

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 469 OF 1998

M.S.R.T.C.THURU DIVL.CONTROLLER, AURANGABAD

VERSUS

ZAHEDA BEE SK.HAMID AND ORS.

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Advocate for Appellant : Mrs. Ranjana Reddy.

Advocate for Respondents 1 to 4 : Mr. A. A. Joshi

Advocate for Respondent No.5 Mr. S. S. Bedre

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CORAM : S. V. GANGAPURWALA, J.

DATE : 27th August, 2015

PER COURT :

1. The present respondents/claimants had filed petition under section 166 of the Motor Vehicles Act, seeking compensation on account of death of Shaikh Hamid who died while traveling in bus owned by the appellant MSRTC. The appellant MSRTC has filed appeal against the judgment of the tribunal awarding compensation of Rs.1,65,000/- with interest. The claimants have filed cross objection seeking enhancement of compensation.

2. Mr. P. K. Joshi, learned counsel for the appellant strenuously contend that the deceased was travelling on a foot of door of the bus and he fell down on account of his own negligence. The passenger is not supposed to travel on the foot of door of the bus. If the passenger travels on the foot of the door of the bus, he should be held to be negligent. It was not a case that the driver of the bus has applied the break. The deceased

himself contributed to the said accident. The tribunal also accepted the fact that the deceased was negligent and negligence should be also held to be contributory of the deceased. However, only on the ground that in one of the cases, this Court had held the Corporation to be liable when the person travelling on foot of door of a bus felled down i.e. in the case of **Mohamed Rafque Vs. Municipal Corporation of Greater Bombay, reported in 1986 A.C.J 1986 (2) 42**, the tribunal has held the respondent Corporation liable to pay the entire amount of compensation.

3. The learned counsel submits that the evidence of the conductor of the bus has not been appreciated in its proper perspective. The MSRTC could not have been held liable to pay the compensation amount.

4. Mr. A. A. Joshi, the learned counsel for the claimants, submits that as the bus was over crowded, there was no option for the passenger. In such case, the deceased was on the foot of the door of the bus and fell down because of the urgent breaks applied by the driver. The accident can be said an untoward incident. The learned counsel submits that the claimants have filed cross objection claiming enhancement of compensation amount. The deduction towards personal expenses ought not to be more than 10%. There are five claimants, one is subsequently expired. The deduction ought to be only 1/10. Learned counsel submits that salary income of the deceased ought to have been considered Rs. 2000/- per month and he was skilled workman, as a mistry. Under the non

pecuniary damages also, a paltry sum of Rs.10,000/- towards loss of consortium is granted. The same ought to be Rs. 1 lac. Learned counsel relied on the following judgments of Apex Court:

1. Rajesh Vs. Rajbir Singh, reported in 2003 (9) SCC 54,
2. Santosh Devi Vs.National Insurance Co. Ltd. & ors. reported in 2012 (3) Bom. C.R.698, and
3. Mohamed Rafque Vs. Municipal Corporation of Greater Bombay, reported in 1986 A.C.J 1986 (2) 42

5. With the assistance of learned counsel I have gone through the judgment. It is not disputed that the deceased was travelling on the foot of the door of the bus. The income has been properly considered by the tribunal. The deductions to be made depends upon facts and circumstances of each case and blanket rule cannot be applied.

6. The Tribunal, on appreciation of evidence, has held that the deceased was earning Rs.1500/- per month. The claimant No.1 has adduced evidence stating that deceased was earning Rs.400/- per week i.e.Rs.1600/- per month. The said amount has been rationally taken by the learned tribunal.

7. The deduction made is almost 50%. The Court held the monthly loss to Rs.850/-. The Court can consider that there were five claimants at

the relevant time. The Court ought to have deducted $\frac{1}{4}$ towards the personal expenses. As such, ought to have considered the loss of income upto Rs.1000 per month, which would come to Rs.12,000/- per year. The multiplier has to be applied also considering the distance of time and accident. The court has applied the multiplier 15 in this case. Though the same would be 17 as per the judgment of the Apex Court in the case of **Sarla Verma Vs. Delhi Transport Corporation**, reported in **(2009) 6 SCC 121**.

8. The Apex Court has held that the distance of accident also requires to be considered while applying the multiplier. I would take the multiplier as is applied by the tribunal. As such, loss of dependency would come to Rs.1,80,000/-. As far as loss of consortium and loss of love and affection is concerned, only Rs.10000/- and Rs.5000/- towards the funeral expenses is awarded. The Apex Court in the case of **Asha Verman Vs. Maharaj Singh reported in (2015) 42 SCD 537** held that for loss of love and affection, amount of compensation can be given up to Rs.1 lac each. Considering the time lag and the fact that it is a case of an accident of the year 1994, I would award compensation under the head of loss of love and affection as Rs.50,000/- each, that would come to Rs.2 lac. As such, the claimants are entitled for the total compensation of Rs.3,80,000/-. i.e. an enhanced compensation of Rs. 2,15,000/-. The claimants have paid Court fees on Rs.1,35,000/-, the claimants are bound to pay additional court fees on the enhanced compensation amount. The appellant MSRTC shall pay

additional compensation of Rs.2,15000/- to the claimants along-with interest at the rate of Rs.8% per annum from the date of filing of the appeal till realization. The said amount is excluding and in addition to the amount awarded by the Trial Court.

9. First Appeal and cross objections are accordingly disposed of. No costs.

10. The learned counsel for the claimants also submits that 50% of the future prospect has to be added. I am not inclined to consider the same as there is no evidence of the deceased being in permanent employment. The amount already deposited by the MSRTC is allowed to be withdrawn by the claimants in the proportion as directed by the trial Court.

11. The first appeal is accordingly disposed of. No costs.

(S. V. GANGAPURWALA, J.)

JPC