

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 1382 OF 2022**

SHANTANU  
SHANKARSA  
DHUDUM

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Date: 2023.06.09  
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Go Digit General Insurance Co. Ltd. )  
 Ananta One, 1 to 6 Floor, )  
 Opp. Shivaji Nagar Bus Stand, )  
 Babulal Shaikh, Narveer Tanaji Wadi, )  
 Pune-411005. )....Appellant  
 (Orig. Insurer)

**Versus**

1. Smt. Reshma Shankar Pawar )  
 Age 28 years present, Occ.: Labour, )  
 Widow of deceased, )
2. Priya Shankar Pawar )  
 Age 12 years present, Occ.: Student, )  
 Daughter of deceased, )
3. Chandrakala Shankar Pawar )  
 Age 10 years present, Occ.: Student, )  
 Daughter of deceased, )
4. Priti Shankar Pawar )  
 Age 8 years present, Occ.: Student, )  
 Daughter of deceased, )
5. Krishna Shankar Pawar )  
 Age 6 years present, Occ.: Student, )  
 Son of deceased, )
6. Smt. Kalabai Ganesh Pawar )  
 Age 56 years present, Occ.: Nil, )  
 Mother of deceased, )  
 Resp. Nos. 2 to 5 being minor through their )  
 mother natural guardian Resp. No.1 )

All r/at Post Dhangwadi, Taluka Bhor, )  
District Pune – 412205. )

7. Shreyas Associates )  
16th KM Bhandara Road, )  
At/Po. Mahalgaon, Tal. Kamptee, )  
Nagpur - 441404. )....Respondents  
(Resp. 1-6 org. Claimants,  
Resp-7 org. Op. Party).

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Mr. Devendranath S. Joshi for the appellant.  
Mr. Amol Gatne i/b Ms. Swati Mehta for the Respondents.

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**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 20<sup>th</sup> APRIL 2023.**

**ORAL JUDGMENT :**

1. The issues involved in this Appeal are accident occurred due to sole negligence of deceased and monthly income of deceased considered on higher side.

2. It is contention of learned counsel for the appellant that deceased gave dash to the offending truck which was stationed on the side of road from backside. The accident occurred at 7:15 p.m. on 9th May, 2021. In month of May, at 7:15 p.m., there would be day light but, the Tribunal has considered it dark which is improper and on that basis, negligence of driver of offending truck is held which is

erroneous. Learned counsel further submits that deceased was claimed to be doing masonry work and the Tribunal has considered his monthly income at Rs. 15,000/- per month, which is on higher side. There is no documentary evidence produced on record to prove the monthly income of deceased but exorbitant and excessive compensation is awarded. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondents/claimants that the offending truck was stationed on highway without any indicator or parking lights on, no signs were put behind the offending truck that it is stationary, no stones were placed behind the truck to show that it is stationed. In the month of May at 7:15 p.m, there would be twilight, the said stationed truck was not visible as no parking lights or indicators were put on, hence, accident occurred. The driver and cleaner of the said truck were not present at the time of accident. They left the truck on highway in dangerous condition. It shows sole negligence of driver of offending vehicle and the tribunal has rightly held that accident occurred due to negligence of driver of offending vehicle. Moreover, driver of offending truck was not examined to prove that at the time of accident, whether there

was twilight or it was dark or not and whether the parking lights and indicator of offending truck were put on or not. In spot panchanama, it is not mentioned that parking lights and the indicator of the said truck were put on. Learned counsel further submits that as per the Government Notification of Minimum Wages Act dated 1 August 2022, the minimum wages prescribed for unskilled labourer in construction for Zone III is Rs.15697/-. It is claimants' case that deceased was getting Rs.21,000/- per month but Tribunal has considered Rs.15,000/- per month, which is proper. Hence, no interference is required in judgment and order passed by the Tribunal.

4. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal, Pune (for short 'the Tribunal').

5. It is claimants' case that on 9 May, 2021 at about 7:15 p.m. the deceased was going on his motorcycle in very careful manner from Kaparhol to Dhangwadi within the limits of village Dhangwadi. The offending truck bearing registration no. MH-40-BG-6351 was carelessly stationed on road without taking care and caution of

putting some signs around it, so that the person traveling on road could not have immediately come to know that the vehicle was parked due to some snag. The deceased did not notice the offending truck and gave dash to it from backside. Deceased suffered injuries in the accident and died while taking treatment. The offense was registered against the driver of offending truck. While dealing with the issue of negligence, the Tribunal has observed that from the papers produced on record it reveals that the offending truck was stationed on highway in dangerous condition, no precautionary measures i.e. parking lights and indicators were put on of the said offending truck by driver and cleaner of said truck. It was dark at the time of accident. The insurance company did not examine any witness to prove that the accident occurred due to negligence of deceased or parking lights or indicator of the said truck were on, hence, the Tribunal considered that the accident occurred due to sole negligence of the driver of offending truck. I do not find any infirmity in it.

6. Admittedly, FIR in respect of the accident was registered against the driver of offending truck. The truck was stationed on the

highway. As per Section 109 of the Motor Vehicle Regulation Act, if vehicle is stationed on the road, necessary precautions are required to be taken by driver or cleaner of offending truck. The parking lights of the said truck are required to be kept on.

7. It is contention of learned counsel for the appellant that as the accident occurred at 7:15 p.m. in the month of May, the parking lights were not required to be put on, as it was not dark. In my view, no one can say on that day whether it was dark or not. Moreover, it is ridiculous to say that during day time parking lights are not required to be put on. As per provisions of Motor Vehicles Rule, when any vehicle is stationed on road, certain precautions are necessary to be taken. Rule 15 of the Central Motor Vehicles Rules, 1989, states about parking of vehicle; it read 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, obstructions 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 foot-path.”

.....

**“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 triangle shall be placed at a distance of fifty meters behind the broken-down vehicle; and”

.....

“When any vehicle is stationed on the road at night time, as per Rule 109 of the Central Motor Vehicle Rules, 1989, proper precautions are necessary to be taken. It read 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 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 constructions equipment vehicle [and combined harvesters], which are installed with food light lamps or sports 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.]”

8.           In present case, it shows that the driver of the offending Truck has clearly violated all the rules and regulations of the Central Motor Vehicle Rules, and the Rules of the Road and Regulation, 1989 and Regulations made under the Act.

9.           It is revealed from the record that at the time of accident, it

was dark. In my view, generally in month of May sun sets after 7:00 p.m., but it cannot be said that every day there would be broad daylight after 7:00 p.m.. It is prior to sun setting time, due to change in weather, there would be twilight in month of May after 7:00 p.m. On the day of accident, whether there was broad daylight or twilight has not come on record. If it is presumed, that it was not dark on that day but when the truck was stationed on highway, it was the duty of driver to put stones around stationary truck or to put some signs showing that the said truck is stationed on road. But the said fact was not proved before the Tribunal as well as it is not proved that precautionary measures were taken by the driver of the offending truck. Moreover the driver of offending truck did not step into witness box to prove the negligence of deceased and to show that it was not dark at the time of accident and precautionary measures were taken by him after parking of offending truck on highway. I do not see merit in the contention of learned counsel for the appellant that proper precautionary measures were taken and there was no negligence of driver of offending truck.

10. Learned counsel for the appellant submits that the spot

panchanama shows that the truck was stationed on left side of the road and deceased had sufficient space to pass. In my view, the spot panhanama and sketch of accident spot shows that the truck was stationed on the left side of highway but not on service road. Though there was space, but the truck was parked on the left side of the road and the motorcycles, two wheelers cannot be driven on main highway, it drive from left side of the road. The motorcycle rider i.e. deceased would not have expected that truck is stationed on highway as there were no signs of stationing of the offending truck and as revealed from police papers, it was dark, hence, he could not have noticed the offending truck and dashed it from backside. I do not see merit in the contention of learned counsel for the appellant that there was negligence of the deceased.

11. It is contention of learned counsel for the appellant that at the time of accident deceased was not wearing helmet, it be considered as contributory negligence of deceased and he died due to head injury. In my view, no evidence is produced on record to prove that the deceased was wearing helmet or not. Moreover, the injuries were caused all over body of deceased. I do not see merit in the

contention of learned counsel for the appellant that deceased was not wearing helmet.

12. To prove the income of deceased, the claimant no. 1 examined herself. She has stated that deceased was doing masonry work and he was drawing Rs.21,000/- per month as monthly income. Considering the evidence of claimant no. 1 and documents on record, the Tribunal has considered notional monthly income of deceased at Rs.15,000/- per month. The deceased was unskilled labourer in construction business. As per notification of State of Maharashtra dated 1<sup>st</sup> August, 2022, minimum wages for the unskilled labourer in construction is more than Rs.15,000/-. The monthly income considered by the Tribunal is proper. I do not find infirmity in it.

13. In view of above, I pass following order:

**ORDER**

- i. Appeal is dismissed. No order as to cost.
- ii. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- iii. The statutory amount be transmitted to the Tribunal

along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

14. All pending applications are disposed off.

15. Learned counsel for the appellant submits that the interim stay be continued for eight weeks. Considering the submissions of the learned counsel for the appellant and respondents, after uploading this order, the interim order is continued for eight weeks.

**(SHIVKUMAR DIGE, J.)**