IN THE HIGH COURT OF JUDICATURE AT BOMBAY, BENCH AT AURANGABAD

FIRST APPEAL NO.380 OF 2015

1. Ku. Anjali s/o Bhagwan Bansode,
   Age – 04 years,
   U/G appellant No.2

2. Anasaheb s/o Dagduji Bhalerao
   age 66 years, Occu.Labour

3. Sau. Janabai w/o Anasaheb Bhalerao
   age 58 years, Occu. Household

   All R/o. Mahada, Shivajinagar,
   Bhokardan Road, Jalna,
   Tq. & Dist. Jalna

...APPELLANTS

VERSUS

1. Maharashtra State
   Road Transport Corporation,
   through Divisional Controller,
   Divisional Office, MIDC area,
   Jalna, Tq. & Dist. Jalna

2. Bhagwan s/o Govind Bansode,
   age 32 years, Occu. Private Service,
   R/o. Solgavan, Tq. & Dist. Jalna

...RESPONDENTS

Ms S.D. More, Advocate for the appellants.
Mr. D.S. Bagul, Advocate for respondent No.1.
Mr. V.P. Golewar, Advocate for respondent No.2.

CORAM : ROHIT W. JOSHI, J.
DATED : SEPTEMBER 15, 2026.

ORAL JUDGMENT :

Heard finally with the consent of learned Counsel for the parties.

2. The present appeal is filed in order to challenge judgment and award dated 04/12/2014 passed by the learned Member, Motor Accident Claims Tribunal, Jalna in Motor Accident Claim Petition Nos.183/2011 and 190/2011.

3. The present appellants and respondent No.2 and appellant No.1 had filed two separate claim petitions under Section 166 of the Motor Vehicles Act, 1988 which came to be registered as Motor Accident Claim Petition Nos.183/2011 and 190/2011 respectively. The claims were lodged on account of demise of late Sanjeevani Annasaheb Bhalerao in a motor accident involving a vehicle owned by respondent No.1/MSRTC. The respondent No.2 is father of appellant No.1. The appellant Nos.2 and 3 are the maternal grandparents of appellant No.1. The deceased is mother of appellant No.1, daughter of appellant Nos.2 and 3 and wife of the respondent No.2.

4. The marriage between the deceased and respondent No.2 was solemnized on 05/05/2009. The deceased started residing at her

parental house while she was pregnant. The date of birth of appellant No.1 is 14/05/2010. The deceased and respondent No.2 were residing separately since 20/10/2009. Whereas it is the contention of respondent No.2 – husband that the deceased started residing at her parental house since, customarily, delivery of first child has to be at parental home, the contention of appellant Nos. 2 and 3 - parents of the deceased, is that she had started residing at the parental house due to matrimonial discord. The accident has occurred on 26/07/2011. On this date also the deceased was residing with her parents and she met with an accident while going to the place of work.

5. The deceased was engaged as a Peon at Primary Health Center. After the demise of the deceased, respondent No.2 – husband has secured employment on compassionate grounds. It must also be stated that the appellant No.1 - minor daughter of the deceased and respondent No.2 is residing with her maternal grandparents i.e. the appellant Nos.2 and 3. The respondent No.2 – husband had filed a proceeding for custody of appellant No.1 his daughter, which came to be registered as Miscellaneous Civil Petition No.7/2012. The said application came to be rejected vide judgment and order dated 12/02/2015. The appellant Nos.2 and 3, the maternal grandparents of appellant No.1 have filed a proceeding for guardianship of the appellant No.1, being Civil

Miscellaneous Application No.14/2021, which is allowed vide judgment and order dated 29/06/2024.

6. As stated above, the parents of the deceased and her husband filed two separate claim petitions. The minor daughter is arrayed as one of the claimants in both these petitions. The learned Tribunal has allowed the claim petition awarding compensation of Rs.17,41,363/- inclusive of the amount of no fault liability. The learned Tribunal has directed that the compensation amount of Rs.12,41,363/- be paid to the minor daughter and Rs.5,00,000/- be paid to the respondent No.2 – husband. The present appeal is filed by the parents of the deceased challenging apportionment of the amount. Apart from this, the appeal is amended in order to seek enhancement in the amount of compensation on account of loss of consortium which is not awarded to the parents.

7. Mr. Bagul, learned Counsel for respondent - MSRTC argues that as regards the dispute with respect to distribution of amount is *inter se* between the appellants and respondent No.2, the respondent – MSRTC is not concerned with the same. However, the learned Counsel contends that the compensation awarded should not be enhanced in view of delay caused in moving application for amendment of memorandum of appeal. Learned Counsel also argues that the learned

Tribunal has erroneously awarded compensation of Rs.1,00,000/- each to respondent No.2 – husband towards loss of consortium and to the appellant No.1 - daughter towards loss of care and guidance.

8. Learned Counsel for respondent No.2 contends that the parents of the deceased have not established that they were dependent upon their deceased daughter, and therefore, their claim is rightly rejected. Learned Counsel contends that since respondent No.2 lost his wife, compensation of Rs.5,00,000/- is rightly awarded to the husband. He draws attention to the findings recorded by the learned Tribunal while dealing with issue of entitlement and apportionment of the amount *inter se* between the minor daughter and the husband of the deceased while rejecting the claim of the parents/appellant Nos.2 and 3. He also draws attention to the findings recorded by the learned Tribunal holding that the parents of the deceased are not entitled to receive any compensation since they have received amount of Rs.11,36,616/- disbursed under the postal life insurance scheme of the deceased. It is recorded that in the cross-examination, the father of the deceased admitted to have expended the said amount.

9. On hearing the respective submissions, the following points arise for my consideration :

(i) Whether the apportionment of compensation as done by the learned Tribunal is just and proper?

(ii) Is the amount of compensation as determined by the learned Tribunal just and proper?

10. Perusal of the evidence on record will demonstrate that the deceased was residing with her parents from 20/10/2009. The reason for staying away from the husband is not clear from the record. Both parties have their own versions in this regard. Whereas the husband contends that the wife had been to her paternal house for delivery of first child, the parents of the deceased maintained that she had left the matrimonial home due to discord with her husband. Be that as it may, the fact that since 20/10/2009, the deceased is residing separate from the respondent No.2 is not in dispute. It must also be stated that the child was delivered on 14/05/2010 i.e. almost after a period of 7 months from separation of the deceased and her husband – respondent No.2. The child was delivered while the deceased was staying with her parents – appellant Nos.2 and 3. It is also duly established that on the date of her accident, she was travelling to her place of work from the residential house of her parents. The accident has occurred on 26/07/2011 i.e. after a period of around 14 months from the date of birth of the appellant No.1 – child. It is also not in dispute that

application for custody filed by respondent No.2 is rejected and claim of guardianship of appellant Nos.2 and 3 is allowed by the learned Civil Court. Likewise, the appellant Nos.2 and 3 have also proved that all the expenses towards performance of last rites of the deceased were performed by them. In view of such evidence on record, the preponderance of probabilities will indicate that the husband and wife were residing separately only for the reason of delivery of the child. It is also duly established that the maternal grandparents are taking care of the minor child of the deceased.

11. Apart from this, respondent No.2 - husband has already secured employment on compassionate basis after the demise of his wife i.e. from 10/12/2015. There is no evidence on record to suggest that while the wife was residing separately from the husband she was contributing towards the expenses of the family comprising of her and her husband. The husband therefore cannot be said to be a dependent of his wife in the peculiar facts of the present case. It must also be borne in mind that the husband now has independent source of income in view of compassionate appointment received by him after demise of his wife. As against this, the evidence on record will clearly indicate that the deceased was residing with her parents for a period of around 22 months prior to her demise. Therefore, the minor daughter and the

parents of the deceased will have to be treated as dependents of the deceased. The husband cannot be treated as dependent.

12. In view of the above, point No.1 framed in the appeal is answered by holding that the entire amount of compensation payable on account of demise of the deceased must be paid to the appellant No.1 - minor daughter and appellant Nos. 2 and 3 - parents of the deceased. The appellant Nos.2 and 3/parents will be entitled to total compensation of Rs.2,00,000/- including the amount of Rs.40,000/- each payable to them towards loss of consortium. The remaining amount of compensation will be payable to appellant No.1 - daughter of the deceased. The husband of the deceased will not be entitled to receive any amount of compensation, except amount of Rs.40,000/- towards loss of consortium.

13. As regards, the claim for enhancement of compensation, by now it is well settled that it is a statutory obligation of a Tribunal entertaining claim petition under Section 166 of the Motor Vehicles Act, 1988 to award just and proper compensation even in the absence of specific claim in that regard. It is also well settled that the duty to award just and proper compensation is also imposed upon this Court while entertaining appeals under Section 173 of the Motor Vehicles Act, 1988. The judgments have travelled this far that even in the absence of a

substantive appeal or cross-objection by the claimants, enhancement of compensation awarded can be granted in an appeal preferred by owner or driver of the offending vehicle or the insurance company. In view of the above legal position, the correct compensation payable is required to be calculated.

14. There is no dispute with respect to compensation of Rs.13,78,512/- determined towards loss of earning. The grievance of the appellants is with respect to component of future prospects which is restricted to 10% of the amount of loss of earning. The deceased was 26 years old at the time of her demise. She was a permanent employee of Government of Maharashtra. In view of the above, the compensation payable towards loss of future prospects will be 50% of the amount of loss of dependency. The amount of compensation payable towards loss of future prospects will therefore be Rs.6,89,256/- (Rs.13,78,512 divided by 2).

15. Apart from this, amount of Rs.40,000/- each will be payable to the daughter – appellant No.1, parents – appellant Nos.2 and 3 and husband – respondent No.2 towards loss of consortium and in addition, amount of Rs.30,000/- is payable towards loss of estate and funeral expenses. The total amount of compensation payable on conventional heads is accordingly worked out to Rs.1,90,000/-.

16. Accordingly, the total amount of compensation payable is arrived at Rs.22,57,768/-.

17. The appeal is thus partly allowed in the following terms :

(i) The amount of compensation of Rs.17,41,363/- as awarded by the learned Member, Motor Accident Claims Tribunal, Jalna vide judgment and award dated 04/12/2014 in Motor Accident Claim Petition No.183/2011 and 190/2011 is enhanced by an amount of Rs.5,16,405/- (Rs.22,57,768/- minus Rs.17,41,363/-).

(ii) Respondent No.1 - MSRTC will be liable to pay interest at the rate of 6% per annum on the enhanced amount of compensation of Rs.5,16,405/- from 26/09/2011 i.e. date of filing of Motor Accident Claim Petition No.183/2019 till the date of realization of the said amount.

(iii) The amount of compensation will be distributed as under :

(a) Rs.40,000/- to respondent No.2 – husband of the deceased.

(b) Rs.2,00,000/-, Rs.1,00,000/- each to appellant Nos.2 and 3 – parents of the deceased.

(c) Balance amount of compensation of Rs.20,17,768/- to the appellant No.1 – daughter of the deceased.

(iv) Respondent No.2 is directed to deposit the Fixed Deposit Receipt/s (FDR) for the amount of compensation awarded to appellant No.1 with the office of this Court on or before 15/10/2026. The Fixed Deposit Receipt/s (FDR) be sent to the office of learned Motor Accident Claims Tribunal, Jalna till further orders to be passed by the learned Tribunal regarding disbursement of the entire amount.

(v) The additional amount of compensation to be paid to appellant No.1 – daughter be invested in a fixed deposit with a nationalised bank. The total amount of compensation awarded to the appellant No.1 be disbursed to her on attaining 25 years of age with accrued interest. It will be open for the appellant No.1 after attaining majority or the appellant No.2 and/or 3 during her minority to make application for withdrawal of amount before the learned

MACT. Such application if made, be decided on its own merit by the learned MACT.

(vi) In the meantime, appellant Nos.1 to 3 will be entitled to withdraw amount of Rs.10,000/- per month for maintenance of appellant No.1.

(vii) In the peculiar circumstances of the present case, parties shall bear their own costs.

18. The appeal is disposed of accordingly. Pending civil applications, if any, are disposed of.

(ROHIT W. JOSHI, J.)

**Gawade*