

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

FIRST APPEAL NO. 2210 OF 2008

The Municipal Corporation for Greater Bombay, Nimkar Marg, Byculla, Bombay-400 008	} } }	(Org. Opposite party) ...Appellant
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Versus

NILAM
SANTOSH
KAMBLE

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NILAM SANTOSH
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Date: 2024.04.16
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1. Smt.Likeunisa Mansoor Alam Shaikh	}	
Age-45 years, Widow	}	

2. Shri.Afiz Itishamuddin Mansoor Alam Shaikh, Age-24 years, Son	}	
	}	

3. Miss.Razda Mansoor Alam Shaikh	}	
Age-22 years, Daughter	}	

4. Smt.Mazda Katun Mansoor Alam Shaikh	}	
Age-19 years, Daughter	}	

5. Shri.Mohd. Imran Mansoor Alam Shaikh	}	
Age-16 years, Son	}	

6. Miss Tabassum Mansoor Alam Shaikh	}	
Age-14 years, Daughter	}	

7. Miss Mumtaz Mansoor Alam Shaikh	}	
Age-14 years, Daughter	}	
	}	

The Respondent Nos.5 to 7 being minors	}	
through their mother and next friend	}	

Respondent No.1 Smt.Likeunisa Mansoor	}	
Alam Shaikh,	}	
All R/at Room No.29/20/25, Dhobi Ghat,	}	(Org.
B-Committee Chawl, Sane Guruji Nagar,	}	Applicant)
Dr.A. Mozes Road, Mumbai-400 011.	}	Respondents

Mr.Vaibhav Gaikwad a/w Mr.Santosh Parad, for the Appellant.
 Ms.Ketki Gokhale i/b Mr.A.M. Gokhale, for Respondent Nos.2
 and 7.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd APRIL 2024

ORAL JUDGMENT :-

1. The issues involved in this Appeal are income of the deceased is considered on higher side and accident occurred due to sole negligence of the deceased.

2. It is contention of the learned counsel for the Appellant-Corporation that, the deceased dashed against the offending dumper and fell on the ground and died. The accident occurred due to sole negligence of the deceased, but these facts are not considered by the Tribunal. The learned counsel further submitted that the Tribunal has considered monthly income of the deceased at Rs.3,000/- per month, without any evidence on

record, which is on higher side. Hence, requested to allow the Appeal.

3. The learned counsel for the Respondent-Claimant submitted that, one side of the road was closed for traffic, due to Ganpati immersion as procession was going on. The driver of the dumper without taking care of the procession started dumper and gave dash to the deceased. He was standing near the divider. The offence was registered against the driver of the dumper. The Tribunal has considered all the aspects while passing judgment and order, no interference is required in it. The learned counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded.

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

5. It is Claimant's case that on 15th September 2002 at 12.40 a.m. at Grant Road, Mumbai, the deceased was crossing DB Road. At the relevant time one garbage dumper bearing Registration No. MH-01-H-1392 suddenly came in high speed

and knocked down the deceased. Due to dash the deceased sustained injuries and died while taking treatment. The offence was registered against the driver of the dumper.

6. It is Claimant's case that deceased was an employee of M/s.Gulam Bag House, Mumbai Central and he was earning Rs.5,000/- per month. To prove the income of the deceased the Claimant No.1 examined herself. She has stated that the deceased was working with Gulam Bag House and he was earning Rs.5,000/- per month. In support of evidence of PW-1, the Claimant's have examined Gulam Gaush, owner of the Gulam Bag House. He has stated that deceased was working with him and he was paying salary of Rs.5,000/- per month to him. The Salary certificate is at Exhibit-13. He has produced Shop and Establishment License. It is at Exhibit-12.

7. While dealing with the issue of income of the deceased, considering evidence on record, the Tribunal has considered monthly income of the deceased at Rs.3,000/- per month. I do not find infirmity in it.

8. To prove the negligence of the driver of the offending

dumper the Claimant No.1 examined herself. She has stated that, the accident occurred due to negligence of the driver of the dumper. It appears that, she was not present at the time of the accident. Hence, I am not considering her evidence.

9. To prove its defence driver of the offending dumper Aslam Khan examined himself at Exhibit-14. He has stated that on the day of the accident it was Ganpati immersion and only one side of the road was open for the traffic. As procession was going on, the vehicles were stopped at the junction. His dumper was also stopped there. On getting signal he started to proceed ahead. At that time, one pedestrian dashed against the bumper of the dumper and fell down on the road divider. In cross-examination he admitted that Police filed charge-sheet against him in respect of the said accident.

10. While dealing with the issue of negligence, the Tribunal has observed that the evidence of the driver of the offending vehicle does not indicate that he had taken all precautions while driving the dumper and in written statement it is pleaded that the driver had applied breaks, but driver has not

stated this fact in his oral evidence. The Tribunal has further observed that when the driver was required to apply break, it shows that the dumper was in high speed. On that basis, the Tribunal has held that accident occurred due to negligence of the driver. I do not find infirmity in it. In my view, Police has filed FIR against the driver of the dumper after making inquiry of the incident. In oral evidence the driver has stated that deceased dashed the bumper of his dumper. By giving mere dash to the dumper it is not possible that the person may die. It shows that to avoid the liability of the accident driver of the dumper has given false evidence before the Tribunal. In written statement filed by the Appellant-Corporation it is mentioned that driver had applied the breaks. It shows that, the dumper was moving when accident occurred, but driver has not stated this fact. The Police papers produced on record indicates the negligence of the driver. Hence, I do not see merit in the contention that the accident occurred due to negligence of the deceased.

11. The Tribunal has awarded consortium amount of Rs.35,000/-, it is on lower side. As per view of Hon'ble Apex

Court in the 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 seven Claimant's, the total of it comes to Rs.3,72,000/-, if the amount of Rs.35,000/- awarded by the Tribunal is deducted from this amount, it comes to Rs.3,37,000/- The Claimant's are entitled for this amount.

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

ORDER

- (i) The Appeal is dismissed.
- (ii) The Claimant's are entitled for enhanced amount of Rs.3,37,000/- @ 7.5% interest from 1st November 2017 till realization of the amount.
- (iii) The Appellant-Corporation shall deposit the enhanced amount along with interest thereon within six weeks after receipt of this order.
- (iv) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to

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withdraw it, as per Rules.

(v) The Claimant's shall pay Deficit Court Fees on enhanced amount, as per Rules.

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

(SHIVKUMAR DIGE, J.)