

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 2509 OF 2005**

1	Mangal Dhananjay @ Dhanpal Udgave Age 51 yrs, Occ. Household, R/o. Dhananjay Clinic, 9 th Lane, Near Jaysingpur Merchants Association, Jaysingpur, Tal. Shirol, Dist. Kolhapur.		
2	Ashwini Dhananjay @ Dhanpal Udgave Age 23 yrs, Occ. Education, R/o. As above.		
3	Dipti Dhananjay @ Dhanpal Udgave Age 22 Yrs. Occ. Education, R/o. As above.	...	Appellants Orig. Applicants
	versus		
1	Baburao Dhuappa Tare Age Adult yrs, Occ. Agri., R/o. Udgaon, Tal. Shirol, Dist. Kolhapur		
2	United India Insurance Co. Ltd. Jaysingpur Branch, Tal. Shirol, Dist.Kolhapur	...	Respondents Orgi. Opponents

Mr. Yogesh Pande i/b. Mr. Sandeep Koregave, Advocate for the Appellants.

Mr. Rahul Mehta i/b. KMC Legal Venture, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th FEBRUARY, 2024.

Oral Judgment :

1. By this appeal, the appellants/claimants are seeking enhancement of compensation.

2. It is contention of learned counsel for the appellants/claimants that the deceased was a medical practitioner having degree of B.Sc., M.F.A.M.. He practised for last 37 years at Shirti, Ghalwad and Jaysingpur, Tal.Shirol, District, Kolhapur. He was earning about Rs.40,000/- to Rs.50,000/- per month. He was having bungalow at Jaisingpur and four-wheeler but the Tribunal has considered his monthly income at Rs.6,000/- on notional basis, which is erroneous. Learned counsel further submitted that accident occurred due to sole negligence of the driver of the tractor trolley but the Tribunal has fixed 60% liability on the deceased, which is not proper. Learned counsel further submitted that consortium amount is awarded on lower side. Hence, requested to allow the appeal.

3. The learned counsel for respondent No.2-Insurance Company vehemently submitted that the deceased had given dash to the stationed trolley. The accident occurred due to sole negligence of the deceased. The Tribunal has considered all aspects, on that basis, judgment and order is passed. No interference is required in it.

4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Jaisingpur (for short "the Tribunal").

5. It is claimants case that on 26th April 2002 at about 11.30 pm, after completing his daily routine, the deceased was returning from Shirol to Jaisingpur on motorcycle bearing No.MH-09-X-1130. When he came

near the land owned by one Devappa Pujari on Shirol-Jaysingpur road, at that time, there was one trolley stationed partly on the kaccha road and partly on the tar road. The molasses was loaded in the said trolley. The trolley was not attached to the tractor, there were no lights on the road. The trolley was left unattended and there were no parking lights, no reflectors, no danger lights and white stones put for protection. Due to dark, the deceased could not see the said trolley and gave dash to it from backside. The deceased sustained injuries and succumbed to injuries. An offence was registered against the driver of the offending tractor. To prove the negligence of the driver of the offending truck, the claimants examined claimant No.1 -Mangal, wife of the deceased but she was not present at the time of the accident. The claimants examined PW2 – Dr. Kumthekar. He has stated that he witnessed the accident, as on 26th April 2002, he was returning on his motorcycle around 10.15 to 10.30 pm. from Shirol. He was at a distance of 300 to 350 feet behind the motorcycle of the deceased. When he came near the house of Mr. Samdole, a truck was coming from opposite side with bright head lights on, and at that time, he heard a big noise of accident and then he saw that one trolley loaded with molasses was parked on the tar road which was not attached to the tractor and deceased had given dash to the stationary trolley by his motor-cycle and was lying on the road in injured condition. He saw that the deceased had sustained injuries to his head and his leg. This witness further stated that the trolley had no tail lamps

or reflectors, it was not visible in the dark. Nothing elicited in the cross-examination of this witness. Considering the evidence on record, the Tribunal has observed that deceased had the last opportunity to avoid the accident but he was careless. In spite of sufficient space available, he was in high speed and could not control his vehicle. The trolley was stationary, therefore, the Tribunal has held that the deceased was 60% responsible and driver of the tractor was 40% responsible for the accident. I am unable to understand the observations of the Tribunal as it has come on record that the trolley was stationed on the road without tail lamp, indicator or reflectors, it was not attached to the tractor, it was stationed in dangerous condition. In my view, when any vehicle is stationed on the road as per the provisions of Central Vehicles Rules, it is obligation on the driver of said vehicle to put on parking lights or indicators of said vehicle. The relevant portion of the said Rules is reproduced herein below:

“ Section 15 in the Rules of the Road Regulations, 1989:

15. Parking of the vehicle:-

(1) Every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and the manner of parking is indicated by any sign board or markings on the road side, he shall park his vehicle in such manner.

(2) A driver of a motor vehicle shall not park his vehicle:

- (i) at or near a road crossing, a bend, top of a hill or a humpbacked bridge;
- (ii) on a foot-path;
- (iii) near a traffic light or pedestrian crossing;

- (iv) in a main road or one carrying fast traffic;
- (v) opposite another parked vehicle or as obstruction to other vehicle;
- (vi) alongside another parked vehicle;
- (vii) on roads or at places or roads where there is a continuous white line with or without a broken line;
- (viii) near a bus stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant;
- (ix) on the wrong side of the road;
- (x) where parking is prohibited;
- (xi) away from the edge of the footpath.”

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“Regulation 28 of the Motor Vehicles (Driving) Regulation:
Vehicle breakdown:

In case a vehicle with more than two wheels has broken down at a place where it can be recognised in time as a stationary obstacle,-

(i). the hazard warning lights of the vehicle shall be switched on immediately;

(ii). on highways and major roads with fast speed, reflective traffic warning triangles shall be placed at a distance of fifty meters behind the broken-down vehicle; and In present case, it shows that the driver of the said Truck has clearly violated all the rules and regulations of the Central Motor Vehicle Rules, Motor Vehicle Rules and the Rules of the Road and Regulation, 1989, and Regulations made under the Act.”

.....

“When any vehicle is stationed on the road at night time, as per Rule 109 of the Central Motor Vehicles Rules, 1989, 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 fog light lamps or sports 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.]”

These rules states that front and rear parking lights shall remain lit when the vehicle is kept stationary on the road. In the present case, the trolley was stationed on the road but no parking lights were on. As per the Central Vehicle Rules, reflective traffic warning triangles shall be placed at a distance of fifty meters behind the broken-down vehicle. In the present case, no such triangles were kept, it shows that the driver of said tractor has clearly violated the rules and regulations of the Central Vehicles Rules.

5.1. The accident occurred at around 10.30 pm. It has come on record that no street lights were on road. Though the Tribunal has observed that deceased had opportunity to avoid the accident, it has not come on record how he had opportunity to avoid the accident because the eye-witness has stated that there was dark on the road and the trailer was not visible. Moreover, to prove the negligence of the deceased, the driver of the tractor did not step into witness box. Hence, I hold that the accident occurred due to sole negligence of the driver of the tractor.

5.2. To prove the income of the deceased, the claimants have examined claimant No.1-Mangal, wife of deceased. She has stated that

deceased was medical practitioner and was earning Rs.50,000/- per month. While dealing with issue of the income of the deceased, the Tribunal has observed that deceased had degree of B.Sc., M.F.A.M, he was practising and was maintaining family of four members. There is no evidence on record to show that he was earning Rs.50,000/- per month. It has come on record that the deceased was Doctor by profession. It is not denied by respondents that deceased was a doctor and it has come on record that he was doing his practise by going village to village. It shows that he was earning handsome amount but the Tribunal has considered his income at Rs.6,000/- per month. It is on lower side. It is claimants' case that deceased was earning Rs.50,000/- to 60,000/- per month but no evidence was produced on record in that regard nor the income tax returns were filed. As it is not disputed that deceased was doctor, I am considering notional monthly income of deceased at Rs.13,000/- per month.

5.3. The Tribunal has awarded consortium amount on lower side. As per the view of the Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, 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.

5.4. Considering the above calculations, the claimants are entitled for following compensation:

Particulars	Rs.	Entitlement
Monthly Income	Rs.	13000.00
Add : future income at 10%	Rs.	1300.00
Total	Rs.	14300.00
Less 1/3rd deduction for personal expenses	Rs.	4767.00
Total monthly income	Rs.	9533.00
Rs.9533 x 12(months) x 9(multiplier)	Rs.	1029564.00
Consortium (Rs.48,000/- X 3 claimants)	Rs.	144000.00
Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
Total Compensation	Rs.	1209564.00
Less compensation awarded by the Tribunal	Rs.	188000.00
Enhanced amount	Rs.	1021564.00

Considering the above calculations, claimants are entitled for enhanced amount of Rs.10,21,564/-.

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

ORDER

- i. The appeal is allowed.
- ii. The appellants/claimants are entitled for enhanced amount of Rs.10,21,564/-@ 7.5% interest per annum from the date of filing of claim petition till realisation of the amount. Out of this amount, Rs.1,80,000/- is consortium amount, the claimants are entitled for interest @ 7.5% per annum on this amount from 1st November 2017 till realisation of the amount.

iii. Respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.

iv. The appellants/claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

The appeal is disposed of.

7. Pending applications, if any, stands disposed of.

(SHIVKUMAR DIGE, J.)