

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 2172 OF 2011

1. Shantaram Damu Madhvi Age 52 yrs, Occup. Farmer		
2. Kantabai Shantaram Madhvi Age 45 yrs, Occup : Housewife		
All R/O. Gaonthan, P/O. Jasae Tal : Uran, Dist : Raigad	...	Appellant (Orig. Applicants)
versus		
1. C. C. Parab Age 45 yrs, Occup : Truck Owner Residing at 54 Sarla Manohar, Sector No.17, Vasi, Navi Mumbai, Dist. Thane		
2. The New India Assurance Company Ltd. Alibag, Dist : Raigad		Respondents (Orig. Opponents)

Mr. P. G. Jagdale, Advocate for the Appellant.

Ms. Kalpana Trivedi, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st FEBRUARY, 2024.

Oral Judgment :

1. This appeal is preferred by the claimants against the dismissal of the claim petition.

2. It is contention of learned counsel for the appellant that initially the claim petition was filed under Section 166 of the Motor Vehicles Act, 1988, thereafter, it was converted into Section 163A of Motor Vehicles Act

Learned counsel further submitted that the deceased was riding on motor-cycle, the offending truck was parked on the road without any signal, thus, the motor-cycle of the deceased gave dash to it from backside. The deceased died due to injuries. The Tribunal has dismissed the claim petition on the ground that the applicant himself was negligent in the accident and the owner and insurer of the motor-cycle were not joined as party, which is erroneous. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2- Insurance Company that the accident occurred due to sole negligence of the deceased and an offence was registered against the deceased. The deceased had given dash to the stationed truck from backside. The Tribunal has considered all the aspects and, 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, Alibaug (for short "the Tribunal").

5. It is claimants' case that on 5th October 2001, deceased – Satish was riding motor-cycle No. MH-4939. His friend – Deepak Madhvi was a pillion rider. They were proceeding towards Gaothan, it was about 7.30 to 8.00 pm. At the relevant time, a truck bearing registration No. MH-04-A1-4333 was stationed on the road without any signal. Due to dark, the deceased could not see the said truck and gave dash to it from

backside. The deceased sustained injuries and succumbed to the injuries. Initially, the claimants had filed claim petition under Section 166 of the Motor Vehicles Act (for short M.V. Act). During pendency, it was amended and converted into, petition under Section 163A of the Act. The Tribunal dismissed the claim petition on the ground that the claimants have not joined motor-cycle owner and insurer as party respondent. Deepak Madhvi was a pillion rider, his evidence was not recorded. The police papers shows that the truck driver was not negligent. The accident occurred due to self-negligence of deceased – Satish. The claim is made against the truck owner and insurer without joining owner and insurer of the motor-cycle as a party respondent and the truck driver was not negligent, hence, the Tribunal has dismissed the claim petition.

5.1 I am unable to understand the observations made by the Tribunal while dismissing the claim petition. Admittedly, the truck was stationed on the road without any signal, no tail lamps or indicators were put on, accident happened around 7.30 p.m. to 8 p.m. there was dark. 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 truck.

“ 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 food 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.]”

5.2 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 truck was stationed on the road but no parking lights were on. In present case, due to dark, the deceased could not see stationed truck and dashed it from back side. 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 truck has clearly violated the rules and regulations of the Central Vehicles Rules.

5.3 Though offence was registered against the deceased, it cannot be said that the accident occurred due to negligence of the deceased as the driver of the offending truck did not take proper precautions when the truck was stationed on the road but this fact is not considered by the Tribunal. Moreover, under Section 163A of the Act, the question of negligence of the deceased will not arise.

5.4 In respect of non-joining of the owner and insurer of motorcycle as party, it is settled principle of law that it is the choice of the claimants from whom they can seek compensation. It appears that the Tribunal has mechanically, without applying its mind, has passed the order. Hence, I am setting aside the observations of the Tribunal about

dismissal of the claim petition.

5.5 The Tribunal has observed that there was no negligence of the driver of the offending truck. It is significant to note that the driver of the offending truck did not enter into the witness box. Without his evidence, the Tribunal has observed that the driver was not negligent, which is erroneous. It has come on record that deceased was working as Supervisor with M/s. K. H. Gharat and Co. at Jasai, uran and he was earning Rs.2,500/- per month. The salary certificate is produced on record. Considering the evidence on record, I am considering the notional income of deceased at Rs.2200/- per month.

5.6 At the time of accident, deceased was 28 year old, so proper multiplier is 18. The claimants are entitled for consortium amount, amount for funeral expenses and loss of estate.

5.7 In view of above calculations, the claimants are entitled for following compensation :

Annual Income (Rs.2200/- p.m. x 12 months)	26400.00
1/3rd deductions towards personal expenses	8800.00
Total	17600.00
(Rs.17600/- x 18 multiplier)	316800.00
Consortium Amount (Rs.48000/- x 2 claimants)	96000.00
loss of estate	18000.00
funeral expenses	18000.00
Total Compensation	448800.00

The appellants/claimants are entitled for Rs.4,48,800/-.

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

ORDER

1. The appeal is allowed.
2. The claimants are entitled for compensation of Rs.4,48,000/- @ 7% interest per annum from the date of filing claim petition till realisation of the amount. Out of this, amount of Rs.1,32,000/- is for consortium. The claimants are entitled for 7.5% interest per annum on this amount from 1st November 2017 till realisation of amount.
3. The Respondent No.2-Insurance Company shall deposit the compensation amount along with accrued interest thereon within eight weeks from the receipt of this order.
4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)