

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

FIRST APPEAL NO. 831 OF 2023

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Reliance General Insurance Company,)
SGM Stone, Raobahadur Dajirao)
Vichare Complex, 517 A/2 E,)
Near Central ST Stand,)
Shaupuri, Kolhapur)

....Appellant
(Orig. Res. No.2)

Versus

1. Nita @ Lata Nanaso Kore,)
Age: 38 years, Occ: Household)
2. Parth Nanaso Kore,)
Age: 13 years, Occ: Education,)
(Respondent No.2 being minor)
represented by Respondent No.1))
3. Sadashiv Ramchandra Kore,)
Age: 63 years, Occ: Retired,)
4. Mangal Sadashiv Kore,)
Age: 57 years, Occ: Household,)

All Resident of : Dafalapur,)
Tal. Jath, Dist. Sangli.)

5. Hanmant Ramchandra Morade,)
Age: 35 years, Occ: Truck Owner)
and Driver, R/o. Morade Vasti,)
Nathachiwadi, Tal. Dound, Dist. Pune)Respondents
(Nos. 1 to 4 are Original &
Nos. is Orig. Res. No.1)

Mr. Akshay Kulkarni, Advocate for the Appellant.
Mr. Sarthak S. Diwan, Advocate for the Respondent Nos. 1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4th 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 accident occurred due to sole negligence of the deceased. As, in written statement, the driver of owner of the offending vehicle has stated that deceased was riding the vehicle and one Sanjay Chougule was pillion rider. The pillion rider

had jumped from the motorcycle, due to which deceased lost his control over the motorcycle and came under the tyre of offending vehicle. Accident occurred due to sole negligence of the deceased but this fact is not considered by the Tribunal. Learned counsel further submitted that the driver of offending vehicle was charged under section 302, 307, 353, 333, 427 and 188 of the Indian Penal Code (for short "IPC") and Sections 119 and 177 of the Motor Vehicles Act, 1988 (for short "the MV Act") therefore, by no stretch of imagination the claim petition under Section 166 of the M. V. Act is maintainable as the said incident does not fall under the definition/category of the accident. The petition under Motor Vehicles Act was not maintainable. No evidence is produced on record to prove the income of the deceased. Tribunal has deducted 1/4 amount for personal expenses, it should be 1/3 as, Claimant No.3 was not dependent on deceased Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that deceased was working as teacher in Zilla Parishad School and all the Claimants were depending on his income. Claimant No.3 is father of deceased, he was 58 years old at the time of filing claim petition. He was staying with the deceased and he was

dependent on the income of the deceased. Learned counsel further submitted that accident occurred due to sole negligence of the driver of the offending truck as, he tried to flee away from the police check-post and when deceased along with other person tried to chase the said truck, the offending truck driver ran over on the body of the deceased. To prove the negligence of the deceased, the driver of offending truck did not step into the witness box. The judgment and order passed by the Tribunal is legal and valid and no interference is required in it. Hence, requested to dismiss the appeal.

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

5. It is claimant’s case that on 11th May 2020, the deceased was on duty at Shinganapur check-post during COVID-19 pandemic period. On 12th May, 2020 at about 1:20 a.m. The deceased and his colleagues stopped one Eicher tempo. There was no permit to carry the passenger by said tempo. While carrying out inquiry at about 2:00 a.m. one truck bearing registration No. MH-12-LT-9749 came in high speed at check-post from Anantpur Tal. Athani. In order to check whether passengers are being carried in the said truck without permit,

the employees deputed at check-post tried to stop the said truck. However, the said truck ran away. In order to confirm whether the said truck is carrying passengers, the deceased and his colleague Sanjay Chougule started chasing the truck on motorcycle. Police Patil Kamble of village Shinganapur and Police Patil Bajrang Patil were following them. They chased the said truck upto village Dafalapur. The deceased and Sanjay Chougule by passing through the market area stopped at S. T. Stand. The deceased was stopped by the side of the road on motorcycle. He raised signal to stop the truck. At that time, the truck driver drove the said truck in rash and negligent manner and gave dash to the deceased due to dash the deceased fell on ground, offending truck ran over on the body of the deceased. The said truck moved further and dragged the deceased up to 50 feet. The deceased died on the spot. The crime was registered against the driver of the truck under Section 302, 307, 353, 333, 427 and 188 of the Indian Penal Code (for short "IPC") and Sections 119 and 177 of the Motor Vehicles Act, 1988 (for short "the MV Act").

6. To prove the negligence of the driver of truck, the Claimants have examined Akash Shinde at Exhibit-28, he has stated that on 12th May, 2020 he was on duty of patrolling in the village

Dafalapur, around 2:00 p.m. when he reached near Dafalapur bus stand, at that time deceased and Sanjay Chougule came there on motorcycle and they informed this witness that one truck has ran away from the check-post and they want to check if passenger is being carried in that truck. After some time, when truck was coming near to the bus stand, the deceased and Sanjay Chougule tried to stop the truck but truck driver gave dash to both of them. The truck driver dragged the deceased up to 50 to 60 feet and ran away from the incident spot. Thereafter, police chased and arrested the truck driver. Nothing elicited in the cross examination of this witness to disbelieve his statement.

7. While dealing with the issue of negligence, the Tribunal has observed that the involvement of the offending vehicle is not disputed. It is contention of learned counsel for the appellant that as, offence was registered against the driver of offending truck under Section 302 of IPC, hence, the claimants are not entitled for compensation under the provisions of Motor Vehicle Act. In my view, it appears from FIR that deceased had chased the offending truck to stop it to check if passengers are carrying in it or not and in that attempt driver of offending truck gave dash to the motorcycle of the

deceased. So, apparently it does not fall under Section 302 of IPC. Moreover, the Sessions Court has already acquitted the driver of offending truck from charges under Section 302, 307, 353, 333, 427 and 188 of the Indian Penal Code (for short “IPC”) and Sections 119 and 177 of the Motor Vehicles Act, 1988 (for short “the MV Act”). On the basis of admission given by the Investigation Officer in his cross examination that it is accidental case. Hence, I do not see merit in the contention that accident falls under Section 302 of IPC. The Tribunal further observed in para 21 of the judgment and order that the Investigating Officer in cross examination has admitted that the station diary entry indicates the alleged incident is an accident. The claimants have produced copy of panchnama of the place of incidence on record. Residual of the panchanama shows that the truck dashed against the motorcycle from the back side therefore, it can be said that it was a case of accident arising out of use of motor vehicle and there was no intention of the Opponent No.1, driver of offending vehicle to commit murder of the deceased. The Tribunal further observed that considering evidence on record it can be gathered that the deceased died in motor vehicle accident due to negligence of the truck driver. I do not find infirmity in it.

8. In my view, Admittedly, dash was given to the deceased by the driver of offending truck when, he was trying to stop the truck. The PW-2 has stated that the deceased died due to dash of the offending truck. The accident occurred due to negligence of the driver of offending truck. The police papers produced on record support the claimants case. The driver of offending truck did not enter into witness box to prove the defense taken by him in written statement. Hence, I do not see merit in the contention that accident occurred due to sole negligence of the deceased. While dealing with the issue of dependency of the Claimant No.3 it has come in the evidence of PW-1 Neeta Kore that all Claimants were dependent on the income of the deceased. PW-3 is a father of the deceased and has retired from service but, he was not working. Hence, I do not see merit in the contention that PW-3 was not dependent on the deceased.

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

ORDER

- i. Appeal is dismissed.
- ii. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

iii. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

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

(SHIVKUMAR DIGE, J.)