

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

FIRST APPEAL NO. 498 OF 2005

Shri Shamrao Gangadhar @ Gangaram Shripat,
Age : 62 years, Occupation Nil,
R/o House No. 62/33, Dikonda Wada,
Chitale Road,
Ahmednagar – 414 001.

... Appellant

Versus

1. The Maharashtra State Road Transport Corporation, "WAHATUK BHAVAN"
Belasis Road, Mumbai.
2. Smt. Rekha Gangadhar Shripat,
Age : 35 years, Occp : Household work,
3. Smt. Rukmini Shamrao Shripat,
Age : 61 years, Occu : Household work,

Respondent Nos. 2 and 3 R/o 62/33,
Dikonda wada, Chitale Road,
Ahmednagar.

... Respondents

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Advocate for the appellant : Mr. K. G. Gawali and Mr. D. G. Nagode
Advocate for respondent No. 1 : Mr. M. K. Goyanka
Advocate for respondent Nos. 2 and 3 : Mr. D. R. Jaybhar
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CORAM : V. K. JADHAV, J.

DATED : 22nd MARCH, 2016

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and award dated 14.08.1998
passed by learned Member, Motor Accident Claims Tribunal,

Ahmednagar in M.A.C. Application No. 670 of 1992, the original claimant No.2 has preferred the present First Appeal.

2. Brief facts giving rise to the present appeal are as follows :

An accident had taken place on 12.05.1992 on Nagar-Pathardi road. On that day, deceased Gangadhar was coming to Ahmednagar from Bhingar on scooter bearing registration No. GBZ 5183. On the way, one S. T. Bus bearing registration No. MH-20-D-0399 coming from Ahmednagar side gave dash to the scooter, in consequence of which, deceased Gangadhar had sustained multiple injuries. He was immediately taken to Civil Hospital, Ahmednagar, where he succumbed to the injuries. The legal representatives of deceased Gangadhar preferred M.A.C. Application No. 670 of 1992 before the tribunal for grant of compensation on the count of death of Gangadhar in motor vehicle accident. Learned Member of M.A.C.T., Ahmednagar, by the impugned judgment and award dated 14.08.1998, partly allowed the M.A.C. Application, thereby directed opponent to pay a sum of Rs.1,02,600/- (inclusive of the amount under no-fault liability) together with interest thereon at the rate of 12% p.a. from the date of filing the application till its realisation and the proportionate costs. Being aggrieved by the quantum of compensation as well as the finding recorded by the tribunal, making

deceased Gangadhar responsible to some extent for the accident, the original claimant No. 2 has preferred this appeal.

3. Learned counsel for the appellant submits that deceased Gangadhar had not contributed negligence in any manner and the driver of S.T. Bus alone was responsible for the accident. Learned counsel submits that the accident was not the result of head on collision as observed by learned Member of the tribunal in the impugned judgment and award. Learned counsel submits that the tribunal has not considered the fact that there is a turn near the spot of accident and considering the width of tar road, which is hardly 20 ft., the tribunal ought to have held that the driver of S.T. Bus was solely responsible for the accident. Learned counsel further submits that though the claimant has deposed that deceased was serving in "Sudarshan Book Stall" and getting Rs.1200/- to 1500/- p.m. by way of salary, the tribunal has erroneously considered the income of deceased as Rs.1200/- p.m. Learned counsel further submits that the tribunal has committed grave mistake of law in applying multiplier 13 instead of 17. Learned counsel submits that so far as non-pecuniary damages are concerned, the tribunal has not awarded any compensation for "loss of consortium" and "loss of estate" and further awarded a very meager amount as "funeral expenses". Learned counsel, in order to substantiate his submissions, places reliance on

the decision in the case of ***Pramodkumar Rasikbhai Jhaveri vs. Karmasey Kunvargi Tak and others***, reported in ***AIR 2002 Supreme Court 2864***.

4. Learned counsel for the respondent-Corporation submits that even though the tribunal has observed in the impugned judgment and award that there was a head on collision between two vehicles, the tribunal held that the S.T. Bus driver was negligent to the extent of 75%, whereas, the scooter rider i.e. deceased Gangadhar was negligent to the extent of 25%. Learned counsel submits that considering the size of vehicles and the other circumstances on record, the tribunal has rightly considered contributory negligence on the part of deceased Gangadhar. Learned counsel further submits that the tribunal has considered the income of deceased Gangadhar on the basis of daily wages prevailing at that time as the claimants failed to bring on record satisfactory evidence to substantiate their contention that deceased Gangadhar was serving in one "Sudarshan Book Stall" on monthly salary of Rs.1200/- to 1500/-. Learned counsel submits that the tribunal has awarded just and reasonable compensation in the present case. Learned counsel submits that there is no reason for intervening in the impugned judgment and award. There is no substance in the appeal and the appeal is liable to be dismissed.

5. In view of the above, following points arise for my determination and I have recorded my findings to those points for the reasons given below :

	POINTS	FINDINGS
1.	Whether the appellant prove that the accident was the result of rash and negligent driving of S.T. Bus bearing registration No. MH-20-D-0399 by its driver alone?	Partly affirmative. (S.T. Bus driver was responsible for the accident to the extent of 75%.)
2.	Whether deceased Gangadhar has contributed to the cause of accident to the extent of 25%, as determined by the tribunal?	Partly affirmative. (Deceased Gangadhar was responsible for the accident to the extent of 25%)
3.	Whether the impugned judgment and award calls for any interference?	In the affirmative. (To the Extent of quantum of compensation.)
4.	What order ?	As per final order.

REASONS

6. It appears from the evidence that the said Nagar-Pathardi road at the spot of the accident is having 20 ft. of tar road having 5 ft.

kaccha strips on both sides. It is also recorded in the spot panchnama that the scooter involved in the accident was lying at a distance of 15 ft. facing towards Ahmednagar and at a distance of 7 ft. from the scooter, some blood stains were seen. It is also mentioned in the spot panchnama that the front bumper and front show of S.T. Bus found pressed and the S.T. Bus was found damaged to that extent. It is also recorded that in the same way, the scooter was also found damaged. Considering the width of road, learned Member of the Tribunal has rightly observed that the S.T. Bus driver could have avoided the accident by taking his bus towards left, but he has not done so. Thus, considering the position of vehicles after the accident and the evidence placed on record, it can be inferred that the accident was the result of head on collision as observed by the tribunal in the impugned judgment and award. However, considering the size of vehicles and the fact that the S.T. Bus driver could have avoided the accident by taking the bus towards extreme left side of the road, the S.T. Bus driver is held to be negligent to the extent of 75%, whereas, the scooter rider i.e. deceased Gangadhar is also held negligent to the extent of 25%. I do not find any fault in the said findings recorded by the tribunal. Learned Member of the Tribunal has rightly discarded the theory of overtaking of another truck at the time of accident by the scooter. I answer point Nos. 1 and 2 accordingly.

7. Claimant No.1-Rekha has deposed that deceased was doing service in one "Sudarshan Book Stall" on monthly salary of Rs.1200/- to 1500/- p.m., however, in order to substantiate the same, the claimants have not examined any witness, nor produced any documentary evidence before the tribunal. Consequently, the tribunal has considered income of the deceased by taking into account the minimum wages at the relevant time. In absence of any evidence about the income proof, minimum wages at the relevant time are required to be considered. I do not find that the tribunal has committed any mistake in considering the income of deceased Gangadhar as Rs.1200/- p.m. However, the tribunal has committed error in applying multiplier 13 instead of 17. Claimant No.1 has deposed that deceased Gangadhar was 30 years old at the time of his accidental death. The same is also recorded in the post mortem notes. Thus, deducting $\frac{1}{3}^{\text{rd}}$ amount of income on the count of his personal expenses, the amount of Rs.8,00/- corresponding to Rs.9,600/- per annum is the loss of dependency/income, and if the same is multiplied by 17, the same comes to Rs.1,63,200/-. It also appears that the tribunal has committed mistake in not awarding compensation under the head of "loss of consortium" and also for "loss of estate". The claimants are entitled for an amount of Rs. 25,000/- for "loss of consortium" and Rs.10,000/- for "loss of estate".

The tribunal has also awarded meager amount for “funeral expenses” and the same is required to be increased to Rs.10,000/-

8. Thus, the break up of compensation can be broadly categorized as under :

1	Loss of Dependency/Income	Rs.1,63,200/-
2	Loss of Love and Affection	Rs.10,000/-
3	Loss of Consortium	Rs.25,000/-
4	Loss of Estate	Rs.10,000/-
5	Funeral Expenses	Rs.10,000/-
TOTAL		Rs.2,18,200/-

Thus, the claimants are entitled for total amount of Rs.2,18,200/-, 75% of the which comes to Rs.1,63,650/-. Accordingly, I proceed to pass the following order :

ORDER

- I. The First Appeal is hereby partly allowed.
- II. The judgment and award dated 14.08.1998 passed by learned Member, MACT, Ahmednagar in M.A.C.

Application No.670 of 1992 is modified in the following manner:

The opponent is hereby directed to pay to the claimants-applicants a sum of Rs.1,63,650/- (inclusive of the amount under no-fault liability) together with interest thereon.

Claimant No.1 shall be paid 50% of the amount under award along with proportionate interest and the rest of the amount along with proportionate interest shall be paid to the claimant Nos. 2 and 3 in equal shares.

III. The rest of the judgment and award passed by the tribunal stands confirmed.

IV. Award be drawn up in the tune with above modification.

V. The First Appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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