

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 121 OF 2013

The New India Assurance Co. Ltd.
 having their office at Regional Office :
 MR0-1, New India Bhavan,
 34/38 Bank Street, Fort, Mumbai – 400023

Appellant

Versus

1. Suvarna Gajanan Salunkhe
Age -30 yrs, Occupation – household
2. Snehal Gajanan Salunkhe
Age - 7 yrs, Occupation – education
3. Mayuri Gajanan Salunkhe
Age – 3 months, Occ-Nil,
4. Mahadev Ramchandra Salunkhe
Age – 60 years, Occup – Nil,
(Res. No. 2 and 3 minor/through natural
guardian as Resp. No.1 as mother)
All resident of Rajuri, Tal- Phaltan,
District – Satara
5. Jayram Abaji Atole
Age – adult, Occ. Owner,
R/o Christan Colony, Baramati,
Tal – Baramati, District – Pune
(Vide Registrar order dt.12/1/15 R.Nos.4 and 5
stand dismissed).

(Orig.Appls.
No.1 to 4)
Respondents

(Orig.O.P.No.
1)

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- Ms. Urmila K. Sanil, Advocate for the Appellant.
- Ms. Atharva R. B. i/b. Mr. Vaibhav R. Gaikwad, Advocate for Respondent Nos. 1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 16th JANUARY, 2024.

JUDGMENT :

1. The issue involved in this appeal is accident occurred due to sole negligence of the deceased.

2. It is the contention of learned counsel for the appellant that truck was stationed on the road. The deceased who was riding on the motor bike gave dash to the truck from back side and died due to injuries. The offence was registered against the deceased but this fact is not considered by the Tribunal and has fixed liability on the Insurance Company which is erroneous, hence requested to allow the appeal.

3. It is the contention of learned counsel for respondents/claimants that the truck which was stationed on the road was without parking lights and reflector / indicator. The driver of the said truck did not take precautions to show that the truck was stationed on the road. The driver did not step into the witness box to prove the negligence of the deceased or precautions taken by him. The order passed by the Tribunal is legal and valid and no interference is required in it.

4. I have heard bold the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Satara (for short “**the Tribunal**”). It is claimant’s case that on 02.12.2004, deceased was riding motorbike bearing No. MH-11/AA-2267. At about 8.45 p.m. a truck No. MH-12/UA-6855 was stationed on the tar road without reflector / indicator. Due to dark the deceased could not see it and gave dash to the said truck from back side and sustained injuries. He died due to the said injuries. While dealing with the issue of negligence, the Tribunal has

observed that from spot panchanama it appears that truck was stationed on the road and after seeking stationed truck, the deceased had applied breaks but he dashed on the rear side of the truck and at the time of accident by parking said truck on road, the driver of truck had gone for taking tea.

5. To prove their case the claimants have examined PW-3 Rahit Sayyad, eye witness to the incident. He has stated that on 02.12.2004 at about 8.30 p.m. when he was proceeding to village Neera, he heard the screams of one person and he saw that one motorcycle rammed into parked truck. The said truck was stationed on the Tar road. At the relevant time, there were no street lights burning due to load shading and the truck had no tail lamps. Nothing elicited in cross examination of this witness to disbelieve his evidence. In my view, as per the rules of Central Motor Vehicles Rule, it was obligatory on the truck driver to put parking lights or indicator of the stationed truck on, but it was not done. Section 15 of the said Rule reads 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.”

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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.”

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“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 present case the accident occurred at 8.30 p.m. there was dark but precautions were not taken by the truck driver. Police papers produced on record shows that the truck was stationed on the road, the driver had gone for having cup of tea. It shows his negligence. Moreover, driver of the offending truck did not step into the witness box to prove that he had taken precautions when he had stationed the truck on road, he has violated Rules and Regulations of Central Motor Vehicle Act. Hence, I do not find merit in the contention that accident occurred due to negligence of the deceased.

6. The Tribunal has awarded consortium at Rs.20,000/- which is on lower side. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram***¹, each claimant is entitled to Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses. There are three claimants. The total comes to Rs. 2,52,000. It has come on record that deceased was 40 year old. The Tribunal has applied multiplier of 14 it should be 15. Hence, I am considering multiplier of 15. Considering the above calculations, the claimants are entitled for following compensation:

¹ 2018 ACJ 2782 (SC)

Particulars	Rs.	Entitlement
Monthly Income	Rs.	7,271.00
Annual Income X 12	Rs.	87,252.00
Addition of 30% Future prospects (87252 +26181)	Rs.	1,13,433.00
1/3rd deduction for personal expenses	Rs.	75,622.00
Multiplier of 15 (75,622 X 15)	Rs.	11,34,330.00
Consortium (Rs.48,000/- X 3 claimants)	Rs.	1,44,000.00
Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
Total Consortium amount	Rs.	1,80,000.00
Total compensation	Rs.	13,14,330.00
Less compensation awarded by the Tribunal	Rs.	10,78,900.00
Balance to be given to claimants	Rs.	2,35,430.00

The claimants are entitled for the enhanced amount of Rs. 2,35,430/-.

7. In view of the above I pass following order:

ORDER

- (i) The appeal is dismissed. No order as to cost.
- (ii) The claimants are entitled for enhanced amount of Rs.2,35,430/- @ 7.5 % interest from 1st November, 2017 till realisation of the amount.
- (iii) The appellant shall deposit the enhanced amount along with accrued interest thereon within four

weeks from the receipt of this order.

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

(v) The statutory amount be transmitted to the Tribunal, Mumbai along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

8. The appeal is disposed of.

(SHIVKUMAR DIGE, J.)

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