

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

FIRST APPEAL NO. 1251 OF 2005

The Chief Executive Officer,	}	
Zilla Parishad, Solapur	}	(Org.
	}	Opponent)
		...Appellant

Versus

**NILAM
SANTOSH
KAMBLE**

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Date: 2024.03.20
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1. Sunnabai Yasin Abdul Raheman Khan	}	
Age-41 years, Occ : Household	}	
2. Rajmahamad S/o. Yasin Abdul	}	
Rahemankhan	}	
Age-16 years	}	
3. Soyab D/o. Yasin Abdul Rahemankhan	}	
Age-14 years.	}	
4. Jahid S/o. Yasin Abdul Rahemankhan	}	
Age-12 years	}	
	}	
Applicant Nos.2 and 4 are minors Gal.	}	
Applicant No.1.	}	(Org.
	}	Claimants)
A// R/at R/p.Tambave, Taluka-Malshiras,	}	
District-Solapur	}	Respondents

Mr.Sumedh Modak i/b Mr.Vijay Killedar, for the Appellant.
Mr.Chaitanya Mulawkar i/b Mr.Sandeep Salunkhe, for
Respondent Nos.1 and 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th MARCH 2024

ORAL JUDGMENT :-

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

2. It is contention of the learned counsel for the Appellant-Corporation that, the accident occurred due to sole negligence of the deceased as, he gave dash to the offending jeep but, this fact is not considered by the Tribunal. The learned counsel further submitted that the Appellant has examined the persons who were travelling in the said jeep and who witnessed the incident. They have stated that accident occurred due to negligence of the deceased, but this fact is not considered by the Tribunal and has fixed 50% negligence on the deceased and 50% on the driver of the offending jeep, which is erroneous. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, the accident occurred due to sole negligence of the driver of the offending jeep. The pillion rider who was on the motorcycle of the deceased has been examined as witness and he has stated that the accident occurred due to

negligence of the driver of the jeep. But the Tribunal has fixed 50% contributory negligence on the deceased, which is erroneous. The learned counsel further submitted that as Claimant did not want to prolong the matter, hence, Claimant's have not preferred the Appeal against the said finding. The learned counsel further submitted that the Tribunal has considered all the aspects while passing the judgment and order, 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 ('The Tribunal' for short), Pandharpur.

5. It is Claimant's case that on 9th July 1997, the deceased was going on moped bearing No.MAO-6601 from Malinagar to village Tambave, alongwith Mahadev Khatake. Another moped bearing No.MGF-3625 came from other side. The deceased was driving, his moped with moderate speed, at the relevant time one Trax bearing No.MH-13-A-2488 came from opposite side in high speed and gave dash to moped of the deceased. The deceased sustained injuries in the accident and

died on the spot., The offence was registered against the driver of the offending jeep.

6. To prove the negligence of the driver of the offending jeep, the Claimant's have examined Mahadev Khatake, PW-2 pillion rider, he has stated that accident occurred due to negligence of the driver of the jeep. Nothing elicited in the cross-examination of this witness to disbelieve his evidence.

7. To prove its defence, the Respondent's have examined Manik Sathe, D.W.-1 at Exhibit-44. He has stated that at the time of the accident, he was travelling in the said jeep. He further stated that the deceased was driving moped in high speed and they came wrong side of the road, in order to avoid the dash from the two wheeler. The jeep was stopped there. The rider on the two wheeler had dashed the cleaner side of the jeep. In cross-examination he has admitted that he is not aware that Criminal case is filed against the driver of the jeep. The Appellant has examined DW-2 Magan Pawar driver of the offending jeep at Exhibit-46. He has stated that the motorcycle of the deceased was in high and excessive speed and he gave dash to his jeep. In

cross-examination he has admitted that Police had filed case against him.

8. The Appellant examined DW-3 Ravindra Bhosale at Exhibit-47. He was passenger in the jeep. He has stated that accident occurred due to negligence of the deceased. In cross-examination he admitted that the speed of two wheeler remains less than the speed of jeep.

9. While dealing with the issue of negligence, the Tribunal has observed that jeep being larger vehicle, it is expected that the larger vehicle driver should take more precaution than the smaller vehicle. In my view, admittedly FIR in respect of the accident lodged against the driver of the offending jeep. The police lodged the said FIR after making inquiry. The charge-sheet is filed against the driver of the offending jeep. The Tribunal has rightly held that there was 50% contributory negligence of the deceased and 50% negligence of the jeep driver. I do not find infirmity in it.

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

ORDER

- (i) The Appeal is dismissed.
- (ii) The Claimants are permitted to withdraw the amount deposited by the Appellant along with accrued interest thereon.
- (iii) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.
- (iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)