

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

FIRST APPEAL NO. 1232 OF 2022

The New India Assurance Co. Ltd. } Vishwas Andheri Kurla Road, Sakinaka, } Mumbai-400072 } Through Mumbai Legal Hub, 41-B, 4 th } Floor, Maker Tower-E, Near World Trade } Centre, Cuffe Parade, Mumbai-400005 }	...Appellant
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Versus

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1. Smt.Veena Vaisham Jadhav } Age-46 years, Widow of deceased }	
2. Kum.Aditya Vaisham Jadhav } Age-15 years, Son of deceased }	
3. Smt.Sitabai Ramchandra Jadhav } Age-80 years , Mother of deceased } Respondent No.2 being minor thr. Mother } natural guardian Respondent No.1 } All R/at 1-32/101, Royal Building, Golden } Park, Beturkar Pada, Kalyan (w), District- } Thane. }	(R No.1-3 Org. Claimants)
4. M/s.Nilesh Enterprises } Tambad Mahal, At Post : Kaman, Taluka- } Vasai, District-Thane. }	FA stand dismissed as against R. No.4 vide order dated 20/12/2021Respondents

Mr.D.S. Joshi, for the Appellant.

Ms.Varsha Chavan, for Respondent Nos.1,2 and 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st MARCH 2024

ORAL JUDGMENT :-

. The issues 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 that, the offending water tanker was watering the plants on road. At the relevant time the deceased who was travelling in the car came from backside and gave dash to the said tanker. The deceased was aware that the tanker is watering to the plants. The other lanes were available to the deceased to go ahead but deceased gave dash to the tanker from back side. It shows that the speed of the car of the deceased was high and excessive, but these facts are not considered by the Tribunal and has fixed liability of accident on the driver of the tanker, which is erroneous. The learned counsel further submitted that the Tribunal has awarded compensation under non-pecuniary heads on higher side, it be reduced. Hence, requested to allow the

Appeal. He relied on *Nishan Singh & Ors Vs/ Oriental Insurance Co. Ltd*¹.

3. It is contention of the learned counsel for the Respondent-Claimant that, at the time of the watering the plants the driver of the tanker did not put any indicator or parking lights of the tanker on. The learned counsel further submitted that the said tanker was in first lane of the highway, which is fast lane as there was no indication that tanker was watering the plant and it has come in the evidence of other witnesses that in the other lanes of the road there was traffic. Hence, deceased had dashed tanker from backside. The accident occurred due to sole negligence of the driver of the tanker. Offence was registered against the driver of the tanker. Moreover, to prove the negligence of the deceased the driver of water tanker did not step into witness box nor any other evidence was produced on record. The Tribunal has considered all the aspects while passing judgment and order. No interference is required in it. The learned counsel further submitted that the Tribunal has

1 (2018) 6 Supreme Court Cases 765

considered salary of the deceased on lower side and has not considered Salary Certificate at Exhibit-38. Hence requested to dismiss the Appeal.

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

5. It is Claimant's case that on 10th January 2010 at about 11.30 a.m. the deceased was travelling in his car on Eastern Express Highway. At the relevant time water tanker was ahead of the car. It was watering the plants, suddenly the said tanker stopped without giving any signal. As a result, car collided with the tanker. Due to said dash deceased sustained serious injuries and he succumbed to injuries, while taking treatment. The offence was registered against driver of the offending tanker.

6. To prove the negligence of the driver of the offending tanker the Claimant's have examined the Claimant No.1 Veena Jadhav widow of the deceased. She has stated that at the time of the accident she was travelling along with her deceased husband in the said car. The offending tanker was ahead of their car and it

was watering the plants. The said tanker suddenly stopped without giving any signal or showing any sign. As a result, the car which was being driven by her husband collided with the water tanker. Due to said dash her husband sustained injuries and he died while taking treatment. In cross-examination she has admitted that she was sitting on the back side of the car. The accident took place on the straight express highway. Two to three vehicles can easily pass from that road. At the time of the accident, trees planted on divider were being watered from the tanker. She saw the tanker from the distance of 5 to 10 feet. There was no other vehicle in between tanker and the car.

7. It is contention of the learned counsel for the Appellant that, as per the provisions of the Motor Vehicles Act safe distance should have been kept by the deceased from tanker. As he dashed from the backside, it shows that the car was in high and excessive speed. In my view, admittedly the water tanker was in the first lane of the highway, which is for fast vehicle. Though there was watering to the plant from the water tanker it was in moving condition and driver of it suddenly stopped it without

giving any signal or indicator, that's why the car of the deceased dashed from his backside. While slowing down any vehicle or stopping vehicle the driver shall give signals about it but in present case no signal was given by the driver of Tanker while stopping the vehicle. It shows sole negligence of the driver of the offending Tanker. As per the Rule 13 of the Rules of the Road Regulations, 1989, the following signals shall be used by the drivers of all motor vehicles namely :-

(a) When about to slow down, a driver shall extend his right arm with the extend downward and to the right of the vehicle and shis, right ar the arm so extended up and down several times in such a mande shall movesignal can be seen by the driver of any vehicle which may be behind him.

(b) When about to stop, a driver shall raise his right forearm vertically outside of and to the right of the vehicle, palm to the right.

(c) When about to turn to the right or to drive to the right hand side of the road in order to pass another vehicle or for any other purpose, a driver shall extend his right arm in a horizontal position

outside of and to the right of his vehicle with the palm of the hand turned to the front.

(d) When about to turn to the left or to drive to the left hand side of the road a driver shall extend high right arm and rotate it in an anticlockwise direction.

(e) When a driver wishes to indicate to the driver of a vehicle behind him that he desires that driver to overtake him he shall extend his right arm and hand horizontally outside of and to the right of the vehicle and shall bring the arm backward and forward in a semi-circular motion.”

These Rules provides about signals to be given by driver while slowing the speed of vehicle or stopping or turning the vehicle. In the present case no signal was given by the driver of offending tanker when it was about to stop. It shows that the accident occurred due to sole negligence of the driver of the offending tanker. Moreover, to prove his defence the driver of the offending water tanker did not step into witness box. The Tribunal has considered all these aspects, hence, I do not find infirmity in it.

8. While awarding compensation the Tribunal has

awarded Rs.3,25,000/- under non-pecuniary heads. In my view, it is on higher side. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*², each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. There are three Claimants it comes to Rs.1,80,000/-. If this amount deducts from the amount considered by the Tribunal it comes to Rs.1,45,000/-. It is an excess amount.

9. It is contention of the learned counsel for the Respondent-Claimant that as per Exhibit-38, the deceased was receiving salary of Rs.52,794/-, but tribunal has not considered it. In my view the Tribunal has considered income of the deceased as per the evidence on record. Hence, I do not find infirmity in it.

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

ORDER

(i) The Appeal is partly allowed.

2 2018 ACJ 2782 (SC)

- (ii) The Appellant is permitted to withdraw Rs.1,45,000/- with proportionate interest out of deposited amount.
- (iii) The Claimant's are permitted to withdraw balance amount with proportionate interest.
- (iv) The Statutory amount along with interest be transferred to the Tribunal. The parties are permitted to withdraw this amount along with accrued interest as per Rule.
- (v) All pending Civil and Interim Applications are disposed of.

11. The learned counsel for the Appellant requested for stay of the order. As accident is of the year 2010, I am not inclined to grant stay.

(SHIVKUMAR DIGE, J.)