

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1158 of 2001

Kolhapur Zilla Prishad	]	Appellant
through the Chief Executive Officer, Z.P.	]	(Original
Kolhapur, At & Post Kolhapur.	]	Respondent
		No.2)

Versus

1	Ushatai Maruti Dongre,	]	
	Age : 50, Occ. Household.	]	
2	Vandana M. Dongre	]	
	Age-28, Occ : Household,	]	
3	Archana M. Dongre,	]	
	Age-27, Occ: Household	]	
4	Sacheen M. Dongre	]	
	Age : 26, Occ: Student	]	
5	Bipin M. Dongre,	]	Respondent
	Age: 24, Occ : Student	]	Nos. 1 to 5
	All residing at 12 th Lane, Ranzunzar Chowk,	]	Original
	Jaysingpur, Tahsil Shirol, District-Kolhapur	]	Claimants
		]	
6	The Director of Insurance	]	
	16/17, New Administrative Building,	]	Original
	Mantralaya, Mumbai.	]	Respondent
			No.3.
7	State of Maharashtra	]	Original
		]	Respondent
		]	No.1
			Respondents

WITH
FIRST APPEAL NO.120 of 2000

1	State of Maharashtra	]	
	(through the Director of Insurance,	]	
	Office at 16/17 floor,	]	Appellant
	New Administrative Building, Opp.	]	(Original
	Mantralaya, Mumbai- 400 032.	]	Opponent)

Versus

1	Ushatai Maruti Dongre,	]
	Age : 40, Occ. Household, Heirs	]
1	Vandana Maruti Dongre	]
	Age-27, Education	]
2	Archana Maruti Dongre,	]
	Age-26, Education	]
3	Sacheen Maruti Dongre	]
	Age : 24, Education	]
4	Bipin Maruti Dongre,	]
	Age: 21, Education	]
	All R/at 12 th Lane, Ranzunzar Chowk,	]
	Jaysingpur, District-Kolhapur	]
2	Vandana Maruti Dongre	]
	Age-18 years, Education	]
3	Archana Maruti Dongre,	]
	Age-17, Education	]
4	Sacheen Maruti Dongre	]
	Age : 16, Education	]
5	Bipin Maruti Dongre,	]
	Age: 14, Education	]
6	Kolhapur Zilla Parishad, Kolhapur	] .Respondents (Original Claimants)

Mr.Sachindra Shetye along with Ms.Sarika Shetye, Advocates for the Appellant in FA No.1158 of 2001.

Mr.Rajan S. Pawar a/w Ms.Tanaya Goswami, AGP for the Appellant in FA No.120 of 2000 and for Respondent No.7 in FA No.1158 of 2001.

Mr.V.B. Rajure, for Respondent No.1(1) to 1(4) and 2 to 5 in FA No.120 of 2000.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19th DECEMBER, 2023.

ORAL JUDGMENT :

1. Both these appeals are preferred against judgment and order passed by the Motor Accident Claims Tribunal, Kolhapur (for short “the Tribunal”) by original respondent No.1- Zilla Parishad Kolhapur and original respondent No.3-Director of Insurance Office.

2. It is contention of learned AGP for appellant in First Appeal No.120 of 2000/original respondent No.3 that a residence quarter was allotted to the deceased at Kolhapur but he drove the vehicle to Jayasingpur without permission of superior authority. Learned counsel further submitted that there was negligence on the part of deceased as he left the headquarter without the permission of the superior authority. Learned counsel further submitted that at the time of the accident, the deceased was driving the vehicle himself without taking the driver allotted to him but these facts are not considered by the Tribunal and has passed the impugned order, which is erroneous, hence, requested to allow the appeal.

3. It is contention of learned counsel for Kolhapur Zilla Parishad, appellant in First Appeal No.1158 of 2001/original respondent No.2 that the offending vehicle belonged to original respondent No.2 and driver was provided to the deceased. The vehicle was in good condition. The accident occurred due to sole negligence of the deceased but these facts are not considered by the Tribunal and has wrongly directed

appellant/original respondent Nos.1 to 3 to pay compensation jointly and severally to the claimants. Appellant/original respondent No.2 should have been exonerated from paying compensation. Hence, requested to allow the appeal.

4. It is contention of learned counsel for respondents/claimants that deceased was the employee of Kolhapur Zilla Parishad. The accident occurred when deceased was going to his home at night time and suddenly the headlights of the car, which he was driving, went off and he dashed to the road-side tree. Due to technical fault in the said car, the accident occurred. The Tribunal has considered all aspects while passing the order, hence, no interference is required in it.

5. I have heard all learned counsel, perused the judgment and order passed by the Tribunal.

6. It is the claimants' case that deceased -Maruti Dongre worked as Executive Engineer in Zilla Parishad, Kolhapur. On 26th November 1987, after finishing his office work, he was proceeding to his residence at Jayasingpur by office car bearing No.MHM 7755. Maruti Dongre was not provided official residence at Kolhapur, therefore, he was living in his own house at Jayasingpur. He was driving the vehicle cautiously with moderate speed. When he reached near Ichalkaranji crossing, the lights of the vehicle suddenly went off. Therefore, the car dashed against the tree, as a result of which, Maruti Dongre received fatal injuries and died on the spot. The incident happened at 11.30 p.m..

It is contention of both appellants that the accident occurred due to negligence of the deceased. Residential quarter was provided to him at Kolhapur. The car in which he was traveling was in good condition. The claimants have examined witness-Shrikant Waichal (PW-2) who was traveling with deceased at the time of accident. He has stated that when they were proceeding in the car, the lights of the car went off, due to which, the accident occurred. It shows that the accident had not occurred due to negligence of the deceased. The Tribunal has considered all the aspects and, on that basis, order is passed. I do not find infirmity in it.

To prove the defense taken by the appellants in both the appeals, no evidence was led before the Tribunal to substantiate their defense. Hence, I do not find merit in the contention of the appellants.

The Tribunal has directed original respondent Nos.1, 2 and 3 i.e. appellants in both the appeals to pay compensation jointly and severally. It is the choice of the claimants to recover the compensation from any of them.

The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in **Magma General Insurance Co. Ltd.(supra)** each claimant is entitled for Rs.48,000/- as consortium, Rs.18000/- for funeral expenses and Rs.18,000/- for loss of estate. There are five claimants, the total amount comes to Rs.2,76,000/-.

In view of above, the claimants are entitled for following compensation:

Particulars	Rs.	Entitlement
1 Monthly Income i.e. salary	Rs.	3,000.00
2 Must have spent for own expenses i.e. deductions	Rs.	1,000.00
3 Dependency (3000 – 1000)	Rs.	2,000.00
4 Multiplier 10 (2000 X 10)	Rs.	20,000.00
5 Yearly Income (20,000 X 12) = Total compensation	Rs.	2,40,000.00
Total Compensation – (No fault liability) (2,40,000 – 15,000)	Rs.	2,25,000.00
6 Loss of consortium 48,000 X 5 (claimants)	Rs.	2,40,000.00
7 Funeral Expenses	Rs.	18,000.00
8 Loss of Estate	Rs.	18,000.00
9 Total Compensation (2,40,000+2,76,000)	Rs.	5,16,000.00
10 Less already awarded by Tribunal	Rs.	2,40,000.00
11 Total compensation payable (5,16,000-2,40,000)	Rs.	2,76,000.00

The claimants are entitled for enhanced amount of Rs.2,76,000/-.

It is the contention of learned AGP for the State that the rate of interest at 12% per annum awarded by the Tribunal on compensation amount is on higher side, it should be reduced. In my view, the rate of interest is on higher side, it should be 9%. per annum. Hence, I am considering the rate of interest at 9% per annum.

7. Considering the above reasons, I pass following order :

(i) First Appeal No.120 of 2022 is partly allowed.

- (ii) First Appeal No.1158 of 2001 is partly allowed.
 - (iii) Rate of interest on the compensation amount awarded by the Tribunal shall be 9% per annum instead of 12% from the date of filing of claim petition till realisation of the amount.
 - (iv) The claimants are entitled for enhanced amount of Rs.2,76,000/- @ 7.5% from 1st November 2017 till realisation of the amount.
 - (v) The appellants shall deposit the enhanced amount along with accrued interest thereon within six weeks from the receipt of the order.
 - (vi) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - (vii) The statutory amount in both appeals be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
10. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)

Note: This judgment is corrected in view of order dated 16th January 2024.