

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1311 OF 2013

1	Snehal Sharad Apradh Age 48 years, Occ: Household.		
2	Rishikesh Sharad Apradh Age 20 years, Occ: Education.		
3	Chaitali Sharad Apradh Age 17 years, Occ: Education R/at : Bungalow No.1, Dnyandeep Bungalow Scheme, Sugar Mill Road, Kasaba Bawda, Kolhapur. Appellant No.3, minor through her legal guardian Appellant No.1.		Appellants (Org.Claimants)
	versus		
1	Parshuram L. Gopallamani, Age 45 years, Occ : Business, R/at : At Post, Khanarlal Second Stop, Devraj Building, Dist. Belgaon, State Karnataka.		
2	The New India Assurance Co. Ltd. Office at Kedar Patankar Complex First Floor, 204, E Ward, Station Road, Kolhapur.		Respondents

Mr. Jayant J. Bardeskar, Advocate for the Appellants.
Ms. Jyoti Bajapyee, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st APRIL, 2024.

Oral Judgment:

1. This appeal is preferred by the appellants/claimants for enhancement of compensation.

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2. It is contention of learned counsel for the appellants/claimants that the accident occurred due to sole negligence of the driver of the dumper but the Tribunal has fixed 50% contributory negligence of the deceased, which is erroneous. Learned counsel further submitted that the Tribunal has not awarded future prospects on compensation amount. Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded and requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2- Insurance Company that the deceased had given dash to the dumper from backside, the accident occurred due to sole negligence of the deceased. An offence was registered against the deceased. The Tribunal has considered all the aspects while passing judgment and order and no interference is required in it.

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

5. It is claimants' case that on 20th December 2008, deceased – Sharad was driving Maruti car along with his friends Rishikesh and Prashant Patil. The deceased was driving the said car on the left side of the road in moderate speed by observing traffic rules. When the said car

reached in the vicinity of Sankeshwar village and he was proceeding on Pune-Bangalore Highway, one dumper bearing registration No.K-35-1789 came from backside of the Maruti car, went ahead and suddenly took left turn, due to which the Maruti car of the deceased dashed to the said dumper from backside. Due to the said dash, deceased died on the spot. An offence was registered against the deceased. To prove the negligence of the driver of the dumper, the claimants have examined DW2-Prashant Patil at Exhibit -43. He has stated that on 20th December 2008, he was proceeding to Belgaum along with Sharad and Rishikesh. Deceased – Sharad was driving car and he was sitting next to him. He has further stated that deceased was driving the car in normal speed. They were proceeding on NH-4 highway. At the relevant time, there was one dumper ahead of their vehicle and that dumper was passing on a track adjoining the divider. There were two tracks to go towards Belgaum. The deceased Sharad gave light signal and also gave horn seeking side, however, the driver of the dumper did not give side, therefore, the deceased took his vehicle to the left side and abruptly, at that moment, the offending dumper without giving any signal came to the left track ,on account of which, there was an accident. The accident occurred due to negligence of driver of the dumper. In cross-examination, this witness has admitted that the dumper was ahead of their vehicle and being NH-4 highway, there was continuous traffic. This witness denied the suggestion that the car dashed against the rear

portion of the dumper and he is deposing falsely as deceased was his close relative.

5.1. To prove the negligence of the deceased, respondent No.2 has examined Namdeo Chavan, cleaner of the offending dumper. He has stated that the Maruti car came behind their vehicle and dashed to the left tyre of their vehicle and chassis, there was no negligence on the part of the driver of the dumper. In cross-examination, he has admitted that at the time of preparing panchanama, only police, he and the driver of the dumper were present. He further admitted that the driver of the dumper was driving the vehicle in lane near the divider. While dealing with the issue of negligence, the Tribunal has observed that it appears from the record that there was negligence of both drivers in the said accident and the Tribunal has considered 50% contributory negligence of the deceased and 50% contributory negligence of the driver of the dumper. I am unable to under the observation of the Tribunal as it has come in the evidence of PW-2 who is eye-witness of the accident that the deceased was driving car in moderate speed and he had given signal to the driver of dumper and when deceased was taking his car on left side, the driver of dumper suddenly came on left side and gave dash to Maruti car. Though DW1-cleaner of the dumper has stated that the accident occurred due to sole negligence of the deceased but he has not witnessed the incident as he was sitting in the dumper. Whereas PW2 who was sitting in the car has witnessed the accident. Moreover, it has come on record

that police had prepared panchanama in the presence of cleaner and driver of dumper and no other persons were present at that time, it shows that without making enquiry about the accident, the police had registered the offence against the deceased. Considering the evidence on record, I am considering 75% negligence of the driver of the dumper and 25% negligence of the deceased.

5.2.. While awarding compensation, the Tribunal has not awarded future prospects. At the time of accident, the deceased was 51 year old. 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 10% future prospects.

5.3. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, each claimant is entitled for Rs.48000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18000/- for funeral expenses.

5.4. In view of above, the claimants are entitled for following compensation :

Particulars	Rs.	Amount
Annual Income	Rs.	2,50,000.00
10% future prospects	Rs	25,000.00
Total	Rs	2,75,000.00
1/3rd deductions for personal expenses	Rs	91,666.00

Total	Rs	1,83,334.00
Rs.1,83,334x 11(multiplier)	Rs	20,16,764.00
25% Contributory Negligence	Rs.	5,04191.00
Total	Rs.	15,12,573.00
Consortium (Rs.48000/- x 3 claimants)	Rs	1,44,000.00
Loss of Estate	Rs	18,000.00
Funeral Expenses	Rs	18,000.00
Total	Rs	16,92,573.00

The Tribunal has awarded Rs.9,43,700/-, if this amount is deducted from the amount of Rs.16,92,573/- considered by this Court, it comes to Rs.7,48,873./-. The claimants are entitled for this amount.

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

ORDER

1. The appeal is allowed.
2. The appellants/claimants are entitled for enhanced compensation of Rs.7,48,873/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.1,80,000/- is consortium amount, the claimants are entitled for 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.
3. Respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.

4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
5. The claimants shall pay court fees on enhanced amount as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)