

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 23 OF 2022

The New India Assurance Co. Ltd.	]	
R/o. 302, 303, Rushiraj Regency, Near Vaidya Vikas	]	
Circle, Gangapur Road, Nashik	]	
(Original Opponent No.2)	]	Appellant
Versus		
1. Bharti Sunil Shinde	]	
Age – 47 years, Occ : Household	]	
2. Shrikant Sunil Shinde	]	
Age – 25 years, Occ : Education	]	
3. Tushar Sunil Shinde	]	Respondents
Age – 22 years, Occ : Education	]	(Resp Nos. 1
4. Radhabai Mahadu Shinde	]	to 5 are org.
Age – 65 years, Occ : Well Settled	]	Appellants,
5. Mahadu Tatyaba Shinde	]	Respondent
Age – 69 years, Occ : Well Settled	]	No. 6 is the
6. Manager,	]	Original
Calcutta Express Transport Service	]	Opponent
R/o. 133/213, Transport Nagar, Kanpur,	]	No.1)
Uttar Pradesh, Pin - 208001	]	

.....

Mr. Asim Vidyarthi a/w. Ms. Ishita Bhole, Mr. Mohit Turakhia and Mr. Shasvat Vidyarthi i/b. Mr. Asim Vidyarthi, Advocate for the Appellant.
None for Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 16th JANUARY, 2024.

JUDGMENT :

1. The issues involved in this appeal are negligence of deceased and income of deceased is considered on higher side.

2. It is contention of learned counsel for the appellant that deceased was proceeding in his car with his wife and offending truck was stationed on the left side of the road. The deceased gave dash to the said truck from the back side. The accident occurred due to sole negligence of the deceased. The wife of deceased who was eye witness to the incident in the cross examination admitted that no seat belts were put by them at the time of accident. It shows that there was negligence of the deceased but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has considered monthly income of the deceased on the basis of average of two years income which is not proper. Learned counsel further submitted that spot panchanama shows there were break marks of 50 ft. were appearing on road which shows car was in high speed. Hence requested to allow the appeal.

3. The respondents are served, none present for respondents. The appeal is of year 2022, hence I am deciding this appeal on merit.

4. I have heard learned counsel for the appellant. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Nashik (for short "**the Tribunal**"). It is appellants' case that deceased had given dash to the stationed truck from back side. Hence, accident occurred due to sole negligence of the deceased. 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. It is read as under:-

“ 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.”

.....

“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.]”

In the present case, the truck was stationed on the road without putting indicators or parking lights on. Moreover, the truck driver did not step into the witness box to prove that precautionary measures were taken by him when truck was stationed on road. The offence was registered against the driver of offending truck. It proves that the accident was caused due to sole negligence of the driver of offending truck. I do not find infirmity in the observations of the Tribunal. While considering the income of deceased, the Tribunal has considered monthly income of the deceased on the basis of Form No.16 submitted by the claimants. The Tribunal has considered monthly income on the basis of average income. I do

not find infirmity in it. The appeal is devoid of merit and I pass following order.

ORDER

- (i) The appeal is dismissed. No order as to costs.
- (ii) The claimants are permitted to withdraw the amount deposited by the Insurance Company along with interest accrued thereon.
- (iii) The statutory amount along with accrued interest be transmitted to the Tribunal. The parties are at liberty to withdraw it as per rule.
- (iv) All pending applications are disposed of.

(SHIVKUMAR DIGE, J.)