

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

**FIRST APPEAL NO. 939 OF 2023  
WITH  
CROSS OBJECTION (ST) NO.28149 OF 2022**

**The New India Assurance Co. Ltd.** }  
Off. At Khoja House, Opposite K.S.B. } (Org. Opposite  
Pumps, Mumbai-Pune Road, Pune-411 018. } Party No.2)  
**...Appellant**

NILAM  
SANTOSH  
KAMBLE

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*Versus*

**1. Smt.Mangal Ravindra Divate** }  
Age-28 years, Occ : Housewife }

**2. Kumar Vikas Ravindra Divate** }  
Age-10 years, Occ : Education }

**3. Kumari.Trupti Ravindra Divate** } (Org.  
Age-6 years, Occ : education, } Petitioners)  
Respondent Nos.2 and 3 are minor their }  
legal guardian mother Respondent No.1. }  
All R/at Shikarapur Bajrangwadi, Taluka- }  
Shirur, District-Pune }

**4. Pashora Singh** }  
C/o. M/s. Patna Roadlines, Kasarwadi, } (Org. Opp.  
Nashik Phata, Pune-411 039. } Party No.1)  
Trailer Truck Owner } **...Respondents**

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Ms.Karishma Jhaveri i/b M/s.Navdeep Vora & Associates, for the  
Appellant.

Mr.Yogesh Pande, for Respondent Nos.1 to 3.

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**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 12<sup>th</sup> MARCH 2024**

**ORAL JUDGMENT :-**

. This Appeal is preferred by Appellant-Insurance Company against the judgment and order passed by the Motor Accident Claims Tribunal ('the Tribunal' for short), Pune.

2. The Respondent's-Claimant's have also preferred Appeal for enhancement of the compensation. As Appeal and Cross Objection are against same judgment and order, I am deciding it by this common judgment.

3. It is contention of the learned counsel for the Appellant-Insurance Company that, accident occurred due to sole negligence of the deceased as, deceased gave dash to the offending vehicle from back side, but Tribunal has considered 50% contributory negligence on the driver of the offending vehicle and 50% contributory negligence on the deceased, which is erroneous. The learned counsel further submitted that at the time of the accident, driver of the offending vehicle was not holding effective and valid driving licenses, but this fact is not

considered by the Tribunal. The learned counsel further submitted that, the Tribunal has awarded amount under the non-pecuniary head is on higher side. Hence, requested to allow the Appeal.

4. It is contention of the learned counsel for the Respondent's-Claimant's that, the offending vehicle trailer truck was 70 feet long. The said trailer was not having parking light and break light and driver of said trailer suddenly stopped his trailer in the middle of the road. Since the trailer was not having brake lights or indicators, the deceased dashed the trailer from its backside and sustained multiple injuries and he died. The learned counsel further submitted that, the Appellant-Insurance Company has not examined Officer from RTO Office to prove that driver of the offending truck was not holding effective and valid driving license. The learned counsel further submitted that, the Tribunal has wrongly fixed 50% contributory negligence on the deceased, which is erroneous as the accident occurred due to sole negligence of the driver of the offending vehicle. The learned counsel further submitted that the driver of the offending

vehicle did not step into witness box, to prove the negligence of the deceased, but this fact is not considered by the Tribunal. Hence requested to allow the Cross Objection and dismiss the Appeal.

5. I have heard both learned counsel. Perused judgment and order passed by the Tribunal.

6. It is Claimant's case that on 12<sup>th</sup> January 2006 around, 8.30 p.m., the deceased Ravindra was proceeding towards Sanaswadi from Shikrapur by Nagar-Pune highway in his Maruti Car bearing No.MH-12/W-6115. When he reached near the bye-pass of Enkei Co. Ltd., Shikrapur, one trailer truck bearing No.HR-38/7174 was proceeding towards Pune. The said trailer was not having parking or brake lights. The driver of the said trailer was driving the offending trailer rashly and negligently and all of sudden he stopped his trailer in the middle of the road. Since the trailer was not having brake lights or indicators, the deceased dashed the trailer from its backside and sustained multiple injuries. During treatment deceased succumbed to the injuries. The offence was registered against the driver of the

offending trailer. To prove negligence of driver of offending trailer, the Claimant's have relied on police papers. The Insurance Company has not examined driver of the offending vehicle.

7. While dealing with the issue of negligence, the Tribunal has observed that perusal of the investigation papers discloses that driver of the offending trailer suddenly applied the breaks. The car of the deceased rammed against the trailer. It appears that, trailer is a long vehicle, having no tale lamp and brake lights. Because of sudden application of brake, the deceased could not guess that, the trailer is going to stop, therefore, deceased could not control his car and dashed against the trailer from backside. There is negligence of both the drivers.

8. In my view, the offending trailer was proceeding ahead of the Maruti car of the deceased. The said trailer was not having break lights and tale lamps. The spot panchnama discloses that, there was no brake light or tale lamp to the trailer. Had there been the tale lamps or break lights, the deceased could have noticed that trailer is going to stop. The accident occurred

around 8.30 p.m., there was dark, without tale lights or break lights it was not possible for the deceased to see the status of the offending trailer. Moreover, to prove the negligence of the deceased, the driver of the offending trailer did not stepped into witness box. Driving 70 feet long trailer without any break light or tale lamps is a grievous negligence, but these facts are not considered by the Tribunal and has fixed 50% contributory negligence on the deceased, which is erroneous. Hence, I hold that accident occurred due to sole negligence of the driver of the offending trailer.

9. To prove the defence that, at the time of the accident, driver of the offending vehicle was not holding effective and valid driving license, the Insurance Company has examined three witnesses. Narendrakumar Dhingra (DW-1) at Exhibit-68, he has stated that he had deputed by Respondent No.2 to verify driving license of Pratapsing Rajkumar, which was having seal and rubber stamp of RTO Bhopal. He had filed an application for supply the information and deposited necessary fee. RTO Bhopal gave him letter and informed that, the driving license was

not issued from their office. Since the information was not supplied on the letter pad, he had again applied and similar information was supplied to him. In support of DW-1, Insurance Company examined DW-2 Bhuvaneshwari Ganpati at Exhibit-75. She has stated that their office had requested the Bhopal office to verify the driving license of Pratapsing and thereafter she appointed Mr.Malvadkar to verify vehicular documents, including the license and it was revealed that driver of the offending vehicle was not having valid and effective driving license at the time of the accident. In cross-examination she admitted that she has not filed FIR against the driver that he had obtained forged license and used it as genuine. DW-3 Pravin Malvadkar, Investigating Officer has stated that he had been to the office of the Respondent No.1 and requested for the documents, however no documents were given to him.

10. While dealing with the issue, the Tribunal has observed that RTO Bhopal has informed that no license was issued in favour of the driver of the offending vehicle. However, there is nothing on record to show that owner of the vehicle was

knowing the fact that, the driver of the offending vehicle was not possessing valid and effective driving license and relying on the judgment of the Hon'ble Apex Court in the case of ***Iffco Tokio General Insurance Co. Ltd. V/s. Geeta Devi & Ors.***<sup>1</sup> held that Insurance Company is liable to pay the compensation. I do not find infirmity in it. In my view, the Appellant-Insurance Company should have examined the Officer from RTO Office, to prove their defence, but it is not done. Hence, I do not see merit in the contention that the driver of the offending vehicle was not holding effective and valid driving licenses. As this Court has held that accident occurred due to sole negligence of the driver of the offending vehicle. The Claimant's are entitled for the amount of 50% which was deducted by the Tribunal.

11. The Tribunal has awarded amount of Rs.2,25,000/- under non-pecuniary head, which is on higher side. As per view of Hon'ble Apex Court in case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram***<sup>2</sup>, each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and

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1 Special Leave Petition (C) No.19992 of 2023 decided on 30<sup>th</sup> October 2023

2 2018 ACJ 2782 (SC)

Rs.18,000/- for loss of estate. It comes to Rs.1,80,000/-, if it deducts from the amount considered by the Tribunal it comes to Rs.45,000/-. It is excess amount, the Appellant-Insurance Company is entitled for this amount. Considering these calculation the Claimants are entitled for following compensation.

| <b>Particulars</b>                                    | <b>Amount</b>          |
|-------------------------------------------------------|------------------------|
| Monthly Income                                        | Rs.14,375.00           |
| (+) Future Prospects (50% )                           | Rs.7,187.00            |
| Annual Income After Future Prospects                  | <b>Rs.21,562.00</b>    |
| 1/3 Deduction                                         | Rs.7,187.00            |
| Monthly Contribution                                  | Rs.14,375.00           |
| Yearly Income Rs.14,375 X 16<br>Multiplier X 12 month |                        |
| Loss of Dependency                                    | <b>Rs.27,60,000.00</b> |
| Consortium (Rs.48,000 x 3)                            | Rs.1,44,000.00         |
| Loss of Estate                                        | Rs.18,000.00           |
| Funeral Expenses                                      | Rs.18,000.00           |
| <b>Entitled for Compensation</b>                      | <b>Rs.29,40,000.00</b> |
| Allowed by Tribunal                                   | Rs.14,92,000.00        |
| <b>Enhanced Amount</b>                                | <b>Rs.14,48,000.00</b> |

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

## **ORDER**

- (i) The Appeal is partly allowed.
- (ii) The Cross-Objection is allowed.
- (iii) The Claimant's are entitled for enhanced compensation amount of Rs.14,48,000/- @ 7.5% interest per annum from the date of the filing of the Claim Petition till realization of the amount.
- (iv) The Respondent-Insurance Company shall deposit enhanced amount after deducting Rs.45,000/- from it, along with accrued interest thereon within eight weeks after receipt of the order.
- (v) The Claimant's are permitted to withdraw deposited amount along with accrued interest thereon.
- (vi) The statutory amount in First Appeal No.939 of 2023 alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.
- (vii) The Claimants shall pay Deficit Court Fees on

enhanced amount.

(viii) All pending Civil and Interim Applications are disposed of.

**(SHIVKUMAR DIGE, J.)**