

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

FIRST APPEAL NO.1133 OF 2004

1. Smt.Geeta Vishnu Kandalkar }
 Age-35 years, Occ : Household }
 R/o. Yamage, Taluka-Kagal, District- }
 Kolhapur }

2. Kum.Ajit Vishnu Kandalkar }
 Age-12 years, Occupation : Education, }
 R/o. As above }

3. Kumari.Shilpa Vishnu Kandalkar }
 Age-9 years, Occupation : Education, R/o. }
 As above. }
 (Applicant Nos.2 and 3 are Minors }
 through there Natural Guardian }
 Applicant No.1) }

....Appellants
 (Original
 Applicants)

Versus

1. Nandkumar Ganpati Patil }
 Age-Major, Occupation : Business, }
 R/o. Kurkukali, Taluka-Karveer, District- }
 Kolhapur. }

2. National Insurance Co. Ltd. }
 Divisional Office, 204, E-Ward, Cosmos }
 Commercial Compex, New Shahupuri, }
 Kolhapur. }

3. Ananda Yashwant Medhe }
 Age-45 years, Occupation : Driver, R/o. }
 Parite, Taluka-Karveer, District-Kolhapur }
 (Delete vide Exhibit-10) }

....Respondents
 (Original
 Opponents)

Mr.Jayant J. Bardeskar, for the Appellant.
Ms.Poonam Mital, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 18th JANUARY 2024

ORAL JUDGMENT :-

. By way of this Appeal, the Claimant's are challenging dismissal of the Claim Petition.

2. It is contention of the learned counsel for the Appellant's-Claimant's that, the deceased was riding on two wheeler bearing Registration No.MH-09-F-7150. He was dashed by the driver of the offending truck, it was in high speed. The offence was registered against the driver of the offending truck, but the Tribunal has not considered this fact and dismissed the Claim Petition of the Claimant without any reasonable ground, which is erroneous. The learned counsel further submitted that, deceased was farmer and he was earning Rs.4,000/- per month and maintaining his family. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the

Respondent-Insurance Company that, the Tribunal has observed that, three persons including deceased were riding on the Bajaj Scooter, one of them was having stick in his hand. That stick went in back wheel of M-80 motorcycle. Due to which the rider of M-80 bike lost his balance, and M-80 bike dashed to the truck to its driver side. The accident occurred due to negligence of the deceased who was riding motorcycle. Hence requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Kolhapur.

5. It is Claimant's case that, on 2nd March 2001, deceased Vishnu Kandalkar was proceeding towards Murgud by Bajaj M-80 two wheeler bearing registration No.-09-F-7150. He was riding that M-80 vehicle slowly, cautiously and on the correct side of the road. When his M-80 bike came in front of the Agricultural center office of Dudhganga Vedganga, one truck bearing No.MH-KA-22/6955 came from opposite side in high speed and in rash and negligent manner. Due to high speed,

driver of the truck lost his control over the truck and gave dash to M-80 two wheeler. Because of the dash deceased fell down and sustained injuries. He succumbed to injuries. Offence was registered against the driver of the offending truck. To prove the negligence of the driver, the Claimant No.1 Smt.Geeta examined herself, but Tribunal has not considered her evidence as she was not present at the time of the accident.

6. To prove his defence the driver of the offending truck Ananda Medhe examined himself at Exhibit-49, he has stated that on 2nd March 2001 he was driving the truck by the left side of the road, when he reached near village Murgud, in front of dudhganga Vedganga Sahakari Sakhar Karkhana's centre office, one jeep was coming from opposite side i.e. from Nipani and was going towards Radhanagari. When the jeep was 100 to 150 feet away from his truck, one M-80 bike suddenly came from back side of the jeep in a high speed. Three persons were sitting on that M-80 motorcycle. One person from them was having a stick in his hand. That stick went in back wheel of M-80 motorcycle, due to which the rider of M-80 lost his balance and dashed to his

truck on driver side. Before M-80 dashed against his truck he had stopped his truck at the boarder of the road on the left side. Motorcycle rider was rash and negligent and because of his negligence accident occurred. In cross-examination he admitted that, on the next day of accident he informed the owner of the truck about accident and due to fear he ran away from incident spot. He further admitted that, he did not feel it to shift the injured and dead person in the hospital. Considering the evidence on record the Tribunal has observed that, accident occurred due to negligence of the deceased and dismissed the Claim Petition.

7. I am unable to understand the observations of the Tribunal when it has come on record that, the offence was registered against the driver of the offending truck. After accident driver of the offending truck didn't stop at incident spot nor informed his owner about accident. It is contention of learned counsel for Insurance Company that the driver of the offending truck has stated that, three persons were riding on M-80 motorcycle and one person was having stick in his hand and that stick

was went in the back wheel of M-80 motorcycle. Due to which the deceased who was riding the M-80 lost his control. It is hard to believe that while driving truck the driver of offending truck had noticed minute activities of person's driving on M-80 two wheeler. Moreover, the police papers produced on record does not support the contention of the driver of the offending truck. From spot panchnamma it appears that 15 feet break marks of truck were appearing on the road. It shows that, the truck was in high and excessive speed. Moreover, in spot panchnamma it is mentioned that, due to dash by the truck, the front portion of the M-80 motorcycle was totally damaged. The D.W-1 driver of offending truck in his evidence has admitted that cleaner was with him at the time of the accident. The cleaner would have the best witness to state about incident, but he was not examined as a witness. D.W.-1 has stated that, he had stopped the truck when deceased gave dash to his truck, but the evidence on record i.e. police paper's falsify his evidence and it has come on record that the wheel of truck run over the deceased.

8. Considering the evidence on record I hold that

accident caused due to contributory negligence of driver of offending truck and deceased. I am considering 60% negligence of driver of offending truck and 40% of the deceased. It has come on record that, the Tribunal has considered monthly income of deceased at Rs.4,000/-. To prove the income of deceased PW-1 has stated that deceased was cultivating agricultural field and he was getting income of Rs.4,000/-. I am considering managerial loss at Rs.3,000/- per month. As per view of the Hon'ble Apex Court in the case of *National Insurance Co. Ltd. V/s. Pranay Sethi*¹, the Claimants are entitled for future prospects. At the time of the accident deceased was 40 years old. Hence, proper multiplier is 15. The Claimant's are entitled for consortium amount. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*², each claimant is entitled for Rs.48,000/- as consortium amount, There are three Claimants, it comes to Rs.1,44,000/-. Considering above calculation's the Claimants are entitled for following compensation.

1 2017 ACJ 2700 (SC)

2 2018 ACJ 2782 (SC)

Particulars	Amount
Monthly Income Rs.3,000/- x 12	Rs.36,000.00
Deduction towards Personal Expenses (Rs.36,000/- (-) Rs.12,000/-)	Rs.24,000.00
25% Future Prospects Rs.24,000/- = Rs.6,000/-	Rs.30,000.00
Multiplier of 15 Rs.30,000/- X 15	Rs.4,50,000.00
Consortium (Rs.48,000 x 3)	(+) Rs.1,44,000.00
Loss of Estate	(+) Rs.18,000.00
Funeral Expenses	(+) Rs.18,000.00
Total Just Compensation Payable	Rs.6,30,000.00
Negligent of Deceased is 40% and Respondent No.3 is 60% (Rs.6,30,000 – Rs.2,52,000)	Rs.3,78,000.00
Total compensation with 7.5% interest per annum	Rs.3,78,000.00

9. In view of above, I pass following order.

ORDER

(i) The Appeal is allowed.

(ii) The Claimants are entitled for amount of Rs.3,78,000/- @ 7.5% per annum from the date of the filing of Claim Petition till realization of the amount. Out of this amount Rs.1,80,000/- is consortium amount the Claimant's are entitled @

7.5% interest on this amount from 1st November 2017 till realization of amount.

(iii) The Respondent-Insurance Company shall deposit enhanced amount within eight weeks after receipt of order.

(iv) The Claimants are permitted to withdraw the deposited amount alongwith interest.

(v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)