

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1085 OF 2012

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Reliance General Insurance Company Limited)
572, Naigaon Cross Road, Next to Royal Industrial)
Estate, Wadala (East), Mumbai - 400031)

... Appellant
(org.Insurer)

Versus

1 Smt. Mangal Baban Nalavade)
Aged 46 years, Occupation : Housewife,)
wife of the deceased)

... Respondent
org.claimants

2 Mr. Ramdas Baban Nalavade)
Aged 24 years, Occupation : Service,)

3 Mr. Vaibhav Baban Nalavade)
Aged 20 years, Occupation – Education)
All residing at B/9, 202, Gagangiri Enclave, Bahrave)
Road, Khadakpada, Kalyan (West), Taluka : Kalyan)

4 Jarnel Singh Harbhajansingh Jhat)
Aged about adult, Occupation: Driver)

... Original
Opposite
party

5 **Mr. Navneetkumar Jaspalkumar Sharma**)
Aged about adult, Occupation : Service)

As per Reg. J-
II order dated
16.3.2016
stand
dismissed.

6 **Mr. Gurunamsingh Bhelasingh Sikh**)
Aged about adult, Occupation : Driver)
All residing at VOP Mahima Pandori,)
District : Amritsar)

As per Reg. J-
II order dated
02.11.2017
stand
dismissed.

... Respondents

Smt. Varsha Chavan, Advocate for the Appellant.

Mr. Sandeep S. Jinsiwale i/b. Dnyaneshwahr Deshmukh, Advocate for Respondent Nos. 1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 20th MARCH, 2024.

Oral Judgment :

1. The issue involved in this Appeal is accident occurred due to sole negligence of the deceased.

2. It is contention of learned counsel for the Appellant/Insurance Company that deceased was driving car on other side of the road and gave dash to the truck, which was coming from opposite direction. The accident occurred due to sole negligence of the driver of offending car. The offence was registered against the driver of offending car, but this fact is not considered by the Tribunal and has fixed 75% negligence on the driver of the car and 25% negligence on the driver of truck, which is erroneous. The Tribunal should have fixed 100% negligence on the driver of the car. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that though, the car of the deceased had gone on other side of the road, the truck which was coming from the opposite direction was in high and in an excessive speed, after seeing the car, the

truck driver could have avoided the accident but he gave dash to the car. It shows that, the truck was in high and in an excessive speed and he did not try to avoid the accident. The Tribunal has considered all the aspects and on that basis, the Tribunal has fixed liability on both drivers, which is proper. Learned counsel further submitted that while awarding compensation, 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, Kalyan (for short “the Tribunal”).

5. It is claimant’s case that on 17th June, 2008 deceased Baban Nalavade with other two persons were proceeding towards Pune in Indica car. The deceased was driving the car at the relevant time. The car dashed on the road side stone of the divider and car went on other side of the road. At the same time, one truck bearing registration No. PB-04-AM-9919 was coming from opposite direction and gave dash to the Indica car. Due to dash, the deceased and occupants of the car died on the spot. The offence was registered against the deceased.

6. While dealing with the issue of negligence, the Tribunal has observed that to prove the negligence of the car driver, the driver of truck did not step into witness box. The police papers produced on record shows negligence of the car driver. On that basis, the Tribunal has considered 75% negligence of the deceased and 25% of the driver of truck. I do not find infirmity in it. In my view, though offence was registered against the deceased. It has come on record that, when the car went on other side of the road, the truck gave dash to the car, it shows that, the truck was in high and in an excessive speed. Moreover, to prove that the truck was in moderate speed and the truck driver had no option to give dash to the car, the truck driver did not enter into the witness box hence, 25% negligence of the truck driver considered by the Tribunal is proper. While awarding compensation Tribunal has not awarded consortium amount. 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 to Rs.48,000/- for consortium amount and Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses. There are three Claimants. The total of it comes to Rs.1,80,000/-. The Tribunal has awarded Rs.9,500/- as consortium amount if, this amount deducts from the amount considered by this Court, it comes to Rs.1,71,500/-. The Claimants are entitled 25% of this amount it comes to Rs.42,875/-.

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

ORDER

- i. Appeal is dismissed.
 - ii. The Claimants are entitled for enhanced amount of Rs.42,875/- @ 7.5% interest per annum from 1st November, 2017 till realisation of the amount.
 - iii. The Appellant/Insurance Company shall deposit the enhanced amount along with accrued interest, within four weeks after receipt of the order.
 - iv. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - v. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
8. All pending applications, if any, stands disposed of.

(SHIVKUMAR DIGE, J.)