

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO. 518 OF 2009

- | | | |
|---------------------------------|---|----------------|
| 1. Smt. Rajashri Shivaji Kharat |) | |
| Age: 25 years, Occu: Household |) | |
| 2. Samarth Shivaji Kharat |) | |
| Age: 5 years, Occ: Nil |) | |
| Appellant No.2 being minor |) | |
| represented through Appellant |) | |
| No.1 as Natural Guardian |) | |
| Both R/o. Abiman Nagar |) | |
| Block No. 86/87 Row House |) | |
| Solapur |) |Appellants |

Versus

- | | | |
|-------------------------------------|---|-----------------|
| 1. Vinodkumar Singh |) | |
| Age: Adult, Occu: Business |) | |
| R/o. NL-2/5 Sector No. 26 |) | |
| Nerul – Navi Mumbai |) | |
| 2. The New India Assurance Co. Ltd. |) | |
| Summons be served on Divisional |) | |
| Manager Solapur Division, Solapur |) | |
| 3. Prof. Shri Vasant Kondiba Wagh |) | |
| Age: Adult, Occ: Business |) | |
| Service, R/o. Bungalow No.7 |) | |
| Pune University Road, Pune |) |Respondents |

Mr. R. S. Alange, Advocate for the Appellants.
Smt. Poonam Mital, Advocate for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 2nd FEBRUARY, 2024.

Oral Judgment. :

1. By way of this appeal, the Claimants are seeking enhancement of compensation.

2. It is contention of learned counsel for Appellants/Claimants that accident occurred due to sole negligence of the driver of offending truck, which was stationed on middle of the road, without any parking lights but the Tribunal has considered 75% contributory negligence of the deceased, which is not proper. Learned counsel further submitted that future prospects are not awarded, it be awarded and consortium amount awarded on lower side, it be awarded. Hence, requested to allow the Appeal.

3. Learned counsel for the Respondent No.2/Insurance Company submitted that the Tribunal has applied multiplier of 18, it should be 17. Learned counsel further submitted that accident occurred due to sole negligence of the deceased, he dashed the tyre, lying on the road and gave dash to the other car so, no question of

negligence of truck driver arises. Learned counsel further submitted that, the Tribunal has considered all the aspects while awarding compensation. The order passed by the Tribunal is proper and no interference is required in it.

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

5. It is Claimant’s case that on 22nd February, 2004 around 8 to 8:30 p.m., deceased Shivaji was proceeding on motorcycle bearing registration No. MH-13-X-0196 from Pune to Solapur, with his friend Lahu who was pillion rider. At relevant time, one truck was stationed on the road. No tail lamps and parking lights of the said truck were on. Some repairing work of that truck was going on. Due to that work, the tyre of truck was lying on the road. At the relevant time, one car was proceeding on that road, due to head light of that car, the eyes of the deceased was dazzled. He could not see the tyre of truck lying on the road and dashed that tyre, he lost his control and gave dash to the car, which was coming from the opposite direction. Due to

dash given to other car, he sustained injuries and died on the way to hospital. Offence was registered against the truck driver.

6. While dealing with the issue of negligence, the Tribunal has observed that accident occurred due to negligence of the deceased as, he dashed the tyre of truck, which was lying on the road, thereafter, he dashed the car, which was coming from the opposite direction. On that basis, the Tribunal has considered 75% negligence of the deceased and 25% of the truck driver. I am unable to understand the observations of the Tribunal as admittedly truck was stationed on road for repairing work, tyre of the truck was lying on the road. Though, the truck was stationed on the road, no parking lights or indicators were put on to show that the truck was stationed on the road, it was highway. While repairing of said truck, the tyre was kept on the road. It shows sole negligence of the truck driver. Though, the deceased had dashed the truck tyre lying on the road, it cannot be said his negligence. Accident occurred around 8:00 to 8:30 p.m there was dark and there were no lights on the road and due to dark, deceased could not see the tyre lying on the road. Moreover, the driver of the offending truck did not step into witness box to prove

that he had taken proper precaution when, truck was stationed on the road and the tyre was not lying on the road. As per Section 15 and Rule 109 of the Motor Vehicle Act, 1988 it is obligatory on the truck driver to take precautions, it reads thus;

“ Section 15 in the Rules of the Road Regulations, 1989:

15. Parking of the vehicle:-

(1) Every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and the manner of parking is indicated by any sign board or markings on the road side, he shall park his vehicle in such manner.

(2) A driver of a motor vehicle shall not park his vehicle:

- (i) at or near a road crossing, a bend, top of a hill or a humpbacked bridge;
- (ii) on a foot-path;
- (iii) near a traffic light or pedestrian crossing;
- (iv) in a main road or one carrying fast traffic;
- (v) opposite another parked vehicle or as obstruction to other vehicle;
- (vi) alongside another parked vehicle;
- (vii) on roads or at places or roads where there is a continuous white line with or without a broken line;
- (viii) near a bus stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant;
- (ix) on the wrong side of the road;
- (x) where parking is prohibited;
- (xi) away from the edge of the footpath.”

.....

**“Regulation 28 of the Motor Vehicles (Driving) Regulation:
Vehicle breakdown:**

In case a vehicle with more than two wheels has broken down at a place where it can be recognised in time as a stationary obstacle,-

- (i). the hazard warning lights of the vehicle shall be switched on immediately;
- (ii). on highways and major roads with fast speed, reflective

traffic warning triangles shall be placed at a distance of fifty meters behind the broken-down vehicle; and In present case, it shows that the driver of the said Truck has clearly violated all the rules and regulations of the Central Motor Vehicle Rules, Motor Vehicle Rules and the Rules of the Road and Regulation, 1989, and Regulations made under the Act.”

.....

“When any vehicle is stationed on the road at night time, as per Rule 109 of the Central Motor Vehicles Rules, 1989, proper precautions are necessary to be taken. It reads thus:-

109. Parking light:-

[Every construction equipment vehicle, combine harvester and motor vehicle] and every motor vehicle other than motor cycles and three wheeled invalid carriages shall be provided with one white or amber parking light on each side in the front. In addition to the front lights, two red parking lights one on each side in the rear shall be provided. The front and rear parking lights shall remain lit even when the vehicle is kept stationary on the road:

Provided that these rear lamps can be the same as the rear lamps referred to in rule 105 sub-rule (2): [Provided also that construction equipment vehicles [and combined harvesters], which are installed with food light lamps or sports lights at the front, rear or side of the vehicle for their off highway or construction operations, shall have separate control for such lamps or lights and these shall be permanently switched of when the vehicle is travelling on the road.]”

6.1 These rules states that front and rear parking lights shall remain lit when the vehicle is kept stationary on the road. In the present case, the truck was stationed on the road but no parking lights were on and due to dark, the deceased could not see stationed truck and tyre lying on the road. As per the Central Vehicle Rules, reflective traffic warning triangles shall be placed at a distance of fifty meters behind the broken-down vehicle. In the present case, no tail lamps and parking lights of the

said truck were on. Some repairing work of that truck was going on and the tyre of truck was lying on the road, it shows that the driver of said truck has clearly violated the rules and regulations of the Central Vehicles Rule. Considering evidence on record, I hold that accident occurred due to sole negligence of the truck driver.

8. While calculating compensation, the Tribunal has considered monthly income of deceased at Rs.5614/- but, the Tribunal has not awarded future prospects. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)***, the claimants are entitled for 50% future prospects. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for Rs.48,000/- as consortium amount and Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

9. Considering above the calculations, the claimants are entitled for following compensation.

Monthly income	Rs.5899/-
Provident fund	Rs.175/-
Income Tax	Rs.110/-
Total	Rs.5,614/-
Annual Income (Rs.5,614/- X 12)	Rs.67,368/-
Add: 50% future prospects	Rs.33,684/-
Total Income	Rs.1,01,052/-
Multiplier 17 (Rs.1,01,052/- X 17)	Rs.17,17,884/-
1/3rd amount deducts	Rs.5,72,628/-
Total	Rs.11,45,256/-
Consortium (Claimants) Rs.48,000/- X 2	Rs.96,000/-
Loss of estate	Rs.18,000/-
Future Prospects	Rs.18,000/-
Total Compensation	Rs.12,77,256/-
Less awarded by the tribunal	Rs.2,09,100/-
Enhanced amount	10,68,156/-

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

ORDER

- i. Appeal is allowed.
- ii. The claimants are entitled for enhanced compensation of Rs.10,68,156/- @ 7.5% interest per annum from the date of filing claim petition, till realisation of the amount. Out of this amount Rs.1,32,000/- is consortium amount. The claimants are entitled @ 7.5%

interest per annum on this amount from 1st November, 2017, till the realisation of amount.

iii. The Respondent No.2/Insurance Company shall deposit enhanced amount along with accrued interest thereon, within six weeks after receipt of the order.

iv. The Claimants are permitted to withdraw deposited amount along with accrued interest thereon.

11. Learned counsel for Respondent No.2/Insurance Company undertakes to file Vakalatnama.

12. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)