

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 602 OF 2005

1. Sangeeta w/o. Prakash Sawaskar
Age 37 years, Occupation Household
2. Kadambari d/o. Prakash Sawaskar
Age 22 years, Occupation Education
3. Ashutosh s/o. Prakash Sawaskar
Age 13 years, Minor through her mother guardian
Appellant No.1 above
4. Jijabai w/o. Baliram Sawaskar
Age 65 years, Occupation Household
5. Baliram Sopan Sawaskar
Age 75 years, Occu. Nil,
All residing at 16, New Laxmi Peth, Degaon Road,
Solapur
- 5a. Jaijabai w/o. Baliram Sawaskar
Age 71 years, Occupation Household
- 5b. Shakuntala Manohar Kewale
Age 56 years, Occupation Govt. Service,
R/at. 3/Ground Floor, Vishwashruti Apartment,
V. M. Purav Marge, Gulmohar Lane,
Sion-Chunabhatti, Mumbai – 400 022
- 5c. Surekha Krushnaji Abhange
Age 52 years, Occupation Govt. Service,
R/at. A-8/2, Govt. Quarter, Bandra (E),
Mumbai-400 051
- 5d. Shobha Shantaram Wankhede
Age 47 years, Occupation Housewife
R/at. A/4, Humayun Mahal, BSNL Officers
Quarters, Motlibai Street, Agripada, Mumbai-11
- 5e. Shubhas Baliram Sawaskar
Age 54 years, Occu. Service
R/at. 24/1, Rly. Lines, Narmada Apts, Solapur
- 5f. Pandurange Baliram Sawaskar
Age 46 years, Occupation Business
R/at. 24/1, Rly. Lines, Narmada Apts, Solapur
Amendment carried out on 16/07/2013 as per
court order dt. 5/7/2013 in Civil Application No.
878 of 2012 in First Appeal No. 602 of 2005

... Appellants

Versus

1. Dhanaji Limba Markad
Age Adult, Occupation Driver,
Residing at and Taluka Madha, District Solapur
2. Shankar Kundlik Bhange
Age adult, Occupation Transport,
Residing at Shukrawar Peth, Madha,
Taluka Madha, District Solapur
3. The Oriental Insurance Co. Ltd.
442, West Mangalwar Peth, Solapur

... Respondents

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Mr. Ashok B. Tajane a/w. Mr. Yogesh G. Thorat, Advocate for the Appellants.

Ms. Jyoti Bajpayee, Advocate for Respondent No.3.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 16th JANUARY, 2024.

JUDGMENT :

1. This appeal is preferred by the appellants/claimants against the dismissal of the claim petition.
2. It is claimants' case that on 09.09.1996 the deceased Prakash Sawaskar along with his friend Noormohammad and others were coming from Solapur in his Maruti van bearing Registration No. AP-13/A-6107. The deceased was driving the car. At around 0:15 a.m., Maruti van dashed against the stationary truck bearing registration No. MHC-6051 on its rear side. The said truck was stationed in the middle of the road without tail lamp, blinkers and reflectors. In the said accident three occupants of the van including Prakash Sawaskar died on the spot.

3. It is the contention of learned counsel for the appellants / claimants that the truck was stationed in the middle of road without putting parking lights or indicators on. The accident occurred in the midnight, due to dark, the applicant could not see the stationed truck and dashed it from the back side. The driver of the truck did not put reflectors and indicators of the said truck on, the accident occurred due to sole negligence of the driver of the said truck. But this fact is not considered by the Tribunal. Learned counsel further submitted that at the time of accident deceased was 35 year old and he was partner in M/s. Isskar Group and was earning Rs.80,000/- per year, he was also proprietor of Sai Pest Control and was earning Rs.50,000/- per year as a net profit from Sai Pest Control. He was also building contractor and was getting income from it. The total annual income of deceased per year was Rs.1,90,000/-. Hence requested to allow the appeal.

4. It is the contention of learned counsel for the respondent No.3/Insurance Company that accident occurred due to negligence of the deceased as he had dashed the stationed truck from back side. The offence was registered against the deceased. The Tribunal has considered all the aspects and on that basis Judgment and Order is passed and no interference required in it.

5. I have heard both the learned counsel. Perused the Judgment and

Order passed by the Motor Accident Claims Tribunal, Solapur (for short “**the Tribunal**”). While dismissing the claim petition the Tribunal has observed that accident occurred due to negligence of the deceased as he dashed the stationed truck on the back side. I am unable to understand the observations of the Tribunal as admittedly the truck was stationed in the middle of the road and accident occurred at midnight, no parking lights or indicators of the said truck were put on. No precautionary measures were taken by the truck driver to indicate that the truck was stationed on the road. The truck driver did not step into the witness box to prove that he had taken precautionary measures when truck was stationed on the road.

As per the Central Vehicles Rules when any vehicle stationed on road proper precautions are necessary to be taken. It reads thus:

[109. Parking light : Every construction equipment vehicle, combine harvester and motor vehicle] and every motor vehicle other than motor cycles and three wheeled invalid carriages shall be provided with one white or amber parking light on each side in the front. In addition to the front lights, two red parking lights one on each side in the rear shall be provided. The front and rear parking lights shall remain lit even when the vehicle is kept stationary on the road:

Provided that these rear lamps can be the same as the rear lamps referred to in rule 105 sub-rule (2): [Provided also that construction equipment vehicles [and combined harvesters], which are installed with food light lamps or sport lights at the front, rear or side of the vehicle for their off-highway or construction operations, shall have separate control for such lamps or lights and these shall be permanently switched off when the vehicle is travelling on the road.]

This rule indicates that it was obligatory on the driver of the truck to put indicators or parking lights of the truck on when it is stationed on the road but it was not done in the present case. Hence, I hold that accident occurred due to sole negligence of the truck driver. It is contention of learned counsel for the respondent No.3 that truck was stationed on road due to accident. In my view, though accident occurred, it does not mean that driver of the truck cannot take precautionary measures as per the provisions of Central Vehicles Rules when truck stationed on road, the driver must have taken precautionary measures. To prove the income of the deceased the claimants have examined six witnesses. It has come in the evidence of claimant No.1 that the deceased was doing various business from it, he was earning Rs.1,80,000/- per annum. Witnesses have stated that deceased was doing business of pest control and building contractorship. Considering the evidence on record, I am considering Rs. 10,000/- as notional monthly income of the deceased. At the time of accident deceased was 38 year old hence proper multiplier is 15. There are five claimants. As per the view of the Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd. Vs. Nanu Ram*¹, each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

6. Considering the above calculations, the claimants are entitled for

¹ 2018 ACJ 2782 (SC)

following compensation:

Particulars	Rs.	Entitlement
Monthly Income	Rs.	10,000.00
40% Future prospects	Rs.	4,000.00
Total	Rs.	14,000.00
Yearly Income -Rs. 14,000 X 12	Rs.	1,68,000.00
1/4 th Deduction for living expenses (Rs.1,68,000/- - Rs.42,000/-)	Rs.	1,26,000.00
Multiplier (Rs. 1,26,000 X 15)	Rs.	18,90,000.00
Total Income	Rs.	18,90,000.00
Loss of Consortium (Rs.48,000 X 5)	Rs.	2,40,000.00
Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
	Rs.	2,76,000.00
Total Compensation	Rs.	21,66,000.00

The claimants are entitled for compensation of Rs.21,66,000/-.

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

ORDER

- i. The appeal is allowed.
- ii. The claimants are entitled for the amount of Rs. Rs.21,66,000/- @ 7.5 interest per annum from the date of filing of claim petition till realisation of the amount. Out of this amount, Rs.2,76,000/- is for consortium amount, funeral expenses and loss of estate, the claimants are entitled for 7.5% interest per annum on this amount from

1st November, 2017 till realisation of the amount.

- iii. The respondent No.3/ Insurance Company shall deposit the enhanced amount along with interest within six weeks after receipt of the order.
- iv. The claimants are permitted to withdraw amount deposited amount along with accrued interest thereon. Out of the total compensation amount, the claimant Nos.1 to 3 are entitled to withdraw 75% amount. Learned counsel for appellants submits that original claimant No.5 is no more and the claimant No.4 is staying with appellants/claimants. The claimant No.4 is entitled to withdraw 25% amount out of deposited amount along with accrued interest thereon.

8. The appeal is disposed of.

(SHIVKUMAR DIGE, J.)

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