

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO. 23 OF 2022

APPELLANT:
Ori. Opponent
(On R.A.)

Pravin s/o Balkrushna Nagarnaik,
Aged about Major, R/o Holi Chauk,
Janefal, Tq. Mehkar, District Buldhana.

..V E R S U S..

RESPONDENT
Ori. Claimant
(On R.A.)

Smt Pushpabai wd/o Dattatraya Navale,
Aged about 45 years, Occu: Household,
R/o Bhorsabhorsi, Tq. Chikhli,
District Buldana.

Mr H.R. Dhumale, counsel for the appellant.
Mr S.P. Pawar, counsel for the respondent.

CORAM

: URMILA JOSHI-PHALKE, J.

DATE OF RESERVE

: 23/03/2023

DATE OF DECISION

: 06/06/2023

ORAL JUDGMENT :

1. The appellant has challenged the judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Buldana in M.A.C.P. No. 72/2013 dated 05/09/2019 by which the compensation of Rs. 6,34,800/- including NFL amount with interest at the rate of Rs. 7.5% per annum awarded to the claimant.

2. Brief facts which are necessary for the disposal of the appeal are as under:-

On 09/04/2013, the son of the claimant namely Amol

Dattatraya Navale was proceeding along with Nandkishor on his motorcycle bearing No. MH-28-AD-9580 from his home Isoli. They reached Isoli Shiwar on Amdapur Janefal Road. At the relevant time, suddenly one Indica Car No. MH-28-C-5805 came from the opposite side of the motorcycle, in a rash and negligent manner, without following rules and regulations, and dashed against the motorcycle. The dash was so forceful that the deceased was thrown from the motorcycle and sustained injuries and died on the spot. As per the contention of the claimant, the said accident took place, due to the rash and negligent driving of the Indica Car driver i.e. the appellant. Regarding the said accident, a crime was registered against the appellant at Amdapur Police Station. The claimant further claimed that at the relevant time, deceased was aged 20 years and was working as a cleaner and earning Rs. 7,000/- per month. As the said accident took place due to rash and negligent driving of appellant, the appellant is liable to pay compensation to the claimant.

3. In response to the notice, the appellant resisted the claimed on the ground that deceased was not having driving license. He was riding the motorcycle with two riders namely Nandkishor Bhaskar Gawai and Samadhan Santosh Gawai. The alleged accident took place due to the negligence of the deceased also and therefore, contributory negligence of the deceased is also required to be held. The further defence raised by the present appellant is that, his Indica Car was stationed on left side below the road, as the wheel of the Car was punctured. It was the deceased, who could not control

his vehicle and dashed against the stationed Car and caused the accident. Therefore, the claimant is not entitled to receive any compensation.

4. To substantiate the contention, claimant examined herself as well as examined the eye witness- Samadhan Satosh Gawai vide Exhibit No.41. The appellant has examined himself vide Exhibit-50 and also examined Sau Lata Dilip Goregaonkar and Shaikh Abdul Shaikh Baban, Investigating Officer. Besides oral evidence, the claimant placed reliance on Police Papers which shows that regarding the said accident, crime was registered against the appellant. The spot panchanama was also drawn. The offending vehicle was not insured. After appreciating the evidence on record, the Tribunal has held that it was the Indica Car Driver i.e. appellant who was negligent and therefore, liable to pay the compensation to the claimant and awarded the compensation of Rs. 6,34,800/-.

5. Being aggrieved and dissatisfied with the judgment and award passed by the Tribunal, present appeal is preferred by the appellant on the ground that the Tribunal ought to have considered the contributory negligence of the deceased while awarding the compensation. He further raised the ground that, in fact his car was stationed on the left side of the road as front wheel of the driver side of the car was punctured. But it was the deceased, who was negligent while driving and dashed his car, sustained injuries and died. The appellant further raised the ground that at the relevant time, he was not driving the said car, but his driver was driving the said Car, he was present in the school and was attending the

meeting. Therefore, he is not responsible for any negligence of the alleged accident.

6. Heard learned counsel Mr H.R. Dhumale for the appellant. He reiterated the contention and submitted that even the Police Paper indicates that the India Car was stationed as the driver side of front wheel of the Car was punctured. However, the Tribunal had not considered the fact and awarded the compensation to the claimant. He further submitted that the evidence on record shows that appellant was not driving the said Car, he was present in the meeting in School, as he is serving as a Teacher and his driver was driving the said car. The car was stationed as front wheel was punctured. The deceased, who was carrying two pillion rider was negligent and could not control his vehicle and dashed against the Car. The negligence of the deceased can be seen from the Police Papers also, but the Tribunal ignored the same and erroneously held the appellant liable to pay the compensation.

7. Per contra, the learned counsel Mr S.P. Pawar supported the judgment of the Tribunal and submitted that merely because the deceased was riding a motorcycle along with two other Pillion Rider may not by itself make him guilty of contributory negligence. The appellant has not examined the driver of the Indica Car. In support of his contention that, at the relevant time, he was present in the School and his driver was driving the said Car. The Police Papers, FIR and the Spot Panchanama shows that it was Indica Car driven by the appellant in rash and negligent manner dashed against the motorcycle and instantaneous death of the deceased was caused.

8. In support of his contention, he placed reliance on *Mohammed Siddique vs National Insurance Company Ltd reported in AIR 2020 SC 520, New India Insurance Company Limited V/s Ravikant Padmakar Tarekar, reported in 2016(3) Mh.L.J. 246, First Appeal No. 1188/2018 decided on 24/08/2021, Oriental Insurance Limited V/s Naina Bapurao Bhamudkar reported in 2014 (3) Mh.L.J. 371 and Magma General Insurance Company Limited V/s Nanuram reported 2018 SCC Online SC 1546.*

9. On the basis of the cited decisions, learned counsel Mr S.P.Pawar for the respondent submitted that the Tribunal has not awarded the compensation to the claimant under the head of loss of estate, funeral expenses, consortium etc.. Thus, the claimant is entitled to receive the additional compensation towards the head of consortium, loss of estate and funeral expenses.

10. Having heard both the sides and on perusal of the record with the able assistance of learned counsels of both the sides, following points arise for my consideration is as follows :

a) Whether the deceased has contributed for the said accident by carrying two pillion riders on his motorcycle?

b) Whether the judgment and award passed by the Tribunal calls for any interference ?

11. There is no dispute that alleged accident took place on

09/04/2013. The involvement of the vehicles motorcycle bearing No. MH-28-AD-9580 and Indica Car No. MH-28-C-5805, is also not in dispute. The only controversy in the petition is that as per the claimant, it was the appellant, who was driving the Indica Car was rash and negligent and dashed against the motorcycle. Whereas as per the appellant his Car was stationed as front wheel of the Car was punctured but the deceased who was driving the motorcycle could not control his vehicle and dashed against the Indica Car which was stationed.

12. To substantiate the contention, the claimant/mother of the deceased entered into the witnesses box and deposed about the occurrence of the accident. Admittedly, she is not eye witness of the accident. She deposed as per the police papers. Though she is cross-examined at length, but nothing incriminating came on record. She flatly denied that the accident in question took place because of negligence on the part of her Son. Besides her oral evidence, she examined Samadhan Santosh Gawai vide Exhibit No. 41 who was the eye witness of the said incident. His evidence disclosed that on 09/04/2013, he was travelling along with deceased on his motorcycle MH-28-AD-9580 as a Pillion Rider. The deceased was driving a motorcycle in a moderate speed. When they reached in Isoli Shiwar of Janephal Amadapur Road, the offending vehicle Indica Car MH-28-C-5805 came in rash and negligent manner and dashed against the motorcycle. Due to the said dash, the deceased thrown on the road and sustained the injuries. His evidence further discloses that the Car driver came to the wrong side and gave dash

to the motorcycle. Immediately, Car driver has took his car towards left side of the road parked it and ran away from the spot.

13. The evidence of this witness during the cross-examination shows that he has shown unawareness about the another pillion rider -Nandkishor Bhaskar Gawai. His cross-examination further shows that the road condition was bad, deceased was not wearing the helmet. He denied that along with him one Nandkishor Gawai was also travelling of the said motorcycle. As per his evidence, the accident took place around 8.30 to 9.00 p.m. Thus, this witness has narrated about rash and negligent Act of the Appellant.

14. To rebut the evidence of the claimant, appellant stepped into the witness box vide Exhibit No.50 and deposed that he was serving as a teacher on 09/04/2013, he was present in the school. During 5 to 7 p.m., there was meeting in the school and therefore, he was present in the school. He is not concerned with the accident dated 09/04/2013. His driver was driving the said Car on the day of incident. The driver has parked his car as front wheel of the vehicle was punctured and driver was attempting to change the wheel, at the relevant time, the motorcycle of the deceased came in rash and negligent manner could not control the speed and dashed against Indica Car towards the driver side. Thus, as per the evidence of appellant, alleged accident took place due to the rash and negligent Act of motorcycle rider. The motorcycle rider has contributed for the said accident, therefore, he is not liable to pay compensation. His evidence further reveals that regarding the said accident, offence

was registered against him. He has not filed any petition for quashing of the FIR as wrongly FIR was lodged against him, though he was not driving the said Car. He admitted that regarding the said accident, crime was not registered against the deceased.

15. To show his presence in the school, he examined Sau. Lata Dilip Goregaonkar, Headmistress, who testified that on 09/04/2013 at about 7.15 p.m., the appellant was present in the school for attending the meeting. He further examined Shaikh Abdul Shaikh Baban, who is the Investigating Officer who testified that during investigation, it revealed that, the deceased was not wearing the helmet, driven the vehicle without license by carrying two more pillion riders on his motorcycle. During cross-examination, it reveals that he has not witnessed the said accident, the Car Driver has already ran away from the spot. He further admitted that the deceased was lying on the left side of the road. He further admitted that after verifying the situation on the spot and of incident he lodged report against the Indica Car Driver.

16. Besides oral evidence, Police Papers, FIR Exhibit No.22 shows that Investigating Officer has made inquiry with Samadhan Vasudeo Aakal and Amardeep Pundlikrao Patil who were the relatives of the deceased. It reveals that the deceased was proceeding along with Nandkishor Bhaskar Gawai and Samadhan Santosh Gawai. It further reveals that Indica Car driver has given the dash to the said motorcycle due to which the accident occurred. The recitals of the FIR further shows that on verification of the spot, it reveals that the Indica Car was facing towards Isoli Village and the

Driver side portion of the Car was damaged. The tyre of the Indica Car was punctured. The spot panchanama Exhibit No. 23 shows the Map. As per the map, Amdapur Janefal Road was East West:- The motorcycle found lying towards the South Side of the road, whereas Indica Car is facing towards towards the North Side of the road. The eye witness of PW-2 specifically stated that the Indica Car Driver has turned his vehicle after the accident and parked towards other side of the road. If the contention of the appellant is taken into consideration that he was proceedings towards Isoli and it was the motorcycle driver, who dashed against his car, then damage to the said Car ought to have been there towards opposite side of the driver and not to the driver side. If the appellant has to travel from Amdapur to Isoli then he was travelling from Western to East. In such circumstances, the driver side of the Car would have been towards North Side of the road. If the contention of the appellant is taken into consideration as it was the motorcycle driver, who dashed against his Car which was stationed, then the damage could have been caused, towards the opposite side of the driver.

17. The contention of the appellant that the Car was Parked as the vehicle was punctured, at the relevant time, the deceased came on motorcycle and dashed against his Car and Car was damaged to the driver side appears to be improbable and unacceptable. Though the appellant has claimed that he was not present at the time of alleged accident, as he was present in the school, he had examined R.W.2 to prove the said contention. But the evidence of R.W 2 is also insufficient to show that at the relevant

time of the accident, the appellant was present in the school. The appellant further raised the contention that he was not driving the said Car but his driver was driving the said Car and offence was registered against him erroneously. In support of the said contention, the appellant has not examined his driver. Moreover, he has not challenged the registration of the crime against him, though he was not driving the Car. He has not applied for quashing of the FIR, even he has not filed any application with the police, contending that he was not driving the said Car, at the relevant time. Admittedly the appellant is not a layman he is a teacher. Therefore, the said action was expected from him which was not taken by him. Thus, the contention of the appellant that it was the deceased who driven his motorcycle in a rash and negligent manner and could not control and dashed against his car is not substantiated by the spot panchanama. If his contention is to be accepted then the damage to the Car should have been to the other side of the driver. The damage to the driver side itself is sufficient to show that he was travelling from East to West but subsequently, he turned his vehicle and parked it to the other side of the road and fled away from the spot. The evidence of eye witness is more probable and acceptable.

18. The appellant further raised the contention that the contributory negligence of the deceased is to be accepted as deceased was riding a motorcycle by carrying two pillion riders. To attribute the contributory negligence of the deceased, appellant has to show that the carrying of two pillion rider, itself contributed for the said accident. The learned counsel Mr Pawar rightly placed

reliance of *Mohd.Siddiqui and another V/s National Insurance Company Ltd.*, referred (supra) wherein the Hon'ble Apex Court has considered the aspect that deceased was riding on a motor cycle along with the driver and another, and held that this fact may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. The Hon'ble Apex Court held that [Section 128](#) of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two wheeled motor cycle, not to carry more than one person on the motor cycle. [Section 194C](#) inserted by the [Amendment Act 32](#) of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the rider and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. Similar is the fact in the present case, thus merely because he was carrying two more Pillion Rider on his motorcycle itself is not sufficient unless it is established that the said fact contributed for the said accident. As regards, the non-wearing of helmet is concerned, it is also a violation of the safety measures. Therefore, the contention of the appellant that deceased has contributed for the said accident is not acceptable.

19. In view of the above discussion, admittedly there is no evidence on record to show that appellant was not travelling in the said Car. The evidence sufficiently shows that it was the appellant, who was driving the said Car and Car was driven in a rash and negligent manner. Admittedly, rash and negligent Act is to be proved by the claimant not beyond reasonable doubt but on the basis of preponderance of probabilities. The claimant has adduced the evidence which sufficiently shows that it was the appellant who was driving the Car and accident occurred, due to his negligence. The cross-examination of R.W.3/Investigating Officer namely Sheaikh Abdul Shaikh Babar also shows that he has lodged the report on the basis of circumstances appearing at the spot of incident. Thus, the circumstances on record and the admission during the cross-examination of the investigating officer sufficiently shows that the appellant was negligent in driving the Car. The appellant failed to prove that the deceased has contributed for the said accident. Hence, I answered Point No.1 accordingly.

20. As far as the contention of the claimant is concerned, that she is entitled for enhancement of the compensation, on perusal of the judgment of the Tribunal, it appears that in absence of proof of income, the tribunal has taken into consideration notional income of the deceased as Rs. 4,000/- and after adding 40% future prospects awarded the compensation of Rs. 6,04,800/-. Besides, the said compensation, the tribunal has also awarded the amount of compensation of Rs. 15,000/- for loss of Estate and Rs. 15,000/- for funeral expenses. Admittedly, the compensation

was not granted to the claimant under the head of Consortium. In view of the judgment of constitutional bench of the Hon'ble Apex Court in the case of **National Insurance Co. Ltd vs Pranay Sethi** reported *(2017) 16 SCC 680* had considered the aspect of the consortium and held that the amount of Rs. 40,000/- would be just and reasonable under the head of Consortium. The Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram** *reported in 2018 SCC Online SC 1546* had also held that in legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. Spousal consortium is generally defined as rights pertaining to the relationship of a husband wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation." Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training." Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

21. The Motor Vehicles Act is beneficial legislation providing relief to the victims or their families. The claimants are entitled for just compensation. Section 168 of the Motor Vehicle Act deals with just compensation, and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be perfect. The concept of just compensation has to be viewed through prism of fairness, reasonableness and in violation of the principal of equitability.

22. In view of the above and well settled principals, admittedly in addition to the compensation awarded by the tribunal, the claimant is also entitled to receive the compensation under the head of Consortium to the extent of Rs. 40,000/-.

23. In view of the above discussion, the appeal is devoid of any merits and liable to be **dismissed**. However, the judgment awarded passed by the Chairman, Motor Accident Claims Tribunal, Buldhana deserves to be modified.

- a) The claimant is entitled to receive the compensation awarded by the Tribunal (+) Rs. 40,000/- towards consortium.
- b) The claimant is entitled to receive Rs. 6,34,800 + 40,000/- = 6,74,800/- along with interest @ Rs. 7.5% per annum from the date of petition till its realization of amount from opponent.

- c) The appellant shall pay the compensation along with interest to the claimant from the date of application till realization. The appellant shall deposit the said amount of compensation within ten weeks after receipt of the copy of judgment of this Court.

JUDGE

RKN