

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

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FIRST APPEAL NO. 269 OF 2005

1. Shobha Ajit Chougule)
Age: 36 years, Occupation: Household)
2. Nirupa Ajit Chougule,)
Age: 16 years, Occupation: Education,)
3. Swarupa Ajit Chougule,)
Age: 14 years, Occupation: Education,)
4. Sandeep Ajit Chougule,)
Age: 12 years, Occupation: Education,)
5. Krishnabai Baburao Chougule,)
Age: 72 years, Occupation: Household,)
All are residing at Abdulat,)
Tal. Shirol, Dist. Kolhapur,)
(Petitioner Nos.2 to 4 are minors)
through their M. G. Mother Petition No.1))....Appellant

Versus

1. Sukumar Bharmu Chougule,)
Age-Adult, Occupation: Agriculture,)

R/o. Akiwat, Tal. Shirol, District: Kolhapur,)
 (Owner of the Tractor and Trailers),)

2. United India Insurance Co. Ltd.)
 Rajershi Shahu Sadan,)
 Near Congress Bhavan,)
 Station Road, Kolhapur.)
 (Insurer of the Tractor and Trailers))...Orig. Oppnents

3. Kumar Babu Ghatage,)
 Age-Adult, Occupation: Driver,)
 R/o. Sadlaga, Tal. Chikkodi,)
 District: Belgaum.)
 (Driver of tractor and Trailers))....Respondents

Mr. Tejpal S. Ingle a/w Ms. Priyanka Babar, Advocate for the Appellant.

Mr. Sandeep S. Koregave a/w Ms. Pallavi Karanjkar, Advocate for the Respondent No.1.

Mr. P. M. Shah, Advocate for the Respondent No.2.

Mr. V. B. Rajure, Advocate for the Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th APRIL, 2024.

Oral Judgment :

1. By way of this appeal, the Claimants are seeking

enhancement of compensation.

2. It is contention of learned counsel for the Appellants/Claimants that accident occurred due to sole negligence of the driver of tractor but this fact is not considered by the Tribunal and has fixed 50% contributory negligence on the deceased, which is erroneous. Learned counsel further submitted that the Tribunal has considered monthly income of the deceased at Rs.3,000/- per month. The deceased was heavy vehicle driver and he was earning more than Rs 4,000 monthly. Learned counsel further submitted that the Tribunal has not awarded future prospects and consortium amount is awarded on lower side. The Tribunal has deducted 1/3rd amount for personal expenses. There are five Claimants, it should be 1/4. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent No.2/Insurance Company that the Tribunal has applied multiplier of 15. At the time of accident deceased was 45 years old, so proper multiplier should be 14. Learned counsel further submitted that the Tribunal has considered all the aspects while passing judgment and order ,no interference required in it.

4. Learned counsel for the Respondent No.1 and learned

counsel for the Respondent No.3 submits that appropriate order be passed .

5. I have heard all learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Kolhapur (for short “the Tribunal”).

6. It is Claimants’ case that on 7th February, 2002 deceased Ajit Chougule was proceedings on scooter by Ichalkaranji - Abdullat road, at about 11:30 p.m. When, he reached near village Abdullat a tractor came with two trollies containing sugarcane from the opposite side and gave dash to the Ajit, he died on the spot due to fatal injuries. The offence was registered against the driver of the tractor. To prove the negligence of the driver of tractor, the Claimants have relied on police papers. To prove its defense, the driver of tractor Kumar Ghatge examined himself at Exhibit-44 (C). He has stated that on the day of accident he was proceeding with tractor along with two trollies containing sugarcane from Abdullat to Jawahar Factory. The trollies were containing near about 12 to 13 tonnes sugarcane. He was driving tractor by the left side of the road in slow speed. The deceased came on the scooter with fast speed from Shiradwad side. He further stated that the light of the scooter was dim. The scooter

rider gave dash to the trolley no 2, on the northern side of the tar road, there was 5 to 6 ft wide kaccha road. On the southern side of the road there were heaps of small stones. Accident occurred due to sole negligence of the deceased. In cross-examination, he admitted that charge-sheet is filed against him by the police. He further admitted in the written statement filed by him it is not mentioned that there were heaps of stone on the southern side of the road.

7. While dealing with the issue of negligence, the Tribunal has observed that from the contents of spot panchanama, it reveals that the color of the second trolley has been removed in the accident and there are also marks on the tyre of the second trolley. The Tribunal further observed that the only person who is available to disclose the nature of the accident is the driver alone. The Claimants have not examined any other witness on the point of negligence. The Tribunal further observed that no doubt photographs produced on record are showing that the scooter was on the left side of the road and deceased was driving by it on correct side but, the trollies were containing sugarcane hence, the driver cannot drive the tractor in fast speed on that ground the Tribunal has fixed 50% contributory negligence on the deceased. I am unable to understand the observations of the

Tribunal as offence was registered by the police after making inquiry against the driver of tractor. The spot panchanama at Exhibit-26 shows that scooter was dragged by the tractor for some feet. It shows that driver of the tractor was not aware about the accident and tractor was in fast speed. The color of trolley was removed. It shows that, when deceased was driving the scooter, trolley dashed to the scooter. The Tribunal has observed that the photographs are produced on record and it showing that scooter on the left side of the road and deceased was driving by his correct side. The spot panchanam produced on record shows that deceased was on the correct side of the road. The Tribunal has observed that the Claimants have not examined witness to prove the negligence of the driver of tractor. In my view, the police papers produced on record points out the negligence of the driver of tractor. Moreover, the spot panchanama supports the Claimants case, the Tribunal should have considered these facts. Considering the evidence on record, I hold that accident occurred due to sole negligence of the driver of tractor.

7. To prove the income of the deceased, the Claimants have examined Claimant No.1 wife of deceased. She has stated that the deceased was working as driver of heavy vehicle and he was earning

income of Rs.3,000/- per month as salary and Rs.1,000/- as Bhatta so, total he was earning Rs.4,000/- per month.

8. Considering evidence on record the Tribunal has considered income of the deceased at Rs.3,000/- per month. In my view, there is no reason to disbelieve the evidence of Claimant No.1. The deceased was heavy vehicle driver and he was maintaining family of five persons. Hence, I am considering monthly income of the deceased at Rs.4,000/- per month. The Tribunal has not awarded future prospect. As per view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)**, the Claimants are entitled for 30% future prospects. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, each Claimant is entitled for Rs.48,000/- for consortium amount and Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses. The Tribunal has deducted 1/3rd amount for personal expenses, there are five Claimants, it should be 1/4.

9. Considering the above calculations, the Claimants are entitled for following compensation.

Monthly Income	Rs.3,500/-
Annual Income	Rs.42,000/-
¼ deduction for personal expenses	Rs.10,500/-
Total income	Rs.31,500/-
Add: 30% future prospects	Rs.9,450/-
Total income	Rs.40,950/-
Multiplier X 14	Rs.5,73,300/-
Consortium (Rs.48,000/- X 5 Claimants)	Rs.2,40,000/-
Loss of estate	Rs.18,000/-
Funeral Expenses	Rs.18,000/-
Total compensation	Rs.8,49,300/-
Less awarded by the Tribunal	Rs.2,00,000/-
Enhanced amount	Rs.6,49,300/-

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

ORDER

- i. Appeal is allowed.
- ii. The Claimants are entitled for enhanced amount of **Rs.6,49,300/- @ 7.5% interest per annum** from the date of filing claim petition till realisation of the amount.
- iii. The Respondent/Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within eight weeks after receipt of the order.
- iv. The Claimants are permitted to withdraw the

deposited amount along with accrued interest thereon.

- v. The Claimants shall pay deficit Court's fees on enhanced amount, as per Rule.

- 11. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)