

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

FIRST APPEAL NO. 650 OF 2021

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|----------------------------------|---|-------------------------------------|
| 1. Shreya Abhay Chounde |) | |
| Age- 46 years, Occ: Household |) | |
|
2. Kowid Abhay Chounde |) | |
| Age: 19 years, Occ: Student |) | |
|
3. Sumati Shatrughna Chounde |) | |
| Age- 77 years, Occ: Nil, |) | |
|
All Residing at Flat No. B1, |) | |
| Sarita Vaibhav Housing Society, |) | |
| Sinhgad Road, Pune |) |Appellants/
Orig. Applicants |

Versus

- | | | |
|--------------------------------------|---|---|
| 1. Mahadev Nagnath Bedge |) | |
| Age: Major, Occ: Driver, |) | |
| R/at – Karajgaon, Tal. Lohara, |) | |
| Dist: Osmanabad. |) | |
|
2. Sanjay Nagnath Yelapure |) | |
| Age: Major, Occ: Truck Transport, |) | |
| R/at. Shivaji Chowk, At Post Umarga, |) |) |
| District: Osmanabad. |) | |

3. Cholamandalam M. S. Gen. Insurance Co.)
Office at – Ambedkar Road, Camp,)
Pune – 411 001.)....Respondents/
Orig. Opponents

Mr. Sarvesh Deshpande a/w Mr. Bharat Ghadavi i/b Mr. Tejas
Dande, Advocate for the Appellant.
Mr. Rajesh Kanojia i/b Res Juris, Advocate for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd MARCH, 2024.

Oral Judgment. :

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

2. It is contention of learned counsel for the Appellants/Claimants that accident occurred due to sole negligence of the driver of offending truck as, offending truck gave dash to the car of the deceased. The Eye witness was examined to prove the negligence of the driver of offending truck. The police papers produced on record shows that accident occurred due to sole negligence of driver of offending truck but these facts are not considered by the Tribunal. Learned counsel further submitted that deceased was working as a Assistant Professor and Placement Officer and, he was getting salary of Rs.59,522/-. At the time of accident,

the deceased was 41 years old, but these facts are not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent/Insurance Company that the deceased had given dash to the offending truck on its cleaner side, which was coming from the opposite direction. Learned counsel further submitted that after making enquiry, police has registered offence against the deceased. One relative of the deceased had filed application before the Judicial Magistrate First Class for re-investigation of the matter. The said Court had directed to re-investigate the matter. In the said re-investigation police filed the report stating that accident occurred due to sole negligence of the deceased and the witnesses who stated that accident occurred due to negligence of the truck driver, were not present on the spot of accident. Learned counsel further submitted that the sketch of accident spot produced on record shows that car of the deceased had gone on wrong side of the road and gave dash to the truck. The Tribunal has considered all these aspects and has passed reasoned order. The judgment and 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, Pune (for short "the Tribunal").

5. It is claimant's case, on 21st February, 2012 at about 3:30 p.m. The deceased Abhay was driving car on Pune to Solapur

highway. He was going to Baramati from Pune. When he reached near Kedgaon Chaufala, the truck bearing registration No.KA-02-AB-754 was coming from opposite direction, the driver of said truck trying to over take another vehicle in that attempt the said truck came on the wrong side of the road and gave dash to the car of the deceased. Due to said dash, the deceased got injured and died while taking treatment. The offence was registered against the deceased.

6. It is claimant's case that accident occurred due to sole negligence of the driver of offending truck. To prove the negligence of driver of offending truck, the claimants have examined eye witness Vishwas Bhosale at Exhibit-49. He has stated that on 21st February, 2012 at about 10:00 -10:30 a.m. he was proceeding on his motorcycle from Yavat to Shedgaon at that time his friend Anil Khaladkar was with him. At the relevant time, the construction work of the Pune - Solapur road was going on hence, only one side of the road was functioning and, on that side both side traffic were going on. He further stated that one yellow colour Maruti car was going ahead of him. At the relevant time, one truck came from opposite direction by overtaking tractor trailer and came on wrong side of the lane. The said truck was in high an excessive speed and gave dash to the Maruti car. Due to said dash Maruti car turned turtle. He further stated that after dash, the said truck went ahead and stopped. He saw the accident from the distance of 100 to 150 feet. This witness went near the Maruti car and inquired with injured and informed his relatives about the accident. After sometime ambulance came and

took the

injured to the hospital. This witness further stated that accident occurred due to sole negligence of the driver of truck. In cross-examination, he has admitted that police has recorded his statement but police had not given him copy of statement. To prove its defense, the driver of offending vehicle Shri. Mahadev Bedge has filed affidavit of examination-in-chief but he was not available for cross-examination hence, his evidence cannot be considered. The Opponent No.3 has examined Police Officer DW-2 Shri. Mangesh Virnak at Exhibit-96 who investigated the incident of accident. He has stated that on 21st February, 2012 he was attached to Yavat Police Station as API, he investigated the accident case, brother-in-law of the deceased had filed an application before the learned JMFC alleging false investigation and implicating the deceased in said accident. The re-investigation was ordered therein and they found that the earlier investigation was properly carried out, accordingly they filed report before the JMFC Court and the proceeding was abated on the account of the death of the deceased. The documents are at Exhibit-32. The final report is at Exhibit-97.

7. In cross-examination, he has admitted that at the time of accident, the traffic on one side of the road was closed and both side traffic was going on from one side only. He cannot give the length of the offending trailer. While dealing with the issue of negligence, the Tribunal has observed that the offence was registered against the deceased. The spot panchaname shows that car had gone on wrong

side of the road and gave dash to the truck. The Tribunal further observed that from the evidence, it is clear that the said accident was not occurred due to rash and negligence of driver of the said truck and has observed that accident occurred due to sole negligence of the deceased. I am unable to understand the observations of the Tribunal as admittedly, traffic was going on one side of the road. The car was going in one direction whereas the truck was coming from opposite direction. The PW-3, Vishwas Bhosale who witnessed the incident has stated that the truck gave dash to the car of the deceased.

8. It is contention of learned counsel for the Respondent/Insurance Company that police has registered the offence against the deceased for said accident. In my view, though the offence is registered against the deceased, it cannot be said that the accident occurred due to sole negligence of the deceased. While deciding the issue of negligence, the Court has to consider evidence came on record. In the present case, the eye witness categorically states that the accident occurred due to sole negligence of the driver of truck. Whereas, the F.I.R. shows it was caused due to negligence of the deceased. As per view of Hon'ble Apex Court in the case of *National Insurance Company Limited Vs. Chamundeswari & Ors. C.A. @ SLP(c) No.4705 OF 2019*, Court has to give weightage to the evidence given before the Court. Rather than the contents of F.I.R. The driver of truck avoided to face cross-examination. The Insurance Company has not examined other witness to prove the negligence of

the deceased.

9. It is contention of learned counsel for the Respondent/Insurance Company that car had given dash to the cleaner side of the truck, which shows that the car went on wrong side and gave dash. In my view, it has come in the evidence of PW-3 eye witness of the incident that after the accident, truck went ahead for 10 to 15 feet and thereafter, it was stopped. So, it cannot be said that on which part of the truck the car was dashed because for some feet the said car dragged by the truck. The spot panchanama produced on record shows the sketch of the accident spot, it shows that accident occurred in the middle of the road. It shows that accident occurred due to contributory negligence of the driver of both vehicle. Moreover, driver of the offending truck has not stepped into witness box to prove the negligence of the deceased. Hence, I am considering 50% contributory negligence of the deceased and 50% contributory negligence of the driver of truck.

10. To prove the income of the deceased, the claimant no.1 has examined herself. She has stated that her husband was working as assistant professor in Vidya Pratisthan Information Technology College

at Baramati and he was getting Rs.60,000/- per month and he was getting Rs.30,000/- as a part time mediator. In support of evidence of PW-1, the claimants have examined PW-4 Sanjay Jagtap. The Administrative Officer of Vidya Pratisthan at Exhibit-55. He has stated that deceased Abhay Chounde was working as Assistant Professor and placement officer in their trust and his salary for February, 2012 was Rs.59,522/- and after deduction it was Rs.58,442/-. The salary slips are at Exhibit-60 and 60/1. In my view, the deceased was working as Assistant Professor, he was permanent employee. The salary slip shows that the deceased was getting Rs.59,522, after deducting income tax and professional tax salary comes to Rs.56,322/-, I am considering this income as monthly income of the deceased. At the time of accident, deceased was 42 years old. As per 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 30% future prospects. As per 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 to Rs.48,000/- for consortium amount and Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

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

Last Salary	Rs.56,322/-
Annul Income (Rs.56,322/- X 12)	Rs.6,75,864/-
Less: 1/3rd Loss of dependency	Rs.2,25,288/-
Annual income after deducting loss of dependency.	Rs.4,50,576/-
Add: 30% future prospects	Rs.1,35,173/-
Total Annual income of calculation	Rs.5,85,749/-
Multiplier 14	Rs.82,00,486/-
Loss of consortium Rs.48,000/- X 3 (Claimants)	Rs.1,44,000/-
Loss of Estate	Rs.18,000/-
Funeral Expenses	Rs.18,000/-
Total	Rs.83,80,486/-
(50% of final amount of compensation)	Rs.41,90,243/-

12. As this Court has considered 50% contributory negligence of the deceased. The claimants are entitled for 50% compensation amount of **Rs.83,80,486/-**.

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

ORDER

i. Appeal is allowed.

ii. The Claimants are entitled for compensation amount of

Rs.41,90,243/- @ 7.5% interest per annum from the date of filing claim petition, till realisation of the amount. Out of this amount of Rs.1,80,000/- is consortium amount. The claimants are entitled @ 7.5% interest per annum on this amount from 1st November, 2017, till realisation of the amount.

- iii. The Respondent/Insurance Company shall deposit compensation amount along with accrued interest thereon, within eight 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 the deficit Court fees on compensation amount, if any, as per Rule.

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

(SHIVKUMAR DIGE, J.)