

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

FIRST APPEAL NO. 463 OF 1998

1. Vasant Bhagwant Pandav,  
Age 68 years, Occu: At present Nil,  
R/o Paithan, Taluka Paithan,  
District Aurangabad.
2. Mrs. Sushilabai Vasant Pandav,  
Age 57 years, Occu: Household,  
R/o as above,
3. Narendra s/o Vasant Pandav,  
Age 29 years, Occu: Education,  
R/o as above. ... Appellants

Versus

1. Maharashtra State Road Transport  
Corporation, (The Divisional  
Controller, Sarjepura,  
Ahmednagar).
2. Kisan Vishwanath Shelke,  
Age Major, Occu: Driver,  
R/o Paithan, District Aurangabad.
3. Ankush Aaba Jagdale,  
Age Major, R/o Karhade,  
Taluka Shirur,  
District Pune. (Deleted)
4. M/s. P. G. Roadways,  
Kundan, 180/1, Timber Market,  
M.P.Peth, Pune-2.
5. The United India Insurance Co. Ltd.,  
Kisan Kranti Building,  
Market Yard, Ahmednagar. ... Respondents

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Mr. M. D. Joshi, Advocate for the appellants  
Mr. M. K. Goyanka, Advocate for respondent No.1  
Mr. Mohit R. Deshmukh h/f Mr. S. G. Chapalgaonkar, Advocate for  
respondent No.5

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**CORAM : V. K. JADHAV, J.**  
**DATED : 18<sup>th</sup> APRIL, 2016**

**ORAL JUDGMENT:-**

1. Heard learned counsel for the respective parties.
2. Being aggrieved by the common judgment and order passed by the learned Member, M.A.C.T., Ahmednagar dated 30.11.1996 in M.A.C. Application Nos. 172 and 173 of 1990, the original claimants in M.A.C. Application No. 172 of 1990 have preferred this appeal to the extent of quantum of compensation.
3. Brief facts, giving rise to the present appeal, are as under:-
  - i) On 23.11.1989, claimant No.1 Vasant alongwith his daughter deceased Sunita were proceeding from Paithan to Pune in S.T. Bus bearing registration No. MCA 7656. Respondent No.2 was driving said S.T. Bus at the relevant time. On way, within the limits of village Kamargaon on Nagar-Pune road, one truck bearing registration No. MWQ-9601 came from opposite side and gave dash to the S.T. Bus. The said truck was being driven in rash and negligent manner in excessive speed by original respondent No.3 at the time of accident. In consequence of which, claimant No.1 Vasant was seriously injured. Moreover, his daughter Sunita sustained severe injuries in

the accident and succumbed to those injuries in the hospital while under treatment. The claimants, being legal representatives of deceased Sunita, preferred M.A.C. Application No. 172 of 1990 for grant of compensation under various heads before the M.A.C.T. Ahmednagar. Claimant No.1 Vasant had also preferred separate petition before M.A.C.T. Ahmednagar bearing M.A.C. Application No. 173 of 1990 for grant of compensation on account of personal injuries sustained by him in the said accident.

ii) Being aggrieved by the quantum, in respect of death claim, the original claimants have preferred this first appeal No. 463 of 1998.

4. Learned counsel for the appellant submits that claimant No.1 Vasant was performing Kirtan by visiting various villages and deceased Sunita was helping her father in arranging Kirtans and also used to help her mother in household work. The Tribunal has not considered her income for giving assistance to her father while performing Kirtan in various villages and also assisting mother in household work. Even the tribunal has not applied the multiplier method and no reasons are given in the impugned judgment and award causing departure from multiplier method. Learned counsel submits that even the tribunal has not awarded any compensation under non pecuniary heads.

5. Learned counsel for respondent-insurer submits that deceased Sunita was non-earning member in the family and at the time of her accidental death, she was taking education. The accident took place in the year 1989 and the income, which was required to be considered in respect of non earning member of the family, was introduced by way of amendment in the year 1994. Learned counsel for the insurer submits that the Tribunal has erroneously awarded interest at the rate of 12% p.a. instead of 9% p.a. Learned counsel submits that the tribunal has therefore, rightly awarded the lump sum compensation.

6. I have also heard learned counsel appearing for the M.S.R.T.C.

7. It is not disputed in the appeal that said accident was caused due to rash and negligent driving by the driver of truck alone, and the driver of S.T. Bus was not responsible for the accident.

8. Departure from multiplier method is permissible only in exceptional cases. In the case in hand, though there is death of a young girl of 20 years old, the Tribunal has awarded lump sum compensation of Rs.50,000/-. There is evidence that deceased Sunita was helping her father claimant No.1 Vasant in arranging

Kirtans in various villages and in that way her contribution is required to be considered. She was also assisting her mother in the household work. It would be appropriate if her income is considered at Rs.15,000/- per annum. Deceased Sunita was unmarried at the time of her accidental death and therefore,  $\frac{1}{2}$  of the amount is required to be deducted towards her personal expenses. Considering her age, the multiplier 18 would be appropriate in this case. In view of this, the claimants are entitled for amount of Rs.1,35,000/- towards loss of income/dependency.

9. It also appears from the impugned judgment and award that learned Member of the tribunal has not awarded any compensation under non-pecuniary heads. The claimants are entitled for an amount of Rs.10,000/- for love and affection and Rs.5,000/- for loss of estate and Rs.5000/- for funeral expenses. The claimants are, thus, entitled for total compensation of Rs.1,55,000/-. Hence, I proceed to pass the following order:-

### **O R D E R**

- I. The appeal is hereby partly allowed.
- II. The Judgment and award dated 30.11.1996 passed by learned Member M.A.C.T. Ahmednagar in M.A.C. Application No. 172 of 1990 is hereby modified in the following manner:-

Respondent Nos. 4 and 5 jointly and severally do pay the claimants in M.A.C. Application No. 172 of 1990 a sum of Rs.1,55,000/- (Rupees one lac fifty five thousand only) to the claimants with interest @ 9% p.a. from the date of filing of application i.e. from 20.04.1990 till realisation, and proportionate costs.

- III. Award be drawn up in tune with the above modification.
- IV. Appeal is accordingly disposed of.

**( V. K. JADHAV, J.)**

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