

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

FIRST APPEAL NO. 204 OF 2015

1. Anjali Ramesh Sulakhe .. Appellants
Age. 37 years, Occ. Household,
R/o. Chapkhana Galli, Tilak Road,
Beed.
2. Kum. Chaiti Ramesh Sulakhe
Age. 14 years,
Minor u/g or real mother
Claimant No.1.
3. Sunita Chandrakant Sulakhe
Age. 64 years, Occ. Household,
R/o. As above.

Versus

M.S.R.T.C. .. Respondent
Through The Divisional Manager,
Maharashtra State Road Transport
Corporation, Beed.

Mr. S.S. Gangakhedkar, Advocate for the appellants
Mr. D.S. Bagul, Advocate for sole respondent.

**CORAM : A.M. BADAR, J.
DATED : 17.11.2015**

ORAL JUDGMENT :-

1. Heard.

2. Admit. With consent of parties, taken up for final hearing, as record and proceeding is available.

3. By this appeal the original claimants are praying for enhancement of compensation awarded to them by learned Member of Motor Accident Claims Tribunal at Beed. For the sake of convenience the parties shall be referred to in their original capacity.

4. Facts in nutshell leading to institution of the present appeal can be summarized thus:-

. The claimants were dependents on deceased Ramesh Sulakhe, who was working as a Junior Clerk at Dwarkadas Mantri Rajasthani Higher Secondary School at Beed. He was proceeding to Kolhapur by S.T. Bus on 02.06.2010 for his medical treatment. According to the claimants, driver of S.T. Bus bearing registration No. MH-20-D-9839 owned by the respondent, drove it in rash and negligent

manner, thereby causing accident. The S.T. Bus dashed container truck, which was stationed on the road. Ramesh Sulakhe died in this vehicular accident. The claimants have lodged claim of Rs. 45,00,000/- towards compensation for death of Ramesh Sulakhe in the vehicular accident caused by S.T. Bus owned by the respondent.

5. By filing written statement, respondent-Corporation opposed the claim by contending that the driver of the S.T. was driving in slow speed but the container truck was standing on the road without any indicator or reflector. As such, the accident happened because of negligence of the driver of truck and not because of negligence of the driver of S.T.Bus. Rest of the adverse averments made by the claimants were denied by the respondent/owner of the S.T. Bus.

6. In order to prove their claim, claimant No.1 – Anjali entered into witness box. Claimants have also adduced evidence of Uttareshwar Sonawane and Sangita

Dhajkari in order to show that the deceased was earning some income by imparting tuition. The claimants have also examined Shivprasad Lahoti, Headmaster of Dwarkadas Mantri Rajasthani Higher Secondary School at Beed, where deceased Ramesh was working as Junior Clerk. In rebuttal, respondent – Corporation has adduced evidence of Dharmraj Galphade driver of S.T. Bus involved in the accident.

7. After considering the evidence on record, learned Tribunal recorded finding that the accident happened because of rash and negligent driving of S.T. Bus bearing registration No. MH-20-D-9839 owned by the respondent-Corporation. By assessing monthly income of deceased Ramesh at Rs. 9,856/-. Learned Tribunal awarded amount of Rs.11,82,720/- towards of loss of dependency. In addition, Rs. 1,00,000/- and Rs. 25,000/- were awarded towards loss of consortium and funeral expenses. As such the claimants were awarded total compensation of Rs. 13,07,720/- along with interest at the rate of 7% p.a.

8. Learned Counsel Mr.Gangakhedkar vehemently argued that learned Tribunal erred in considering salary certificate at Exh.89, which was of the month May, 2007. In-fact, at the time of death of Ramesh his salary was Rs.14,638/- as seen from salary certificate at Exh.88 proved by P.W.4-Shivprasad Lahoti. He further argued that even in pension papers of deceased, his last pay was shown at Rs.14,638/-. In submission of learned Counsel for the appellants, learned Tribunal erred in not awarding any amount towards loss of future prospects for advancement in life of the deceased. Similarly, no compensation was paid towards loss of love and affection. Meager amount was paid towards loss of consortium. Learned Counsel for the appellants further submitted that the Tribunal erred in awarding interest at the rate of 7% p.a. For support of these submissions, reliance was placed on judgment of the Hon'ble Supreme Court in the case of Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr., 2009 AIR (SC) 3104, Rajesh and Others Vs. Rajbir Singh & Others, 2013 ACJ 1403 and Asha

Verman & Ors. Vs. Maharaj Singh & Ors., 2015 (4) Scale 329.

9. Per contra, Mr. Bagul, learned Counsel appearing for respondent - MSRTC supported impugned award by contending that learned Tribunal has rightly taken into consideration salary at Rs.7,856/- for the month of May, 2007. He further argued that in-fact, learned Tribunal erred in considering Rs.2000/- as monthly income of deceased from music classes. In submission of learned Counsel for the respondent, learned Tribunal had granted just and reasonable compensation to claimants including interest at the rate of 7% p.a.

10. With the assistance of learned Counsels appearing for both the parties, I have carefully gone through record and proceedings. It is not in dispute that Ramesh Sulakhe died in the vehicular accident. Similarly it is not in dispute that deceased Ramesh was aged about 39 years at the time of his death. Evidence

of claimant - Anjali as well as that of CW-4 Shivprasad Lahoti goes to show that deceased Ramesh was working as a Junior Clerk with Dwarkadas Mantri Rajasthani Higher Secondary School at Beed. However, evidence of CW-4 Shivprasad Lahoti makes it clear that because of ill-health deceased Ramesh was on leave for a period of three years prior to his accidental death occurring on 03.06.2010. Evidence of CW-4 Shivprasad Lahoti, Headmaster of Dwarkadas Mantri Rajasthani Higher Secondary School at Beed shows that deceased Ramesh had drawn salary of May, 2007 lastly and that was amounting to Rs.7,856/-. This salary certificate is at Exh.89. Thereafter, deceased Ramesh was continuously absent from school and as such he was not paid any salary. The claimants have placed reliance on certificate dated 26.06.2010 issued by CW-4-Shivprasad Lahoti, the Headmaster of Dwarkadas Vidyalay, Beed. By this certificate, it was certified by the Head-Master that had the deceased been in service of the school, he would have earned salary of Rs.14,638/- as per 6th Pay Commission.

This certificate, as such, makes it clear that deceased Ramesh had not actually earned this salary as mentioned in the certificate Exh.88. Rather he was not earning any salary since prior to three years of his death. In such situation no fault can be found in finding of learned Tribunal that salary income of deceased was Rs.7.856/- p.m.

11. Evidence of claimant - Anjali coupled with evidence of CW-2-Uttareshwar and CW-3-Sangita goes to show that deceased Ramesh was imparting tuition in music and thereby earning some income. The Tribunal has assessed income from tuition earned by the deceased at Rs.2000/- and this finding is perfectly in consonance with evidence on record. Thus, learned Tribunal has rightly come to the conclusion that deceased Ramesh was earning income of Rs.9,856/- p.m.

12. Perusal of impugned award passed by the Member of Motor Accident Claims Tribunal goes to show that after

taking down income of deceased Ramesh at Rs.9,856/-, it was not proportionately increased in order to award future prospects of advancement in life and career of deceased. The Hon'ble Supreme Court in the matter of Sarla Verma (Supra), Rajesh (Supra) and Asha Verman (Supra) has consistently held that 50% of actual income needs to be added towards monthly income of the deceased for taking care of future prospects of advancement in life and career if the deceased was less than 40 years of age. As such 50% monthly income of deceased Ramesh needs to be added to his income in order to take care of loss of future prospects in life. Thus, total monthly income of deceased is assessed at Rs.14,784/- (Rs.9,856/- + Rs.4,928/-). As there were three dependents of deceased Ramesh, $1/3^{\text{rd}}$ amount needs to be deducted from this monthly income towards living expenses of deceased Ramesh. As such monthly loss of dependency of claimants is estimated at Rs.9,856/- and yearly loss of dependency of the claimants needs to be assessed at Rs. 1,18,272/-.

13. As deceased Ramesh was 39 years old at the time of his accidental death, proper multiplier would be 15 as held by the Hon'ble Apex Court in the case of Sarla Verma (Supra). Thus, total amount of loss of dependency of claimants is assessed at Rs. 17,74,080/- (Rs.1,18,272/- x 15) and as such claimants are entitled to Rs. 17,74,080/- towards loss of dependency.

14. Learned Tribunal has awarded Rs. 1 lakh towards consortium and Rs. 25,000/- towards funeral expenses, no fault can be found out with this Award. However, learned Tribunal has failed to award any amount towards loss of love and affection. Claimant No.2 is daughter and claimant No.3 is mother of deceased Ramesh. As such, an amount of Rs. 50,000/- is awarded to the claimants towards loss of love and affection.

15. Thus, the claimants are found to be entitled to total compensation of Rs. 19,49,080/-.

16. Learned Tribunal has awarded interest at the rate of 7% on the amount of compensation assessed by it. However, in the matter of National Insurance Co. Ltd. Vs. Dr. Ashok Raikar & Ors., 2012 ACJ 255 this Court and in the matter of Mohan Soni Vs. Ram Avtar Tomar & Ors., 2012 ACJ 583 the Hon'ble Apex Court has awarded interest at the rate of 9% p.a. on the amount of compensation assessed in case of vehicular accident. Considering prevailing rate of interest of bank at the time of accidental death of deceased, this Court finds it fit to award interest on the amount of compensation so assessed at the rate of 9% p.a.

17. In the result, the appeal is partly allowed. The impugned order of learned Tribunal is modified. The respondent shall pay an amount of Rs.19,49,080/- including NFL to claimants along with future interest at the rate of 9% p.a. from the date of filing of claim petition under section 166 of the Motor Vehicles Act till realization of entire amount. The amount of NFL deposited

by the respondent shall be adjusted in the amount already awarded, as on the date of payment. Out of amount under the award, an amount of Rs.5,00,000/- (Rupees Five Lakhs) be paid to claimant No.1-Anjali Ramesh Sulakhe and an amount of Rs.2,00,000/- (Rupees Two Lakhs) be paid to claimant No.3-Sunita Chandrakant Sulakhe by account payee cross-cheque. Rest of the amount be kept in fixed deposit in any nationalized bank in the name of claimant No.2-Ku. Chaiti Ramesh Sulakhe initially for a period of three years. She shall be entitled for quarterly interest thereon. The respondents shall pay proportionate costs to the claimants.

[A.M. BADAR, J.]