

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

FIRST APPEAL NO.893 OF 2016

1. Lucky Kisansingh Yadav,)
2. Priyanka Kisansingh Yadav,)
3. Smt. Neelam Kisanshingh Yadav,)
[Appellant Nos.1 and 2 are Minors,)
hence claiming through their mother)
i.e. Appellant No.3])
4. Jagmalsingh Harnarayan Yadav,)
[for himself and on behalf of)
Appellant No.3 as per General)
Power of Attorney].)
5. Kitabdevi Jagmalsingh Yadav,)
All R/At 4/16, Bajaj Vihar, Akrudi, Pune))

...Appellants
(Ori. Claimants)

Versus

1. ~~Alfa Services,~~
(FA stands dismissed as against Respondent No.1
vide order dated 13/11/2019)
2. The Divisional Manager,)
The New India Assurance Co. Ltd.,)
D.O.2., Legal Cell, Nehru Memorial)
Hall, Camp, Pune.)

...Respondents
(Ori. Respondent)

Mr. Yogesh Pande for the Appellants.
Ms. Poonam Mital for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATED : 30th MARCH, 2023

JUDGMENT :

1. By way of this Appeal, the Appellants-Claimants have challenged the dismissal of claim petition.

2. It is contention of the learned counsel for the Appellants that the accident had occurred due to sole negligence of driver of offending bus, but Tribunal has not considered this fact and dismissed the claim petition on erroneous ground. The learned counsel further submits that, deceased was in military service as security guard and he was getting salary Rs.26,017/- per month and he was permanent employee, but Tribunal has not awarded compensation. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Insurance Company that deceased himself dashed the stations bus. He himself was driving motorcycle in rash, negligent manner and solely responsible for the accident. There was no negligence on the part of the driver of bus. No evidence was led before the Tribunal to show that, deceased was getting monthly gross salary at Rs.26,017/-. The Tribunal has considered all the aspects and on that basis, claim petition is dismissed. No interference is required in it.

4. I have heard both the learned counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal,

Pune (for short 'The Tribunal').

Brief facts of the Appellants case are as under:-

5. On 7th September, 2012, deceased Kisansingh was proceeding from his military quarter i.e. from Senapati Bapa Road and going towards Bajaj Vihar Akurdi, to meet his father on his motorcycle bearing registration No.MH/14/CQ/9677, via old Pune Mumbai Road. He was driving motorcycle at a moderate speed. It was rainy day and pitch dark night. When he reached near ICC Company, near Pimpri at about 10:30 pm, one mini bus bearing registration No.MH/14/9710 was parked by the driver on the road where, the parking was prohibited. There was no signal light or guard stone or any attendant warning for the presence of bus on main road. As such, Kishansingh Yadav could not notice the presence of bus and dashed the bus from behind. Due to said dash, deceased sustained injuries on his head and while taking treatment he succumbed. The offence was registered against the driver of mini bus. While dealing with the issue of negligence, the Tribunal has observed that bus was parked on the left side of road, there was sufficient space on the right side of bus to pass two wheeler vehicles, at that time, there were street lights on the road and lamps on the gate of company were also on, there was sufficient light on the road. Considering the evidence on record and from spot panchnama at Exhibit-25, it is clear that, the width of road is 35 feet. The bus was not parked at the centre of the road. It was possible to identify the parked vehicle, as there was light on the road. The light of the

company's gate was also on, and as per the evidence of offending bus driver, tail lamp of the said bus was on. There is no rebuttal evidence that the bus was parked at center of road, without indicators and signals on. Therefore, whether it was parked in no parking zone or otherwise, will not be a cause of accident. Mere Parking of the vehicle is not sole cause of accident. It was for the motorcycle rider i.e. deceased to see in the head light of his motorcycle that the vehicle was parked. With the help of head light of motorcycle, the deceased could have noticed that there is sufficient space to the right side of parked vehicle. Therefore, the Tribunal has considered that accident occurred due to sole negligence of deceased and dismissed the claim petition. I am unable to understand the observations of the Tribunal as admittedly the offending bus was parked in no parking zone of the road, the accident occurred at 10:40 pm, it was dark night. To prove the negligence of deceased, the driver Sachin Chirme, examined himself at Exhibit-39. In cross-examination, he has admitted that driver Mohan Patil at Exhibit-44 had parked bus in no parking zone and there was no mechanical fault in his bus. He further admitted that no person was present in the bus, when it was parked in no parking zone. From the evidence on record and the spot panchnama, at Exhibit-25, it shows that bus was parked in no parking zone and no attendant was there. It is settled principle of law that when any vehicle is stationed on road, certain precautions are necessary to be taken. I do not agree with the observations of the Tribunal that in street lights or head light of motorcycle, the deceased could have

noticed the parked bus. In my view, parking bus in no parking zone is an offence, so burden cannot be shifted on deceased about happening of the incident. There was negligence of bus driver also. Hence, I am considering 50% negligence of bus driver and 50% contributory of the deceased.

6. To prove the income of deceased, the claimant examined Mr. Jagmalsingh Harnarayan Yadhav, at Exhibit-20. He has stated that at the time of accident, deceased was 31 years old and he was serving in 2 MAH Girls BN NCC, Senapati Bapat Road, Pune on the post of NASST of Sub Rank NK and his last drawn salary for the month of August was Rs.26,017/- and with dearness allowance it was Rs.27,072/-. In support of his evidence, the claimant has examined Mr. Rajeshwar at Exhibit-31, Subhedar in Army Department. He has stated that the last drawn salary of deceased for August-2012 was Rs.26,017/-, the salary slip at Exhibit-35. Nothing elicited in the cross-examination of this witness. Considering evidence on record, I am considering the salary of deceased at Rs.26,017/- per month. The deceased was 31 year old at the time accident. As per the view of Hon'ble Apex Court in the case of *National Insurance Co. Ltd. vs. Pranay Sethi*¹, the claimants are entitled for 50% future prospects. The claimants are entitled for consortium amount. As per the view of Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd. vs. Nanu Ram*², each claimant is entitled for Rs.40,000/- with 10% income as consortium

1 2017 ACJ 2700 (SC)

2 2018 ACJ 2782 (SC)

amount and Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate.

7. Considering the above calculations, the claimants are entitled for following compensation.

Particulars	Amount
Monthly Income	Rs. 26,017.00
50% future prospects	Rs. 13,008.00
Deduction towards personal expenses 1/4 th of Rs.39,025 comes to Rs.9,756/-. Therefore, Rs.39,025-Rs.9,756 comes to	Rs. 29,269.00
Total Income Rs.29,269X12	Rs. 3,51,228.00
Rs.3,51,228 X 16 (multiplier)	Rs. 56,19,648.00
Loss of consortium Rs.44,000/-X5 (applicants)	Rs. 2,20,000.00
Loss of Estate	Rs. 16,500.00
Funeral Expenses	Rs. 16,500.00
Total	Rs. 58,72,648.00
Less 50% towards contributory negligence	Rs. 29,36,324.00
Total compensation payable to the claimants	Rs. 29,36,324.00

The claimants are entitled for compensation of Rs.29,36,324/-.

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

O R D E R

- (i) Appeal is allowed.
- (ii) The claimants are entitled for compensation amount of Rs.29,36,324/- @ 7.5% from filing claim petition

till realization of the amount, out of this amount Rs.2,53,000/- is consortium amount, the claimants are entitled interest at 7.5% on this amount from 1st November, 2017 till realization of the amount.

(iii) The Respondent – Insurance Company is directed to deposit the compensation amount along with accrued interest thereon within eight weeks after receipt of this order.

(iv) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

9. Pending applications, if any, are also disposed of.

(SHIVKUMAR DIGE, J.)