00
Rs.17,954.00- Rs. 4,488.00	Rs. 13,466.00
50% Future prospects	Rs. 6,733.00
Total	Rs. 20,199.00
Yearly income - Rs.20,199.00 X 12	Rs. 2,42,388.00
Rs.2,42,388 X 15 (multiplier)	Rs. 36,35,820.00
Plus Spousal Consortium for Applicant No.1	Rs. 40,000.00
Plus Parental Consortium for Applicant No.2	Rs. 40,000.00
Plus Parental Consortium for Applicant No.3	Rs. 40,000.00
Plus Parental Consortium for Applicant No.4	Rs. 40,000.00
Plus Funeral Expenses	Rs. 15,000.00
Plus Loss of Estate	Rs. 15,000.00
Total Compensation	Rs. 38,25,820.00
Deduction of 30% contributory negligence of the	Rs. 11,47,746.00

2 (2018) 18 SCC 120

deceased motor cycle rider
Total Compensation Payable

Rs. **26,78,074.00**

13. The Claimants are entitled for compensation of Rs. 26,78,074.00/-.

14. In view of the above, I pass the following order.

ORDER

- i. Appeal is allowed.
- ii. The Claimants are entitled for amount of Rs. 26,78,074/- , @ 7.5 % from date of filing claim petition till realization of amount out of this amount consortium amount is of Rs. 1,90,000/-. The Claimants are entitled @ 7.5% interest on this amount from 1.10.2017 till realization of amount.
- iii. The respondents are directed to deposit the compensation amount along with interest within six weeks from the date of receipt of the order.
- iv. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

15. Pending applications, if any, stand disposed of.

(S. G. DIGE, J.)