

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

FIRST APPEAL NO. 953 OF 2012

Maharashtra State Road
Transport Corporation,
Through its Divisional Controller,
Divisional Office,
At Nanded.

... Appellant

Versus

1. Neeta Govind Lonkar,
Age 51 years, Occu-Household,
2. Saurabh S/o Govind Lonkar,
Age 27 years, Occu-Education,
3. Monalisa D/o Govind Lonkar,
Age 25 years, Occu-Education,

All R/o. Lon (Bk) Tq. Vasmath,
District Hingoli, at present
Yeshwantnagar, Nanded.

... Respondents

.....
Advocate for the appellant : Mr. M. K. Goyanka & Mr. Manoj Shinde
Advocate for respondent Nos. 1 to 3 : Mr. G. R. Syed
.....

CORAM : V. K. JADHAV, J.

DATED : 29th MARCH, 2016

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and award passed by learned Member, Motor Accident Claims Tribunal, Nanded, dated 23.02.2012 in MACP No. 805 of 2009, the appellant-MSRTC has preferred this appeal. Respondents-original claimants have filed

cross objection to the extent of quantum of compensation.

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

On 09.05.2008, at about at about 1.30 p.m., deceased Govind was proceeding by his own Maroti Alto Car bearing registration No. MH-38/1575 from Aundha to Hingoli. On the way, within the limits of village Wagarwadi Tanda, one S.T. bus bearing registration No. MH-20/D-7517 came in high speed in rash and negligent manner from Hingoli side and gave dash to the car, in consequence of which, driver of the car by name Laxman Chauhan died on spot, whereas, deceased Govind sustained severe injuries and succumbed to those injuries in hospital. The respondents-original claimants filed MACP No. 805 of 2009 for grant of compensation under various heads *inter-alia* contending that deceased Govind was serving as Deputy Engineer in M.S.E.D. Company Limited, Hingoli and was drawing monthly salary at the time of his accidental death besides his income from agricultural land. The appellant-original respondent MSRTC strongly resisted the claim by filing written statement. The original respondent MSRTC resisted the claim on the ground that the car driver was at fault entirely and the driver of S.T. Bus was not at fault. Learned Member, MACT, Nanded, by impugned judgment and award dated 23.02.2012, partly allowed the claim petition with proportionate costs and thereby directed original respondent MSRTC to pay

compensation of Rs.18,08,556/- along with interest at the rate of 12% per annum from the date of application till its realization. Being aggrieved by the same, original respondent MSRTC has preferred the present appeal and the original claimants have filed cross objection to the extent of quantum.

3. Learned counsel for appellant MSRTC submits that the appellant MSRTC has examined the driver of S.T. bus as witness No.1 and also the conductor of said S.T. bus as witness No.2. Learned counsel submits that both of them have deposed that accident had taken place due to rash and negligent driving of the car driver and that the bus driver was not at fault. Learned counsel submits that the bus driver has deposed that the driver of car lost his control over his vehicle and dashed against the bus towards the front right side and, in fact, at the time of said accident, driver of the bus took his bus to the extreme left side of the road and actually stopped it. Learned counsel submits that the spot panchnama Exh.20 supports the case of appellant MSRTC. Learned counsel submits that it appears from the map drawn on the spot panchnama Exh.20 that S.T. bus was at the extreme left side of the road, whereas, the car left the tar road, entered in a road-side agricultural land and finally went in a ditch. Learned counsel submits that the tribunal has not considered the evidence of S.T. bus driver and conductor and

also not considered the contents of spot panchnama and erroneously arrived at the conclusion that S.T. bus driver was at fault to the extent of 70% and the car driver was at fault to the extent of 30%. Learned counsel submits that the driver of S.T. bus has not contributed negligence in any manner and the tribunal ought to have held that the driver of car was entirely responsible for the accident. Learned counsel submits that the driver of car was not having driving licence and his driving licence was expired just four months prior to the accident. Learned counsel submits that the same is an additional factor to consider the negligence on the part of the car driver. Learned counsel submits that the claim petition suffers from non joinder of necessary parties i.e. the owner and the insurer of car involved in the accident. Learned counsel submits that the tribunal has awarded exorbitant amount of compensation and also committed mistake in awarding interest at the rate of 12% per annum. Learned counsel for the appellant-MSRTC, in order to substantiate his submission, placed reliance on the decision in the case of ***Municipal Corporation of Greater Bombay vs. Shri Laxman Iyer and another***, reported in ***AIR 2003 SC 4182***.

4. Learned counsel for respondents-original claimants submits that the tribunal has considered the evidence of the driver and the conductor of S.T.bus and the documents such as spot panchnama,

F.I.R., and rightly held that the S.T. bus driver has contributed negligence to the extent of 70%, whereas, the car driver has contributed negligence to the extent of 30%. Learned counsel submits that the tribunal has not considered addition of 30% of income by considering the future prospects. Learned counsel submits that the tribunal has awarded meager amount for non pecuniary loss. Learned counsel submits that the tribunal has not considered agricultural income of deceased Govind. Learned counsel submits that the tribunal ought to have considered the loss of supervision in cultivation of agricultural land on account of untimely death of Govind. Learned counsel submits that deceased Govind was the owner of said car and there is no question of impleading him or his legal heirs as party to the claim. Learned counsel submits that the claimants, in fact, have taken risk in not impleading the insurer of said car as a party to the claim petition and in that way, lost the claim to that extent. Learned counsel submits that in that way, no prejudice was likely to be caused to the respondent MSRTC in any manner.

5. The following points arise for my determination and I have recorded my findings to those points for the reasons mentioned below :

POINTS	FINDINGS
1. Whether the claimants prove that due to rash and negligent driving of S. T. bus bearing registration No. MH-20 / D -7517 by its driver alone, the accident had taken place?	Partly affirmative. S.T. bus driver has contributed negligence to the extent of 70% and the car driver has contributed negligence to the extent of 30%.
2. Whether the claim petition is bad for non joinder of necessary party?	In the negative.
3. Whether the tribunal has rightly assessed compensation under various heads and correctly awarded interest?	Partly negative.
4. What order?	As per final order.

REASONS

POINT NO. 1.

6. The appellant MSRTC has examined Vishwanath Bhosale as witness No.1 to substantiate its contention that the accident had taken place due to rash and negligent driving of the car driver alone. Witness Vishnath Bhosale, driver of said S.T. bus has deposed that at about 12.30 hours, when his bus came within the limits of village Wagarwadi, at that time he saw that one car was coming from Parbhani side i.e. from the opposite side in high speed. He has further deposed that he, therefore, took his bus towards left side of the road by applying breaks and even then the car driver brought his

car towards wrong side of the road. He has further deposed that the car driver lost his control over his car and dashed against the bus towards the front right side and due to excessive speed of the car, the car went 100 feet in reverse direction and stopped in a road side ditch. It is difficult to say anything in case of an accident, however, in my opinion, even assuming that the care gave dash in high speed, the car would go in any direction except the reverse direction, and the same is only possible if the vehicle coming from opposite direction was also driven in speed and collision of both the vehicles had taken place. On careful perusal of spot panchnama and the map drawn on it, it appears that the bus was at the extreme left side of the road. It is pertinent to note that even though the car was extensively damaged in the accident and even the right side head light of the S.T. bus was broken, nothing was found near the bus where it was shown in the map drawn on the spot panchnama. Thus, the only inference that can be drawn is that, after the accident, the bus was taken to the extreme left side of the road. On noticing the damage caused to the S.T. bus, it appears that the S.T. Bus driver is also responsible for the accident. The front right side headlight was found to be broken and the body near the said right side headlight was found pressed. The road is south-north in direction. The S.T. bus is towards the eastern side of the road, whereas, the car is towards the western side of the road in a

roadside ditch. Thus, considering the case from any angle, the only irresistible inference could be drawn is that the S.T. bus driver was also responsible for the accident. Thus, considering the size of both the vehicles, learned Member of the tribunal has rightly considered that the S.T. bus driver has contributed negligence to the extent of 70% and the car driver, who died in the accident, has contributed negligence to the extent of 30%. It would be appropriate to mention here that after the accident, crime was registered against the driver of S.T. bus alone. Furthermore, even though it is considered that the licence of car driver was expired on the date of accident, it is not the case of appellant MSRTC that the car driver was not having driving licence at all. It is also not the case of appellant MSRTC that the accident had taken place because of untrained and inexperienced driving by the car driver. I answer point No.1 accordingly.

POINT NO. 2

7. I do not find that the claim petition suffers from non joinder of necessary parties. Deceased Govind himself was owner of the car. Driver of the car died on the spot in the said accident. In the event, the tribunal decides that the car driver was also responsible for the accident, the claimants have taken risk in not impleading insurer of the car as a party to the claim petition. In that way, no prejudice was likely to be caused to the appellant-MSRTC in any manner. It is the

claimants who are at loss and the claim petition is not bad for non joinder of the car insurer as a party to the claim petition. I accordingly, answer point No. 2 in the negative.

POINT NO.3

8. The salary certificate Exh. 29 and 37 shows that deceased Govind was drawing salary of Rs.33,743/- and the basic pay and Dearness Allowance of deceased Govind was Rs.32,126/-. I find no fault in the impugned judgment and award passes by learned Member of the tribunal while considering the salaried income of deceased. The extract of service book of deceased Govind was placed before the tribunal and the same is marked at Exh.36. As per the said extract, date of birth of deceased Govind was 09.07.1953. Since deceased Govind had crossed the age of 50 years at the time of his accidental death, there is no question of addition of income by considering the future prospects.

9. Learned Member of the tribunal has rightly considered the multiplier for the age group of 50 to 55 as laid down by the Supreme Court in the case of ***Sarla Verma (smt.) and others vs. Delhi Transport Corporation and another***, reported in ***2009 (6) SCC 121***.

10. Learned Member of the tribunal has, however, committed

mistake in awarding interest at the rate of 12% per annum. Learned Member of the tribunal has awarded meager amount under the heads of non-pecuniary loss. The same requires reconsideration. The respondents-original claimants are entitled for an amount of Rs.15,000/- for "funeral expenses" and Rs.15,000/- for "loss of consortium". Respondents-original claimants are also entitled for an amount of Rs.10,000/- under the "loss of estate". So far as income of deceased Govind from the agricultural land is concerned, claimant No.2 Sourabh, his own son, has admitted that after death of his father, he is personally cultivating the land and he has not deposed that due to lack of experience or the skilled supervision of his father, the claimants are facing loss in the agricultural income.

11. In view of the above discussion, the impugned judgment and award requires modification to the extent of rate of interest and the compensation under the heads of non-pecuniary loss as discussed above. I answer point No.3 accordingly and proceed to pass the following order:

O R D E R

- I. The First Appeal and the Cross Objection are hereby partly allowed.
- II. The judgment and award dated 23.02.2012 passed by

learned Member, MACT, Nanded in MACP No. 805 of 2009 is modified in the following manner:

Respondent do pay the compensation of Rs.18,39,056/- along with interest at the rate of 9% per annum from 30.10.2009 till its realization to the claimants-petitioners.

- III. Rest of the judgment and award passed by learned Member, MACT, Nanded in MACP No. 805 of 2009 stands confirmed.
- IV. Award be drawn up accordingly.
- V. Needless to say that the amount deposited in this Court shall be paid to the claimants.
- VI. The First Appeal and the Cross Objection stand disposed of.

(V. K. JADHAV, J.)

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