

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

FIRST APPEAL NO.395 OF 2009

NILAM
SANTOSH
KAMBLE

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Date: 2024.05.10
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1. Smt.Minakshi Kailash Kale	}	
Ag-23 years, Occ : Household	}	
	}	
2. Kunal Kailash Kale	}	
Age-3 years, Occ : Education	}	
	}	
3. Smt.Kamal Gulab Kale	}	
Age-49 years, Occ: Nil	}	
	}	
4. Shri.Gulab Harischandra Kale	}	
Age-58 years, Occ : Nil	}	
	}	
All R/at Ghodegaon, Taluka-Ambegaon,	}	(Org.
District-Pune.	}	Applicants)
	}	...Appellants

Versus

1. Shri.Dhondiba Shankar Bende	}	
Age-Adult, Occ: Business	}	
R/at Manchar, Pimpalgaon Phata, Taluka-	}	
Ambegaon, District-Pune	}	
2. The New India Assurance Co. Ltd.	}	(Org.
2 nd Floor, Sharda Centre, Behind Nal Stop,	}	Opponents)
Karve Road, Pune.	}	...Respondents

Mr.Sulajja Patil i/b Mr.Uday B. Nighot, for the Appellants.
Ms.Poonam Mital, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 03rd MAY 2024

ORAL JUDGMENT :-

. By way of this Appeal, the Appellant's-Claimant's are seeking enhancement of compensation.

2. It is contention of the learned counsel for the Appellant's-Claimant's that accident occurred due to sole negligence of the jeep driver, but the Tribunal has considered 50% contributory negligence of the deceased as he was driving with two pillion rider, which is erroneous. The learned counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Insurance Company that, the deceased was riding motorcycle with two pillion riders. There was composite negligence of the deceased and jeep driver. The Tribunal has rightly considered that there was 50% contributory negligence of the deceased. The judgment and order passed by the Tribunal is

legal and valid. No interference is required in it. 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), Pune.

5. It is Claimant's case that on 30th November 2004 at about 11.45 p.m. deceased Kailash Kale was coming to home by Ozar-Narayangaon Road by motorcycle bearing No.MH-14-Y-2166 with two pillion riders. When the deceased came within the limits of Dhangarwadi, a jeep bearing No.MH-14-H-1968 was coming from the opposite direction in high speed, the driver was driving it in rash and negligent manner, it gave heavy dash to the motorcycle of the deceased. The deceased died on the spot and other two pillion riders sustained injuries. The offence was registered against the jeep driver.

6. To prove the negligence of the jeep driver, the Claimant's have relied on police papers.

7. While dealing with issue of negligence, the Tribunal has observed that the incident map at Exhibit-37, shows that the

accident took place at the distance of 4 ft. from the western side edge of the road. The sketch map clearly shows that the jeep driver of the offending jeep crossed his side. He was not driving his vehicle to his left side. The spot panchnama shows that the motorcycle was heavily damaged. By considering the spot panchnamma and the map at Exhibit-37, one can easily say that the driver of the offending jeep was driving the vehicle in rash and negligent manner and was responsible for the accident.

8. While awarding compensation, the Tribunal has observed that the deceased was riding motorcycle with two pillion rider. Hence, the Tribunal has considered his contributory negligence at 50%. I am unable to understand the observations of the Tribunal as the Tribunal himself has observed that accident occurred due to sole negligence of the driver of the offending jeep. The offence was registered against the driver of the offending jeep. Moreover, to prove the negligence of the deceased driver of the offending jeep did not enter into witness box. Mere driving with triple sit cannot be a ground to hold contributory negligence of the rider of the motorcycle. Hence, I

am setting aside the observations of the Tribunal that 50% contributory negligence of the deceased and hold that accident occurred due to sole negligence of the driver of offending jeep.

9. The Tribunal has awarded consortium amount of Rs.1,95,000/-, which is on lower side. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*¹, each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. There are four Claimant's, the total comes to Rs.2,28,000/-. If amount of Rs.19,500/- awarded by the Tribunal is deducted from this amount it comes to Rs.2,08,500/-. The Claimant's are entitled for this amount. Considering these calculations the Claimants are entitled for following compensation.

Particulars	Amount
Monthly Income	Rs.5,340.00
Annual Income (Notional Income X 12 months)	Rs.64,080.00
After 1/3rd Deduction	Rs.21,360.00
After Multiplier of 16	Rs.6,83,520.00

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Loss of Consortium	Rs.1,92,000.00
Loss of Estate	Rs.18,000.00
Funeral Expenses	Rs.18,000.00
Total Just Compensation Payable	Rs.9,54,240.00
Less: Compensation awarded by the Tribunal	Rs.3,51,510.00
Enhanced Amount	Rs.6,02,730.00

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

ORDER

- (i) The Appeal is partly allowed.
- (ii) The Claimant's are entitled for enhanced amount of Rs.6,02,730/- @ 7.5% interest per annum from date of the filing of the Claim Petition till realization of the amount. Out of this amount Rs.2,28,000/- is consortium amount. The Claimant's are entitled for 7.5% interest on this amount from 1st November 2017 till realization of the amount.
- (iii) The Respondent-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within 8 weeks after receipt of this

order.

(iv) The Appellant's-Claimant's shall pay Deficit Court Fees on enhanced amount, if any, as per Rules.

(v) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(vi) MACP Claim Petition No.587 of 2005 at Pune is disposed of.

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

(SHIVKUMAR DIGE, J.)