

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 562 OF 2011

	Sushila Vinayak More Age-50 years, Occ: Household, R/o. New Adgaon Naka, Opp. S.T. Depot, Shriranmnagar, Panchavati, Nashik		Appellant
	<i>Versus</i>		
1.	Yeshwant Kisan Malme, Age-Major, Occ : Service-Driver, R/o. At Post Kalamboli, Khedupada, Taluka-Panvel, District-Raigad		
2.	Nitin S. Parkar, Age-Major, Ramsunder Pande Chawl, Room No.1, Shivtekdi, Near Borivali Vidyamandir High School, Mumbai-400 060.		
3.	Oriental Insurance Co. Ltd. 4 th Floor, Indian Mercantile Chambers 4 R.K. Marg, Ballard Estate, Mumbai-400 038.		
4.	M/s.Thiru Freight Services Pvt. Ltd. Post Kalamboli, Gala No.90, Truck Terminal, Kalamboli, Taluka-Panvel, District- Raigad.		Respondents

Mr.Y.G. Thorat i/b Mr.Mohan Gawade, Advocate for the Appellant.
Ms.Poonam Mital, Advocate for Respondent No.3-Insurance Company.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th APRIL, 2024.

Oral Judgment:

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1. This appeal is preferred by the appellant-claimant against the dismissal of the claim petition.

2. It is contention of learned counsel for the appellant/claimant that the accident occurred due to sole negligence of the offending truck. An offence was registered against the driver of the offending truck but the Tribunal has not considered this fact. Learned counsel further submitted that the Tribunal has dismissed the claim petition on the ground that the claimant has not proved the negligence of the driver of the offending truck and no witness was examined to prove the negligence of the driver of the offending truck, which is erroneous. Learned counsel further submitted that the deceased was diploma holder in Dairy Technology and was serving as a Technical Officer with Simla Dudh Pvt. Ltd. at Mandvi and was getting salary of Rs.3000/-per month, he was the only earning member in his family but this fact is not considered by the Tribunal, hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.3- Insurance Company that to prove the negligence of the driver of the offending truck, no witness was examined by the claimant. At the time of the accident, the friend of the deceased was a pillion rider on the motorcycle of the deceased, who witnessed the incident, but he has not been examined by the claimant to prove the negligence of the driver of the offending truck. The Tribunal has considered all the aspects while passing the judgment and order, no interference is required in it.

4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Nashik (for short “the Tribunal”).

5. It is the claimant’s case that on 23rd July 2000 at about 4.00 p.m., the deceased – Jitendra along with one Ghanshyam Mahajan were proceeding on motorcycle. Jitendra was riding the motorcycle, Ghanshyam Mahajan was pillion rider. Both were going, out of Amabadi Naka Petrol Pump on Wada-Bhiwandi road. At the relevant time, a truck trailer bearing No.MH-06-8556 proceeding from Wada to Bhiwandi gave a dash to the motorcycle. As a result of the same, Jitendra received injuries and he died on the spot. An offence was registered against the driver of the truck.

5.1. To prove the negligence of the driver of the offending truck, the claimant has examined Ghanshyam Mahajan who was the pillion rider on the motorcycle but he has not stated about the negligence. His evidence is silent on the point of negligence. While dealing with the issue of negligence, the Tribunal has observed that it has not come on record in which manner the accident occurred. It is not proved on record that the accident occurred due to rash and negligent driving of the trailer, hence, the Tribunal has dismissed the claim petition. I am unable to understand the observations of the Tribunal as the offence for the said accident was registered against the driver of the offending truck. The police has registered offence against the driver of the offending truck after making

enquiry. The driver of the offending truck did not step into the witness box to prove the negligence of the deceased. It appears from the spot panchanama that the driver of the offending truck was proceeding on the road when deceased was approaching highway from petrol pump. The spot panchanama shows that the truck ran over the deceased. The motorcycle of the deceased was dragged for 10 feet, it shows that the truck was in high and excessive speed. Hence, I hold that the accident occurred due to sole negligence of the truck driver.

5.2. To prove the income the deceased, the claimant has examined herself. She has stated that deceased was a diploma holder in Dairy Technology and was serving as a Technical Officer with Simla Dudh Pvt. Ltd. at Mandvi and was getting salary of Rs.3000/-per month. Nothing elicited in cross-examination of the claimant. As the deceased was diploma holder in Dairy Technology, I am considering the monthly income of the deceased at Rs.3000/- per month.

5.3. As per the view of the Hon'ble Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)**, the claimant is entitled for 40% future prospects.

5.4. At the time of the accident, the deceased was 23 year old, hence, the proper multiplier is 18.

5.5. As per the view of Hon'ble Apex Court in **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, the claimant is entitled for Rs.48000/- as consortium amount, Rs.18,000/- for loss of

estate and Rs.18000/- for funeral expenses.

5.6. In view of above, the claimant is entitled for following compensation :

Particulars	Rs.	Amount
Annual Income of the deceased (Rs.3000/- pm x 12)	Rs.	36000.00
40% future prospects	Rs.	14400.00
TOTAL	Rs.	50400.00
1/2th deductions towards personal expenses	Rs.	25200.00
TOTAL	Rs.	25200.00
Rs.25200/- x 18(multiplier)	Rs.	4,53,600.00
Consortium (Rs.48000/- x 1 claimant)	Rs.	48000.00
Loss of Estate	Rs.	18000.00
Funeral Expenses	Rs.	18000.00
Total Compensation.		5,37,600.00

The Tribunal has awarded Rs.50,000/-, if this amount is deducted from the amount of Rs.5,37,600/- considered by this Court, it comes to Rs.4,87,600/-. The claimant is entitled for this amount.

6. In view of above, I pass the following order :

O R D E R

1. The appeal is allowed
2. The claimant is entitled for enhanced compensation of Rs. 4,87,600/- @ 7% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.84,000/- is consortium amount, the claimant is entitled **7 or 7.5%** interest per annum on this

amount from 1st November 2017 till realisation of the amount.

3. Respondent No.3-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.
4. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
5. The claimant shall pay court fees on enhanced amount as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)