

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1893 OF 2010

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|---|---|-------------|
| 1. Sindhubai Sanjay Waghmare | } | |
| Age 30 year, Occu. Household work | } | |
| R/o. Chambhar Lane, H. No. 3485, Gopal Road, | } | |
| At Post and Taluka Pandharpur, District Solapur | } | |
| 2. Nilesh Sanjay Waghmare | } | |
| Age 8 years, Occ. Education | } | |
| 3. Priyank Sanjay Waghmare | } | |
| Age 6 years, Occ. Education | } | |
| (applicant Nos. 2 and 3 minors through their next | } | |
| friend mother Applicant No.1 Smt. Sindhubai | } | |
| Sanjay Waghmare) | } | |
| 4. Satyabhama Maruti Waghmare | } | |
| Age 65 years, Occ. Nil | } | |
| R/o. Chambhar Lane, H. No. 3485, Gopal Road, | } | |
| At Post and Taluka Pandharpur, District Solapur | } | Appellants |
| Versus | | |
| 1. Rotary Club Branch Pandharpur | } | |
| Through its President, R/o. Pandharpur | } | |
| 2. New India Assurance Company Ltd. | } | |
| Regional Office, Sharda Center, | } | |
| II Floor, Behind Nal Stop, Karve Road, Pune | } | |
| 3. Ramchandra B. Chavan | } | |
| Age adult, Occu. Service, | } | |
| R/o A/p Vadaki, Tal Haveli, Dist. Pune. | } | Respondents |

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- Mr. Ajay A. Joshi, Advocate for the Appellants.
- Mr. S. M. Dange, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 16th JANUARY, 2024.

JUDGMENT :

1. This appeal is preferred by appellants/claimants against the dismissal of claim petition.

2. It is claimants' case that on 27.12.2002 deceased Sanjay Waghmare was proceeding along with Hamid Shaikh in Maruti van Ambulance. He was driving the ambulance in moderate speed. When the ambulance came near the spot of accident, the road was divided into two parts i.e. Western side and Eastern side. At that time, Western side road was closed for traffic, hence deceased took his van in Eastern side road. At the relevant time, two motorcycles came in high speed and dashed the ambulance. Due to the said dash deceased Sanjay sustained injuries and died.

3. It is contention of learned counsel for the appellants/claimants that accident occurred due to negligence of the motorcycle riders as they gave dash to the ambulance of the deceased. Learned counsel further submitted that the deceased was driving ambulance in moderate speed. The half portion of the road was closed for traffic, hence deceased had taken the ambulance on other side of the road and driving the ambulance abutting to the road divider. But the Tribunal has not considered this fact and dismissed the claim petition on the ground that accident occurred due to sole negligence of the deceased. Learned counsel further submitted that deceased was getting salary of Rs.3,000/- per month. At the time of accident he was 39 year old. Hence, requested to allow the appeal.

4. It is the contention of learned counsel for the Insurance Company that at the time of accident deceased was driving ambulance on wrong

side of the road. The ambulance was in high and excessive speed. The deceased had given dash to the motorcycle rider. The Tribunal has considered all the aspects and on that basis Judgment and Order is passed and no interference is required in it.

5. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Pandharpur (for short “**the Tribunal**”). While dismissing the claim petition the Tribunal has observed that accident took place due to negligence of the deceased himself. I am unable to understand the observations of the Tribunal as it has come on record that half portion of the road was closed for traffic from which deceased was going in ambulance. From the spot panchanama and map of the accident spot it appears that the ambulance was proceeding on the other side of the road, near the divider and two motorcycle riders came in high speed and gave dash to the ambulance.

6. To prove the negligence of motorcyclists the claimants examined PW-1 Hamid Shaikh at Exhibit-32 who was traveling with deceased, he has stated that on the day of accident deceased was driving ambulance and he was sitting near the deceased, they were going by national highway No.4 as the work was going on the spot of accident, there was single way traffic due to road repair work. They were proceeding on left side of the road. Motorcyclists were coming from opposite direction and they were

overtaking each other. Both motorcyclists dashed their ambulance on front side. Due to dash this witness was thrown away from ambulance. The deceased had sustained severe injuries. Motorcyclist fell on the road and they were injured in it. Nothing elicited in the cross examination of this witness to disbelieve his evidence. The spot panchanama is at Exhibit-24 supports the evidence of this witness. In the spot panchanama it is mentioned that one part of the road was closed for traffic and the ambulance was stopped near the divider. It shows that the motorcyclist gave dash to the ambulance near the divider but these facts are not considered by the Tribunal. Considering the evidence of PW-2 and police papers produced on record, I am considering 50% negligence of deceased and 50% negligence of motorcycle riders. It has come on record that deceased was working as a driver and he was getting salary of Rs.3,000/- hence, I am considering monthly income of deceased at Rs.3,000/- per month. At the time of accident deceased was 35 year old, hence proper multiplier is 16.

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

Particulars	Rs.	Entitlement
Monthly income per month was of Rs.3,000/- out of it 1/3 rd deduction, comes to Rs.2,000/- per month	Rs.	2,000.00
Add : 40% Future prospects	Rs.	2,800.00

Annual Income Rs.4,800 X 12	Rs.	57,600.00
Multiplier Rs. 2,800 X 16 X12	Rs.	5,37,600.00
Consortium (Rs.48,000/- X 4)	Rs.	1,92,000.00
Funeral Expenses	Rs.	15,000.00
Loss of Estate	Rs.	15,000.00
Total	Rs.	7,59,600.00
50% of total amount Interest on 50% amount w.e.f. 24.12.2003 i.e. filing of claim petition	Rs.	3,79,800.00
Net amount of compensation	Rs.	3,79,800.00

Considering the above calculations, claimants are entitled for compensation of Rs.3,79,800/-.

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

ORDER

- i. The appeal is allowed.
- ii. The appellants /claimant are entitled for compensation amount of Rs.3,79,800/- with @ 7.5 interest per annum from the date of filing of claim petition till realisation of the amount.
- iii. The respondent No.2/Insurance Company shall deposit the amount of compensation along with accrued interest thereon within eight weeks from the receipt of this order.
- iv. The claimants are permitted to withdraw the deposited

amount along with accrued interest thereon.

9. The appeal is disposed of.

(SHIVKUMAR DIGE, J.)