

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

FIRST APPEAL NO.1406 OF 2007

1. Jija s/o Bhaurao Shelke,
Age 43 years, Occ. Labourer,
r/o Kumbephal, Tq. & Dist.
Aurangabad.
2. Jijabai w/o Jija Shelke,
Age: 40 years, Occ. Household,
r/o as above.

...APPELLANTS

(Org.Appellants No.1 & 2)

VERSUS

1. Maharashtra State Road Transport
Corporation, Divisional Office,
Aurangabad.
2. The Driver of Bus bearing No.
MH-20-A-4478 under employment
of Respondent no.1.

...RESPONDENTS

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Mr. A.A.Joshi, Advocate, for appellants.
Smt.Ranjana D.Reddy, Advocate for respondent
no.1.

...

CORAM: P.R.BORA, J.

Date of reserving the judgment:29/3/2016

Date of pronouncing judgment: 5/4/2016

JUDGMENT:

1. The original claimants in M.A.C.P.No.348/1998
decided on 31st January, 2002, by the Motor Accident Claims

Tribunal, at Aurangabad, have preferred the present appeal seeking enhancement in the amount of compensation awarded by the Tribunal.

2. The aforesaid claim petition was filed by the appellants seeking compensation amounting to Rs.1,50,000/- on account of the death of their only son, aged about 17 years, who had died in a vehicular accident happened on 22.7.1998 having involvement of S.T.Bus bearing Registration No.MH-20-4478. Though the respondent Corporation had raised a plea alleging negligence on the part of the deceased, the same has been turned down by the Tribunal. In so far as the assessment of compensation is concerned, though the claimants had claimed the compensation amounting to Rs.1,50,000/- (Rs. one lac, fifty thousand), which was including the amount of Rs.5250/- towards medical expenses, the learned Tribunal has awarded the total compensation amounting to Rs.1,06,000/-.

3. From the discussion made by the Tribunal, in paragraph no.6 of its judgment, it appears that the learned Counsel for the claimants had relied on the judgment in the case of **Haji Zainullah Khan Vs. Nagar Mahapalika, Allahabad (1994 ACJ 993)**. In the said matter, the age of the deceased on account of whose accidental death his legal heirs had claimed compensation, was 20 years old and was the student of B.Sc., First Year. The learned Tribunal has observed that the facts in the case before him were different and has further recorded that in his opinion, compensation of Rs.1,00,000/- (Rs. one lac) would be just and sufficient.

4. Shri A.A.Joshi, learned Counsel for the appellant, submitted that without any just and sufficient reason, the learned Tribunal has refused to award the compensation as was prayed by the claimants. The learned Counsel submitted that the claimant had made a claim of a very reasonable amount and not made any exorbitant demand and as such, whole of the claim should have been award. As against this, Smt. R.D.Reddi, learned Counsel appearing for respondent no.1 Corporation, submitted that the Tribunal has awarded just and reasonable amount considering the evidence before it and no interference is required in the impugned judgment and award.

5. Having considered the submissions made by the learned Counsel appearing for the respective parties, the only question for my determination in the present appeal is: whether the compensation awarded by the Tribunal is just and sufficient. Most of the facts involved in the matter are undisputed. Admittedly, the age of the deceased was 17 years old. There is further no dispute that he was the only son of the claimants i.e. the present appellants. The objection raised by the respondent Corporation alleging negligence on the part of the deceased has been turned down by the Tribunal against which the respondent Corporation has not preferred any appeal. Thus, the finding so recorded has attained finality.

6. It was the case of the claimants that, at the relevant time, the deceased was earning Rs.30/- per day. It is the further case of the claimants that the deceased was good at studies and would have certainly secured higher qualifications and, consequently, would have earned much more than what he was earning at the relevant time.

7. On perusal of the impugned award, it appears that the Tribunal has failed in considering the fact that the deceased was the only son of the claimants and that he was having bright future prospects. The Tribunal has further failed in considering that because of the accidental death of their only son, the claimants had suffered huge loss and are left with nobody to support them in their advanced age. It further appears to me that when the claimants had preferred the claim of a reasonable amount, at the first instance, the respondent Corporation should not have resisted the same on the point of quantum, and thereafter, even if it was resisted by respondent no.1, the learned Tribunal must have outrightly ignored the said objection and should have allowed the claim in toto. I am, therefore, inclined to allow the present appeal. Hence, the following order:

ORDER

- 1) The appeal is allowed with costs.
- 2) The amount of compensation is enhanced to Rs.1,50,000/- (Rs. one lac, fifty thousand) and respondent No.1 Corporation is directed to pay the balance amount of Rs.44,000/- (Rs. forty four thousand) to the appellants / claimants together with interest thereon at the rate of 9 per cent per annum from the date of the petition till its realization.
- 3) Modified award be prepared accordingly.

**(P.R.BORA)
JUDGE**