

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

FIRST APPEAL NO. 111 OF 2020

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| 1. Laxmi Ishwar Kamalapur |] |
| Age: 53 years, Occ: Household |] |
| 2. Shivraj Ishwar Kamalapur |] |
| Age – 30 years, Occ: Labour |] |
| 3. Ganesh Ishwar Kamalapur |] |
| Age: 28 years, Occ: Labour |] |
|
All R/o. Modi Khana, Chintalwar Vasti, |] |
| Solapur |] |

.... Appellants

Versus

- | | |
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| 1. Rajshekhar Chanbasappa Dindore |] |
| Age: 38 years, Occ: Business |] |
| 2. Lingayya Dhanayya Swami |] |
| Age: 39 years, Occ: Business |] |
| Res. Nos.1 & 2 R/o. Hotagi, Tal: South |] |
| Solapur Dist: Solapur. |] |
| 3. United India Insurance Company Ltd. |] |
| Navi Peth, Near Paras Estate, Solapur |] |

.... Respondents

Mr. R. S. Alange, Advocate for the Appellant.

Adv. Seema S. Dighe i/b Priyal G. Sarda, Advocate for Respondent Nos.1 & 2.

Mr. Nitesh Bhutekar a/w Mr. Prathamesh Mandlik, Advocate for Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 18th JULY, 2025.

JUDGMENT. :

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

2. It is contention of learned counsel for the Appellants that while the deceased was standing on road, he was dashed by the offending tractor. Due to said dash he died. The offence was registered against the driver of offending tractor. However, the Tribunal has dismissed the claim petition, on the ground that the deceased was standing on the tractor by consuming liquor, and he fell from the tractor. There was no evidence produced on record in that regard, but on mere assumption, the Tribunal has passed impugned judgment and order, which is erroneous. Learned counsel further submitted that, the deceased was working as a labourer and was earning Rs.500/- per day. He was maintaining family of three persons. The Tribunal has not awarded any compensation, it be awarded. Hence, requested to allow the appeal.

3. It is contention of learned counsel for Respondent – Insurance Company that accident occurred due to sole negligence of

the deceased as he was standing on offending tractor under the influence of the liquor and fell on the ground. To prove the said fact, owner of the tractor examined himself before the Tribunal. He has stated that the deceased died because to his own negligence. In postmortem report of the deceased, it is mentioned that there was smell of alcohol to food found in the stomach of the deceased. The Tribunal has passed well reasoned order, no interference is required in it, and requested to dismiss the appeal.

4. It is contention of learned counsel for the Respondent – Owner that accident occurred due to sole negligence of the deceased, as he was standing on the tractor and fell down as he was under influence of alcohol. The Tribunal has passed well reasoned order, no interference is required in it, and requested to dismiss the appeal.

5. I have heard all learned counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal, Solapur (for short, “the Tribunal”).

6. It is Claimants’ case that on 28th September, 2009 around 7:00 p.m., when the deceased was standing on the road, at that time the offending tractor gave dash to him. Due to said dash, he sustained injuries and died while taking treatment. The offence was

registered against the driver of offending tractor. To prove the negligence of driver of offending tractor, the Claimants have examined, the Claimant No.2 – Shivraj Kamalapure. He has stated that, at the time of accident, his father was standing at the corner of the road, at that time, offending tractor gave dash to him. Due to said dash, he sustained injury and died on the spot. The accident occurred due to rash and negligent driving of the driver of the tractor. In cross-examination, he has stated that at the time of accident, there was procession of Ganpati. He has denied the suggestion that, at the time of accident, his father was under the influence of liquor and was standing in the trolley of the said tractor.

7. The Claimants have examined PW2 – Narendra Mehtre. He has stated that, at the time of accident, the deceased was walking alongside the tractor, specifically in the space between the tractor and the trolley. Suddenly, the rear wheel of the tractor went into a ditch, causing a wooden plank kept on the tractor to fall on the deceased. As a result of the plank falling on him, the deceased died. According to PW2, the accident occurred due to sole negligence of driver of tractor.

In cross-examination, he has denied that accident occurred

merely due to wooden plank falling on the deceased. He also denied the suggestion that the deceased was under the influence of liquor at the time of accident, and accident occurred when the deceased was trying to climb onto the tractor.

8. The owner of offending tractor, Rajshekhar Dindure, examined himself to prove his defence at Exhibit – 58. He has stated that the tractor was going with procession, at that time, the deceased was standing on the tractor, under the influence of liquor. Due to influence of liquor, he could not balance himself and came under the rear wheel of the tractor. The accident occurred due to sole negligence of the deceased. In cross-examination, he has admitted that the fact that the deceased was under influence of liquor and he himself was negligent for the said accident, has not stated before police by him, and he had not seen the said accident.

9. While dealing with the issue of negligence, the Tribunal has observed that there is discrepancy in the statement of claimant and opponents in respect of the accident. From the evidence of witness Ganesh Kamlapure and considering the spot panchanama and documents produced on record, the Tribunal has considered that, at the time of accident, the deceased was under influence of

liquor, as the postmortem report shows its contents in stomach of about Semi solid, Semi digested food material, and smell of alcohol present. On that ground, the Tribunal has observed that accident occurred due to sole negligence of the deceased and has dismissed the claim petition.

10. I am unable to understand the observations of the Tribunal, as no blood alcohol concentration (BAC) test of the deceased was done. Mere smelling of the alcohol to the food cannot be said that the deceased was under influence of the alcohol. Unless, it is proved by the laboratory test. Moreover, eye witnesses have not stated that the deceased was under influence of alcohol. The suggestion was given to the eye witness Narendra Mehtre in cross-examination that the deceased was under influence of liquor to which he has denied it.

11. It is claimant's case that the deceased was working as labourer and earning Rs.500/- per day. To prove the income of the deceased, the claimants have examined the Claimant No.2 Shivraj Kamlapure. He has stated that deceased was working as centring worker. He was working under Mr. Arun Salunke and he was getting daily Rs.500/- for labour work. He was getting monthly income at

Rs.15,000/- per month.

12. To prove the income of the Claimants, the claimants have examined PW2 – Mr. Arun Salunke. He has stated that he runs a business in the name and style M/s. Arun Construction. The deceased was serving as a fitter in his firm since 2004 to 2009. He used to pay him Rs.500/- per day towards salary. Approximately, he used to get Rs.15,000/- per moth. The salary certificate is at Exhibit 53. In cross-examination, he has admitted that he has not produced any document showing that the deceased was appointed by his firm as a labour.

13. In my view, the deceased was working as labour. At the time of accident, he was 50 years old. He was earning member of his family. Considering this fact, I am considering Rs.10,000/- as monthly income of the deceased. As per view of Hon'ble Apex court in the case Pranay Sethi, the claimants are entitled for 40% future prospects. As per view of Hon'ble Apex Court in the case of MAGMA, 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.

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

Monthly income	Rs.10,000/-
Annual income	Rs.1,20,000/-
Add: 25% future prospects	Rs.30,000/-
Total income	Rs.1,50,000/-
Multiplier 13 (Rs.1,50,000/- X 13)	Rs.19,50,000/-
Less: 1/3rd deduction for personal expenses	Rs.6,50,000/-
Total	Rs.13,00,000/-
Consortium Rs.48,000/- X (3 Claimants)	Rs.1,44,000/-
Loss of estate	Rs.18,000/-
Funeral expenses	Rs.18,000/-
Total compensation	Rs.14,80,000/-

15. In view of above, I pass following order :

ORDER

- i. The Appeal is allowed.
- ii. The Claimants are entitled for compensation amount of **Rs.14,80,000/-** @ 7.5% interest per annum from the date of filing claim petition, till realization of the amount. Out of this amount Rs.1,80,000/- is consortium amount, the Claimants are entitled @ 7.5% interest per annum from 1st November, 2017, till realization of the amount.
- iii. The Respondent No.3 – Insurance Company shall deposit the compensation amount along with accrued interest thereon, within six weeks after

receipt of this order.

- iv. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - v. The Claimant shall pay the deficit Court fees on enhanced amount, if any, as per Rules.
 - vi. Record and Proceedings be sent back to the Tribunal.
16. All pending applications, if any, also stand disposed of.

(SHIVKUMAR DIGE, J.)