

Biker Not Liable For Contributory Negligence If Parking Lights Of Stationary Vehicle Against Which He Dashed At Night Were Off: Bombay HC

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IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

S.G. DIGE, J.

FIRST APPEAL NO. 569 OF 2022; 18th October, 2022

Mohini Mohanrao Salunke versus Ramdas Hanumant Jadhav

Mr. R.B. Deshpande - Advocate for Appellants Mr. H.A. Patankar – Advocate for Respondent No.4

J U D G M E N T

Being aggrieved and dissatisfied by the judgment and order passed by the Member, Motor Accident Claims Tribunal, Latur (for short, 'the Tribunal'), appellants – original claimants preferred this appeal for enhancement of compensation.

2. Brief facts of the case are as under:

On 09.10.2009 at about 10:00 p.m. deceased Mohanrao Narharrao Salunke was proceeding on his motorcycle towards his village Bardapur, Tq. Ambejogai, Dist. Latur. When he reached near Kaushik Dhaba on LaturAmbejogai road at Renapur, Dist. Latur, gave dash to the stationary motor tempo bearing No. MT-B-6994 (for short, 'offending tempo') which was standing on the road. Due to the accidental injuries Mohanrao Salunke died during the treatment. Offence was registered against the tempo driver.

3. The claimants fled Claim Petition for getting compensation before the Tribunal. The Tribunal has awarded compensation. Against said judgment and order this appeal.

4. It is contention of learned Counsel for appellants that, the Tribunal has considered 50% contributory negligence of the deceased which is improper. Learned Counsel further submits that, the offending tempo was stationed in the middle of the road. It was darkness. No tail lamp and the indicators of the stationary offending tempo were put on. No proper precaution was taken by the driver of the offending tempo, for indication to the other vehicles that, offending tempo was stationed in the middle of the road. Due to darkness deceased could not see offending tempo and dashed against it, but this fact is not considered by the Tribunal and has wrongly held that, there was 50% contributory negligence of the deceased.

5. Learned Counsel further submits that, no compensation awarded under the non-pecuniary heads. No compensation awarded under the heads of future prospects and consortium. Hence, requested to allow the appeal.

6. It is contention of learned Counsel for respondents that, deceased was driving motorcycle in high and excessive speed. There was headlight on the motorcycle. In that headlight the deceased could have seen the stationed offending tempo but due to high speed of motorcycle deceased dashed to the offending tempo. The indicators and parking lights of the offending tempo were in on condition, the proper precaution was taken by the respondents when offending tempo was stationed on the road. It was stationed on the left side of the road. The Tribunal has rightly considered contributory negligence of the deceased while awarding compensation. The Tribunal has considered all the aspects and on that basis compensation is awarded. Hence, requested to dismiss the appeal.

7. I have heard both the learned Counsel. Perused judgment and order passed by the Tribunal.

8. The issues involved in this appeal are in accident whether there was contributory negligence of the deceased and entitlement of compensation amount under future prospects. Admittedly, the accident is occurred at 10:00 p.m. the deceased gave dash to stationary offending tempo from back side. The Tribunal has observed that, deceased could not notice the offending tempo under headlight of motorcycle and as such, given dash to the offending tempo therefore, vehicular accident occurred. The Tribunal has held 50% contributory negligence of the deceased.

9. I am unable to understand findings given by the Tribunal regarding contributory negligence of the deceased when it has come on record that, no tail lamps or the indicators of offending tempo were put on or no proper precautions were taken by the driver of the offending tempo, to give signal to the other vehicles to show that, the offending tempo was stationed on the road.

10. After the incident of accident Mohini Salunke, CW-1, widow of deceased and CW-3 Govind Suryawanshi have seen the place of accident while going to Civil Hospital, Latur where deceased was admitted after accident. They noticed that, offending tempo was stationed in the middle of road and its tail lamp or indicators were not on. It has come in the evidence of CW-4 Laxman Jadhav who runs Dhabha by name 'Kaushik' near the place of accident, that after hearing sound he went to the accident spot. He found that deceased was lying on the road and stationary offending tempo. He further stated that, indicators or tail lamp of the offending tempo were not on. It was stationed in the middle of the road. From the evidence of three witnesses it reveals that, offending tempo was stationed in the middle of road. No tail lamp or indicators of offending tempo were on.

11. It is significant to note that, driver of the offending tempo has not examined any witness to prove that, he had put on the tail lamp or indicators of the offending tempo. Latur Ambejogai road is highway. The accident is happened at 10:00 p.m. when offending tempo was stationed in middle of the road. It was duty of the driver of the offending tempo to put indicators or parking light of the offending tempo in on condition, so other vehicles could know about stationed tempo but it has come on record that, no such precautions were taken by driver of the offending tempo. When any vehicle 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 sport 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.]

This rule states that, front and rear parking lights shall remain lit when the vehicle is kept stationary on the road.

12. It has come on record that, no such parking lights were put on the offending tempo, so liability of contributory accident cannot be fastened on the deceased by holding that, he should have seen the stationed tempo under the headlight of motorcycle. When there

is specific rule in respect of taking precautions by stationary vehicle, if such precautions are not taken by the driver/owner of stationary vehicle then liability cannot be shifted on motorcycle rider. Hence, I am setting aside the observations of the Tribunal that, there was 50% contributory negligence of the deceased in the said accident and I am holding that, driver of the offending tempo is sole responsible for the occurred accident. The Tribunal has considered salary income of deceased at Rs.31,563/- while calculating the compensation. The Tribunal has deducted 20% income tax. No reasons given by the Tribunal for said deduction. The yearly salary income of deceased was below Rs.5,00,000/then deduction of income tax should be 10%. Hence, I am considering it 10% deduction for income tax.

13. The Tribunal has not awarded future prospects. As per view of **Hon'ble Apex Court in the case of National Insurance Company Ltd., Pranay Sethi and Others** reported in **(2017) 16 SCC 680**, the appellant is entitle for 30% future prospects as age of deceased was 46 years and he was in government service. The appellants are entitle for funeral and transportation expenses at Rs.15,000/-.

14. In view of the above calculations, appellants are entitle for following compensation:

Sr. No.	Heads	Amount
1.	Income (p.a.)	Rs.3,78,756/-
2.	Minus – Professional Tax (Rs.200 pm x 12)	- Rs.2400/-
3.	Minus – Income Tax (10%)	Rs.3,76,356/- <u>Rs.37,636/-</u>
4.	Minus – 1/3 Personal Expenses	Rs.3,38,720/- <u>Rs.1,12,906/-</u>
5.	Net yearly income	Rs.2,25,814/-
6.	Multiplier (13) (age : 46 years)	Rs.29,35,582/-
7.	+ 30% future prospects	+Rs.8,80,674/-
8.	Funeral & Transportation Expenses	Rs.15,000/-
9.	Total Compensation Amount	Rs.39,51,256/-
10.	Tribunal Awarded	Rs.13,91,936/-
Appellants are entitled		Rs.25,59,320/-

15. The Tribunal has awarded amount of Rs.13,91,936/-, if it deducts from amount of Rs.39,51,256/- compensation awarded by this Court it comes to Rs.25,59,320/-. Appellants are entitle for this amount. In view of the above, I pass the following order :-

ORDER

- (a) Appeal is allowed.
- (b) Appellants are entitle for enhanced amount of Rs.25,59,320/- along-with @ 6% interest thereon from the date of filing of Claim Petition till its realisation.
- (c) Respondents shall deposit the enhanced amount along-with accrued interest thereon within eight (08) weeks before the Tribunal, Latur.
- (d) Appellants are permitted to withdraw deposited amount along-with accrued interest thereon.
- (e) Appeal is disposed of, accordingly.
- (f) Civil Application, if any, same stands disposed of.