

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

FIRST APPEAL NO. 935 OF 2006

1. Sunita Santosh Dhapate)
Aged: 19 years, Occ: Household)

2. Kum Didi alias Aarati Santosh Dhapate)
Age: 2 years,)
Being minor through legal Guardian)
Applicant No.1.)

3. Vasant Bhanudas Dhapate)
Age: 47 years, Occ: Agriculturist)

4. Ratan Vasant Dhapate)
Age: 40 years, Occ: Household)

All residing at Anthurne, Tal: Indapur)

Dist: Pune.)....Appellants

(Orig. Applicant Nos. 1 to 4)

Versus

1. The Oriental Insurance Co. Ltd.)
321/A-2 Oswal Banndhu Samaj Building)
Jawaharlal Neharu Road, Pune -42)(Orig. Opp. No.1)

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2. Kalyan Jagannath Jadhav)

R/o Sakurde, Tal: Purandar,

)(Orig. Opp. No.2)

Dist: Pune.

)Respondents

....Respondents

Mr. D. D. Shinde Mr. Y. G. Thorat i/b U. B. Nighot, Advocate for the Appellants.

Ms. Poonam Mital, Advocate for the Respondent no.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4th MARCH, 2024.

Oral Judgment :

1. This appeal is preferred by the Appellants/Claimants against the dismissal of claim petition.

2. It is contention of learned counsel for the Appellants/Claimants that deceased was riding on motorcycle with his father, at relevant time their motorcycle was dashed by the offending tanker, due to dash deceased died. The Tribunal has observed that the Claimantss have failed to prove the negligence of driver of offending tanker, on that ground the claim petition is dismissed, which is erroneous. Learned counsel further submitted that at the time of accident deceased was 4 years old and he was clever boy, he could have become doctor or Class-I officer. Hence, requested to allow the appeal. He relied on *Muhammed vs. United India Insurance Company Limited & Ors.*

2023 ACJ 894 .

3. It is contention of learned counsel for the Respondent No.1/Insurance Company that the Tribunal has considered all the aspects while passing the judgment and order hence, no interference is required in it. Learned counsel for the Respondent relied on the judgment of ***Meean Devi vs. Nanu Chand Mahto alias Nemchand Mahto & Ors. (2023) 1 SCC 204.***

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

5. It is Claimants’ case that on 29th September, 2003 deceased Santosh was driving on his motorcycle in a moderate speed by observing the traffic rules and regulations along with his son, from Pune to village Anthrune Tal. Indapur at about 7:00 p.m. while they were proceedings on the road near village Daundaj a water tanker bearing registration No. MH-12-FA-9801 came from opposite direction in rash and negligent manner without following the traffic rules and safety of others and gave a heavy dash to the motorcycle of the deceased. Due to said dash deceased and his son died in the said accident. The offence was registered against the driver of offending tanker.

6. To prove the negligence of driver of offending tanker, the Claimants have relied on police papers. The Respondents have not examined any witness in support of their defense. While dealing with the issue of negligence, the Tribunal has observed that the Claimantss have not examined the witness. Those statements were recorded by the police. The Tribunal further observed that the Claimants failed to prove the negligence of driver of offending tanker hence, dismissed the claim petition. I am unable to understand the observations of the Tribunal as admittedly offence is registered against the driver of offending tanker. The petitioners have examined the Police Head Constable Manohar Sapkal, who has registered offence against the driver of offending tanker. After investigating the police constable has registered the offence. Moreover, deceased was 4 years old son and, he was travelling on the motorcycle with his father so, no question of his negligence arises. The spot panchanama shows that accident occurred due to negligence of the driver of offending tanker hence, I hold that accident occurred due to negligence of the driver of offending tanker.

7. Admittedly, at the time of accident deceased was 4 years old. As per the view of Hon'ble Apex Court in the case of *Muhammed (supra)*, the Claimants are entitled total compensation of Rs.5,50,000/- hence, I am awarding this amount to the Claimants.

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

ORDER

- i. Appeal is allowed.
 - ii. The Appellants/Claimants are entitled Rs.5,50,000/- @ 7.5% interest from the date of filing claim petition till realisation of the amount.
 - iii. The Respondent/Insurance Company shall deposit the amount along with accrued interest thereon, within six weeks after receipt of the order.
 - iv. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - v. The Claimants shall pay deficit Court's fees as per Rule.
9. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)