

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1181 OF 2017

	National Insurance Company Ltd. Mumbai Regional Office 5 th Floor, Sterling Cinema Building, 65, Murzban Road, Fort, Mumbai – 400 001	))))... Appellant	
	versus		
1	Prakash Soudagar Godage Age : 17 yrs, Occp : Education	))	
2	Sanika Vishal Pawar Age : 20 yrs, Occp : Household	))	
3	Vastala Kashinath Godage Age : 65 yrs, Occp : Household All R/o. A/p Kalman, Tal. North Solapur, Dist. Solapur No.1 being minor through his Grandmother Applicant No.3	)))))))	
4	Mr. Rajkumar N. Gavade Age : Adult, Occp. Business R/o. Laul, Tal. Madha, Dist. Solapur Owner of Jeep No. MH-13/TC-175 involved in the accident.	))))).... Respondents	

with
FIRST APPEAL NO. 486 OF 2017

	National Insurance Company Ltd. Mumbai Regional Office 5 th Floor, Sterling Cinema Building, 65, Murzban Road, Fort, Mumbai – 400 001	))))... Appellant	
	versus		
1	Prakash Soudagar Godage Age : 17 yrs, Occp : Education	))	
2	Sanika Vishal Pawar Age : 20 yrs, Occp : Household	))	
3	Vastala Kashinath Godage Age : 65 yrs, Occp : Household	)))	

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	All R/o. A/p Kalman, Tal. North Solapur, Dist. Solapur No.1 being minor through his Grandmother Applicant No.3	))))	
4	Mr. Rajkumar N. Gavade Age : Adult, Occp. Business R/o. Laul, Tal. Madha, Dist. Solapur Owner of Jeep No. MH-13/TC-175 involved in the accident.	)))))....	Respondents

Mr. Rahul Mehta i/b. KMC Legal Venture, Advocate for the Appellant.

Mr. R.S.Alange, Advocate for Respondent Nos. 1 to 3.

Mr. Shivraj Kundhge, Advocate for Respondent No.4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 2nd MAY, 2024.

Oral Judgment :

1. Both these appeals are preferred by the appellant-Insurance Company against the judgment and order passed by Motor Accident Claims Tribunal, Solapur (for short “the Tribunal”). The issues involved in both the appeals are same, hence, I am deciding it by this common judgment.

2. It is contention of learned counsel for the appellant – Insurance Company that at the time of the accident, claimant No.1-Prakash who was minor was driving the motorcycle, which gave dash to the jeep but this fact is not considered by the Tribunal. Learned counsel further submitted that the report was given to the police that claimant No.1 was driving the

motorcycle but this fact is not considered by the Tribunal, which is erroneous. Learned counsel further submitted that at the time of accident the driver of the offending jeep was not holding effective and valid driving license. Hence, requested to allow the appeals.

3. It is contention of learned counsel for respondent Nos.1 to 3/claimants that the father of claimant No.1 was driving the motorcycle at the time of the accident and claimant No.1 was sitting between his father and his mother, who was a pillion-rider. Learned counsel further submitted that the driver of the offending jeep gave dash to the motorcycle driven by the father of the claimant No.1 by coming on wrong side. The eye-witness supports the case of the claimants. The Tribunal has considered all the aspects while passing the judgment and order, no interference is required in it. Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side in both appeals, it be awarded.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal,

5. It is claimants' case that on 21st November 2010, deceased – Saudagar was proceeding towards Madha on motorcycle bearing registration No. MFN-2012 with his wife and son. The deceased was driving the motorcycle on left side of the road in moderate speed. When they reached in front of Vidya Mandir High School, Vairag, one Bolero

Jeep bearing registration No.MH-13-TC-175 came from opposite direction. It was being driven in high and excessive speed and in rash and negligent manner. The driver of the jeep lost his control over the vehicle and suddenly jeep came on wrong side of the road and it dashed against the motorcycle of the deceased. In the said accident, the deceased and his wife sustained multiple bodily injuries and both died while taking treatment. An offence was registered against claimant No.1, who was minor at the time of the accident.

6. To prove the negligence of the driver of the offending jeep, the claimant No.1 has examined himself. He has stated that on the day of the accident, he along with his father and mother was going towards Madha. His father was driving the motorcycle in moderate speed. When they reached in front of Vidya Mandir High School, Vairag, the offending jeep came from the opposite direction in rash and negligent manner. The driver of the jeep lost control over the jeep and came on wrong side and gave dash to their motorcycle. Because of dash, his mother and father fell down on the road and sustained injuries and, they died while taking treatment. He further stated that the accident occurred due to negligence of the driver of the jeep. In cross-examination, he denied the suggestion that he was driving the motorcycle. He has stated that his father was driving the motorcycle. He has admitted that he was prosecuted for rash and negligent driving of the motorcycle. In support of evidence of PW1, the claimants have examined PW2-Chandrakant Pandharmise, eye-

witness of the accident at Exhibit-26. He has stated that he knew the deceased – Soudagar. Soudagar used to come to Vairag for selling vegetables. On the day of accident, Soudagar was driving the motorcycle, his wife was pillion and his son i.e. claimant No.1 was sitting between them. He was standing by the side of the road as servicing of his motorcycle was in progress. When the deceased had arrived in front of cart, the accident took place. The Bolero Jeep gave dash to their motorcycle. The driver of the Bolero Jeep ran away from the incident spot. This witness took both deceased in the hospital. He further stated that the accident occurred due to negligence of the jeep driver. He had given his statement before the police about the accident. The statement is at Exhibit-27. Nothing elicited in the cross-examination of this witness.

6.1. To prove its defense, the driver of the jeep – Dattatraya Lokare examined himself at Exhibit-30. He has stated that when he was going on road on the day of accident, one bullock cart came from opposite side. At the relevant time, claimant No.1, who was riding the motorcycle along with his mother and father who were pillion riders, tried to overtake the bullock cart. Two oxen were tied on the backside of the bullock cart. One of the ox, swung his horn, due to which, claimant No.1-Prakash lost control of the motorcycle and they all fell down, because of which, the accident occurred. The police registered the offence against claimant No.1. In cross-examination, he admitted that there was less traffic on road. There were seven passengers in the jeep. While dealing with the issue of

negligence, the Tribunal has observed that the spot-panchanama at Exhibit-37 shows that the accident occurred due to dash given to the motorcycle. I do not find infirmity in it. In my view, PW2, who has witnessed the incident has stated that the accident occurred due to dash given by Bolero Jeep to the motorcycle of the deceased. It appears that the driver of the jeep has stated before the Tribunal to avoid his liability as he has stated that due to swinging of horn by the ox, the motorcycle of the deceased fell on ground and they got injured but the spot-panchanama falsifies his evidence as it shows that the front portion of the motorcycle was damaged and headlights were broken. It shows that it happened due to dash given by Bolero Jeep. Moreover, it has not come on record that claimant No.1 was driving the motorcycle at the time of the accident. Hence, I do not find merit in the contention that claimant No.1 was driving the motorcycle at the time of the accident.

6.2. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, each claimant is entitled for Rs.48000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18000/- for funeral expenses. There are three claimants, the total comes to Rs.1,80,000/-. The claimants are entitled to Rs.1,80,000/- in each appeal.

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

ORDER

1. Both the appeals are dismissed. No order as to cost.
2. The claimants are entitled for enhanced compensation of Rs.1,80,000/- @ 7.5% interest per annum in each appeal from 1st November 2017 till realisation of the amount.
3. The appellant-Insurance Company shall deposit the enhanced amount of Rs.1,80,000/- along with accrued interest thereon in each appeal within eight weeks from the receipt of this order.
4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
5. The statutory amount in both the appeals be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
6. The claimants shall pay deficit court fees as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)