

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.688/2001

The Maharashtra State Road
Transport Corporation,
Ahmednagar Division, Ahmednagar,
Through Divisional Controller.

...Appellant..
(Org.opponent)

Versus

- 1] Smt.Shaila Suresh Sonsale,
age 52 yrs., occu.service,
- 2] Nilesh Suresh Sonsale,
age 23 yrs., occu.education,
- 3] Smt.Sushila Govind Sonsale,
age 70 yrs., occu.nil,
Died on 22.2.2006 and res.nos.1 & 2
are L.Rs. of res.no.3.

Respondent nos.1 & 2 r/o
Bhagyodaya Society, Bungalow No.11,
Nagar-Manmad Road, Ahmednagar.

...Respondents..
(Org.petitioners)

.....

Shri M.K. Goyanka, Advocate for appellant.
Shri U.S. Malte, Advocate for respondent nos.1 & 2.

.....

CORAM: M.T. JOSHI, J.

DATE: 05.03.2015

ORAL JUDGMENT :

1] Present appeal is preferred by the Maharashtra State Road Transport Corporation against the award passed against it u/s 166 of the Motor Vehicles Act, 1988. The respondent nos.1 to 3 had filed Cross Objections for enhancement of the compensation granted by the learned Tribunal.

2] The facts in nut-shell are as under:-

A] On 8.8.1989, deceased Suresh Sonsale was travelling by the Bus of the present appellant bearing registration No.MH-20-D-3367 from Pune to Alibag. When the Bus came near the village Sagaon, the Bus went out of the road and dashed to a tree. In the said accident, Suresh Sonsale died. According to the respondents - claimants, the accident had occurred due to the rash and negligent driving of the Bus and, therefore, the compensation was claimed.

B] As regards the quantum of compensation, it was submitted that at the time of death, the deceased was 56 years old. He was keeping good

- 3 -

health. He was serving with the State of Maharashtra in Soil Conservation office at Alibag as Assistant Auditor. His salary was Rs.14,000/- per month due to the increase in salary upon accepting the recommendations of the Fifth Pay Commission. The entire family was dependent upon him. There would have been increase in the salary in future and, therefore, composite compensation of Rs.8,00,000/- was claimed.

C] The present appellant contested the claim. It was submitted that the accident had not occurred due to rash and negligent driving of the Bus. In fact, the Bus driver was driving the same in a moderate speed. However, one luxury Bus came suddenly from the opposite side in high and excessive speed. Therefore, in order to avoid collision with the said luxury Bus, the driver of the Bus was compelled to turn his vehicle towards the extreme left side on Kacha road. The road was narrow and was slippery due to rains early in the morning and, therefore, despite taking due care and caution by the driver

- 4 -

of the Bus, the Bus went beyond the road and the accident had occurred. As regards the quantum, the same was also contested.

D] The learned Member of the Tribunal came to the conclusion that the accident had occurred due to rash and negligent driving of the Bus of the appellant. As regards the compensation, the Tribunal took into consideration the age of the deceased, his salary, loss of dependency, applied multiplier of seven and granted compensation of Rs.7,39,200/-. Hence, the present appeal.

3] Advocate Shri Goyanka submits that the evidence would clearly show that the accident had occurred in the process when the driver of the Bus of the appellant was attempting to avoid collision with the luxury Bus. He further submits that the evidence on record would also show that the respondent no.1 - the widow, was in fact employed and, therefore, she was earning family pension after retirement and he, therefore, submits that there is no dependency. He alternatively submits that though the learned Member concluded that the deceased was 55 years old at the time of accident, multiplier of seven is

- 5 -

applied as to the loss of dependency i.e. salary minus personal expenses, which is higher.

4] On the other hand, Advocate Shri Malte for the respondent nos.1 & 2 submits that the evidence on record would show that the accident had occurred due to rash and negligent driving of the Bus of the appellant. He submits that in view of provisions of Schedule II to Section 163-A of the Motor Vehicles Act, multiplier of eleven ought to have been applied. Hence, he submits that the appeal be dismissed and the Cross Objections be allowed.

5] On the basis of above material, following points arise for my consideration and my findings thereon are as under for the reasons recorded below.

Sr.N o.	POINTS	FINDINGS
1	Whether the accident had occurred due to rash and negligent driving of the Bus of the appellant ?	In the affirmative.
2	Whether the compensation granted by the learned Member of the Tribunal is just and proper ?	In the affirmative. Hence, the appeal as well as Cross Objections are dismissed without any order as to costs for the reasons to follow.

- 6 -

REASONS

6] The driver of the appellant deposed before the Court that the width of the road was 10 Ft. He was driving his Bus with a moderate speed between 15 to 20 Kms. per hour. However, as a luxury Bus came from the opposite side with excessive speed, which could not have been easily located due to the turn and the bridge, he took his Bus outside the road in order to avoid collision and, therefore, the accident had occurred.

7] The statement made by the driver to the Police was confronted to him in the cross-examination, which would go to show that as he applied brakes to the Bus, he lost control over the steering and the Bus left the road. The learned Member, therefore, disbelieved the version of the driver, which was belatedly made in the witness box. Besides this, it is also found in the certified copy of the panchanama of spot of occurrence recorded by the Police that the width of the road was not 10 Ft., but it was 27 Ft. including tar road of 22 Ft. width. All these facts would show that the driver of the appellant was rash and negligent in driving the Bus.

8] As regards the quantum, it should be noted that

- 7 -

the deceased was a State Government employee and was working as Assistant Auditor. Therefore, a document showing his date of birth could have been easily placed on record by the respondent nos.1 to 3. The learned Member in absence of the said document has taken into consideration the statement of the respondent no.1 – widow, that at the time of death of the deceased, she was 52 years old. Therefore, the age of the deceased i.e. her husband, was estimated at 55 years. Multiplier of seven was applied to the net salary, minus $1/3^{\text{rd}}$ of it towards the personal expenses.

9] While it is true that normally the deceased would have retired within three years, he could have gained pension for a period to come. Therefore, application of multiplier beyond three years is also a reasonable estimate.

10] Advocate Shri Malte, however, relies on Schedule II u/s 163-A of the Motor Vehicles Act. It should be noted that when we have definite evidence regarding the earning period of the deceased, the application of the multiplier as given in Schedule II cannot be considered. The learned Member has taken all the facts on record and

- 8 -

came to a right conclusion.

11] In the result, the appeal as well as the Cross Objections are hereby dismissed without any order as to costs.

(M.T. JOSHI, J.)