

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

FIRST APPEAL NO.60 of 2001

Venubai w/o Rangrao Patil
Age 41 years, Occu. Household,
R/o Nawalpura, Chopda,
District Jalgaon.

.. Appellant
(Orig. Petitioner)

Versus

1. Pandharinath Dattatraya Ahirrao,
Age 35 years, Occu. Driver,
R/o. Wanwade, Tal. Shirpur,
District Dhule.
2. M.S.R.T. Corporation Bombay
through Depot Manager, Dhule.
3. Shikhachand Gokuldas Jain,
Age adult, Occ. Trader,
Resident of Panchaleshwar Galli,
Chopda, District Dhule.
4. The New India Assurance Co. Ltd.,
Pune, Branch Dhule.
5. Rangrao Shankar Patil
Age 45 years, Occu. nil
R/o. Nawalpura, Tq. Chopda,
District Jalgaon.
6. Sunil Rangrao Patil,
Age : 19 years, Occu. Education,
R/o. Nawalpura, Tal. Chopda,
Dist. Jalgaon.

... Respondents
(Nos. 1 to 4 Ori. Opponents.
Nos. 5 and 6 Ori. Petitioners)

...

Mr. L.S. Mahajan, Advocate h/f Mr. Amol Sawant, Advocate
for Appellant;
Mr. D.S.Bagul, Advocate for Respondent No.2

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CORAM: P.R.BORA, J.

Dated : 05th April, 2016.

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JUDGMENT :

1) The original claimant No.1 in Motor Accident Claim Petition No.30 of 1994 have preferred the present appeal challenging the Judgment and Award passed in the said petition on 26.11.1999 by the Motor Accident Claims Tribunal, Dhule.

2) The appellant and respondent nos. 5 are the parents, whereas the respondent no.6 is the younger brother of deceased Chandrakant Rangrao Patil who died in a vehicular accident happened on 06.12.1993, within the jurisdiction of Police Station Thalner having involvement of a S.T. Bus bearing registration MH-20/A-4563 and a Jeep bearing registration No. MH-19/C-5517 (appellant, respondent no.4 and respondent No.6 are hereinafter referred to as 'claimants'). It was the case of the claimants before the Tribunal that, the alleged accident had happened because of the negligence on the part of the driver of the S.T. Bus, and they have therefore claimed compensation from the driver of the S.T. Bus and the

Maharashtra State Road Transport Corporation. Deceased Chandrakant was driving the Jeep involved in the alleged accident, at the time when accident happened. According to the claimants, the driver of the Bus was rashly driving the S.T. Bus at the relevant time and coming from the wrong side, he gave a dash to the Jeep, which was being driven by deceased Chandrakant and in the accident so happened, Chandrakant ultimately suffered the death. As stated in the claim petition, age of the deceased Chandrakant was 21 years on the date of accident. He was serving as a driver on the Jeep involved in the accident owned by original respondent no.3 and was receiving salary to the tune of Rs.1,600/- per month and also used to receive Rs.30 per day as daily Bhatta. It was the contention of the appellants before the Tribunal that, they were depending upon income of the deceased Chandrakant.

3) The claim petition was resisted by the S.T. Corporation mainly on the ground that, in occurrence of the alleged accident, there was absolutely no negligence on the part of driver of the S.T. Bus and the accident in question had happened because of the sole negligence of deceased

Chandrakant who was driving the Jeep involved in the alleged accident.

4) The learned Tribunal on the basis of the oral and documentary evidence adduced before it, partly allowed the petition. Learned Tribunal recorded a finding that, in occurrence of the alleged accident, the driver of the Jeep and the driver of the S.T. Bus both were equally responsible. Learned Tribunal assessed the dependency of the claimants on the income of deceased Chandrakant to the tune of Rs.500/- per month and by applying the multiplier of 16, assessed the dependency compensation to the tune of Rs.96,000/-. The Tribunal also awarded Rs. 4,000/- to the claimants towards the loss of love and affection, and thus assessed the total compensation of Rs. 1,00,000/- and awarded 50% of the sum to the claimants in view of the finding recorded by it that, for occurrence of the accident in question, rash and negligent driving of the deceased was equally responsible. Aggrieved by the judgment and award, the original claimants are before this Court in appeal.

5) Shri L.S. Mahajan, learned Counsel appearing for the appellant submitted that, the Tribunal has grossly

erred in recording a finding that, alleged accident had happened because of the equal negligence on the part of the driver of the S.T. Bus and the deceased who was driving the Jeep at the relevant time. Taking me through the evidence and particularly the averments in the spot panchanama, the learned Counsel sought to canvass that, on the basis of evidence, which was before the Tribunal, no such finding could have been recorded by the Tribunal holding deceased Chandrakant equally responsible for occurrence of the alleged accident. Learned Counsel submitted that, the situation on the spot clearly shows that, the S.T. Bus had entered on the wrong side and gave a dash to the Jeep. According to the learned Counsel, there was no negligence on the part of deceased Chandrakant in occurrence of the alleged accident.

6) The learned Counsel further submitted that, even in assessing the amount of compensation, the Tribunal has committed grave errors. The learned Counsel pointed out that, the Tribunal while assessing the compensation, deducted 2/3rd of the amount towards the personal expenses of deceased Chandrakant. Learned Counsel submitted that, it is wholly impermissible and was

against the settled principle of law. Learned Counsel further submitted that, having regard to the age of deceased Chandrakant, the Tribunal ought to have applied multiplier of 18, whereas the Tribunal has applied the multiplier of 16. Learned Counsel further submitted that, a very meager sum has been awarded by the Tribunal towards the loss of love and affection and has not awarded any amount towards the funeral expenses and also towards future prospects of deceased Chandrakant. Learned Counsel submitted that, a very reasonable sum was claimed by the claimants towards compensation, and in such circumstances, the Tribunal ought to have in toto awarded the claim so filed by the petitioners. The learned Counsel, therefore, prayed for enhancement of the compensation and to modify the award to that extent.

7) Shri Bagul, learned Counsel appearing for the Maharashtra State Road Transport Corporation supported the impugned judgment and Award. Learned Counsel submitted that, elaborate discussion has been made by the Tribunal, while deciding the issue of negligence in occurrence of the alleged accident. Learned Counsel submitted that, the Tribunal has rightly recorded a

conclusion that, in occurrence of the alleged accident , the driver of both the offending vehicles were responsible in equal proportion. Leaned Counsel further submitted that, the compensation assessed by the Tribunal is also just and fair and is based on the evidence brought before it and hence requires no interference. He, therefore, prayed for dismissal of the appeal.

8) After having heard the arguments advanced by the learned Counsel for the respective parties and on perusal of the record of the case and more particularly the evidence adduced in the matter, the questions for my determination are:

- (a) whether, the finding recorded by the Tribunal on the point of negligence can be upheld?
- (b) whether, the compensation awarded by the Tribunal can be said to be just and fair compensation?

9) In so far as the aspect of negligence in occurrence of the accident is concerned, the Tribunal has elaborately discussed the situation on the spot as is revealing from the spot panchanama and other relevant documents. After having read the discussion so made by the Tribunal, I do not find any infirmity in the finding

recorded by the Tribunal holding the drivers of both the vehicles, involved in the alleged accident, responsible in occurrence of the said accident in equal proportion.

10) However, the compensation determined by the learned Tribunal apparently appears to be unjust. The Tribunal has committed a grave mistake in deducting 2/3rd amount of the total income of the deceased towards his personal expenses. The Law on this point stand settled that, in case of deceased bachelor, the amount equal to one half of his income can be at the most deducted towards his personal expenses. Secondly, the Tribunal has applied a wrong multiplier. Considering that, deceased Chandrakant was aged about 21 years on the date of accident, the Tribunal must have applied the multiplier of 18 and not of 16. Thirdly, I find substance in the submission so advanced on behalf of the appellants that, the Tribunal has not awarded the just and adequate compensation under the head of loss of love and affection and has also not awarded any amount towards the funeral expenses. In my opinion, the impugned award needs to be modified on these counts.

11) As has come on the record and as has been proved by the original claimants, deceased Chandrakant was receiving salary to the tune of Rs.1,600/- per month. After deducting one half of the said amount towards the personal expenses, it has to be assumed that deceased must be spending the remaining amount on the welfare of his parents and younger brother. The claimants therefore said to be depending to that extent on the income of deceased Chandrakant. The claimants are therefore entitled for the compensation of Rs.1,72,800/- ($800 \times 12 = 9600 \times 18 = 1,72,800$). I further deem it appropriate to enhance the amount of Rs.4,000/- granted by the Tribunal towards the loss of love and affection to Rs.20,000/-. I am also inclined to award the sum of Rs.10,000/- towards the funeral expenses. The compensation amount in total thus, comes to Rs. 2,02,000/- ($1,72,800 + 20,000 + 10,000 = 2,02,000/-$). Deducting 50% of the said amount, the claimants are entitled to receive the sum of Rs.1,01,000/- jointly and severally from the respondent nos.1 and 2.

12) In the result, I hold the claimants entitled to receive the aforesaid amount of enhanced compensation to the tune of Rs.1,01,000/- jointly and severally from

respondent no.1 and respondent no.2 with the interest thereon at the rate of 9% per annum from the date of filing of the petition till its realization. The impugned Award stands modified to the above extent. Modified Award be prepared accordingly. Appeal is partly allowed to the aforesaid extent with proportionate costs.

(P.R.Bora)
Judge

SPR