

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 896 OF 2002

1. Vandana w/o Suryakant Solav
Age 21 years, Occ. Household,
R/o. Barbadi, Tq. Purna,
District Parbhani
 2. Kishan s/o Suryakant Solav
Age 6 months, minor u/g. Of his
natural guardian and
mother claimant No.1
 3. Bhimrao Kashiba Solav
Age 50 years, Occ. Agriculture
R/o. Barbadi, Tq. Purna
district Parbhani
 4. Shantabai w/o Bhimrao Solav,
Age 40 years, Occ. Household
R/o. Barbadi, Tq. Purna
District Parbhani
- ...Appellants

versus

1. Gundappa s/o Mandolappa Samangave
Age major, Occ. S.T. Driver
C/o. S.T. Depot, Kinvat
District Nanded
 2. Maharashtra State Road Transport
Corporation,
Through the Divisional Controller,
Nanded Division, Nanded
 3. The Oriental Insurance Company Ltd.
Branch Office, Daulat Building
Shivaji Chowk, Parbhani
- ...Respondents

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Advocate for Appellants : Mr. A.R. Tapse h/f Mr. P.D. Suryawanshi

Advocate for Respondents : Mrs. Ranjana Reddy

Advocate for Respondents : Mr. A.G. Kanade

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CORAM : V. K. JADHAV, J.
DATED : 12th APRIL, 2016

ORAL JUDGMENT:-

1. Heard learned counsel for the respective parties.
2. Being aggrieved by the common judgment and award dated 12.1.1998 passed by learned Member, M.A.C.T. Latur in M.A.C.P. No. 145 of 1994 alongwith M.A.C.P. No. 110 of 1994, the original claimants in M.A.C.P. No. 145 of 1994, prefer this appeal to the extent of quantum.
3. Brief facts, giving rise to the present appeal, are as follows:-
 - a) Deceased Suryakant and deceased Gangadhar were cousins. Both of them were employed as Gramsevaks in the office of Panchayat Samiti, Vasmat, District Parbhani. On 12.3.1994, deceased Suryakant was riding his motor cycle bearing registration No. MH-22-A-5854, on Latur Nanded State Highway. Deceased Gangadhar was pillion rider. At that time one S.T. bus of Latur-Kinwat came from opposite direction in excessive speed and gave a dash to the motor cycle from front side. In consequence of which, deceased Suryakant died on the spot whereas deceased Gangadhar sustained injuries and

succumbed to them after 5/6 hours of the accident.

b. The legal representatives of deceased Suryakant filed claim petition bearing M.A.C.T. No. 145 of 1994 before M.A.C.T. Latur for grant of compensation under various heads. Respondent M.S.R.T.C. had strongly resisted the claim by filing written statement. The respondent M.S.R.T.C. had resisted the claim on the ground that the accident had taken place due to rash and negligent riding of motor cycle by deceased Suryakant. Furthermore, respondent M.S.R.T.C. also denied the claim of compensation under various heads. Learned Member of the Tribunal by its impugned judgment and award dated 12.1.1998 directed the respondent No.1 and 2 to pay compensation of Rs.1,54,000/- to the claimants alongwith interest. The appellants-original claimants preferred this appeal to the extent of quantum.

4. Learned counsel for the appellants submits that the Tribunal has considered the contents of spot panchnama and held that the driver of S.T. bus as well rider of motor cycle, both were negligent in driving their respective vehicles. Learned counsel submits that the contents of spot panchnama indicates that the driver of S.T. bus alone was responsible for the accident and deceased Suryakant had

not contributed negligence in any manner. Learned counsel submits that deceased Suryakant was serving as Gramsevak and he was drawing regular salary. Even though salary certificate is produced on record, the same is not considered by the Tribunal in its proper perspectives. Learned counsel submits that even Tribunal has not considered the future prospectus and made addition in the income of deceased Suryakant. The Tribunal has not considered the income of deceased Suryakant from agriculture source. Learned counsel submits that deceased Suryakant was personally cultivating his agriculture land and 7x12 extract to that effect is produced before the Tribunal. Learned counsel submits that the Tribunal has not awarded compensation, under non pecuniary heads, such as loss of estate, loss of love and affection etc.

5. Learned counsel for the respondent M.S.R.T.C. submits that the Tribunal has correctly held that the driver of S.T. bus as well as rider of motor cycle both have contributed the negligence. Learned counsel submits that the Tribunal has appreciated documentary evidence in its proper perspectives. The Tribunal has not committed any error in arriving at the conclusion that the driver of S.T. bus was responsible to the extent of 70% and the rider of motor cycle has contributed negligence to the extent of 30%. The Tribunal has considered the take home salary of deceased Suryakant and also

considered the admission given by P.W.1 Vandana in her cross examination. Learned counsel submits that deceased Suryakant was spending near about Rs.1500/- for the purpose of transportation etc. and therefore, he used to contribute Rs.1000/- p.m. for house expenses and maintenance of family members. The Tribunal has therefore, rightly considered dependency of only Rs.12,000/-. So far as the income from agricultural source is concerned, even after death of Suryakant, the corpus of land remained as it is and parents i.e. claimant Nos. 3 and 4 were cultivating the land and fetching the income as it was prior to the accidental death of deceased Suryakant. Learned counsel submits that the Tribunal has correctly appreciated the evidence and accordingly awarded just and reasonable compensation. Learned counsel submits that no interference is required in the appeal and the appeal is liable to be dismissed.

6. It appears from the evidence that respondent M.S.R.T.C. has examined driver of S.T. bus involved in the accident. According to the driver of S.T. bus, he had seen two motor cycles coming from front side at the time of accident, riding by their respective riders parallel to each other and they were talking to each other. He has further deposed that he therefore, lowered down the speed of S.T. Bus and took the S.T. bus at the extreme left side of road when he noticed

that motor cycle riders were not attentive. According to him, the motorcycle drivers parted their ways and one of them gave dash to the corner of the driver side of his S.T. Bus. However, the contents of the spot panchanama speaks for itself. The blood stains were found on the middle portion of road, as observed by the Tribunal. As per the version of driver, if he took the S.T. bus towards extreme left side of road, then there is no question of blood stains found on the middle portion of road. Thus, the only irresistible inference could be drawn that the accident had taken place in the middle portion of road. Furthermore, the inference also could be drawn that the motor cycle was also not on the extreme left side of road. I do not find any fault in the findings recorded by the Tribunal that the driver of S.T. Bus was liable to the extent of 70% and rider of the motor cycle contributed negligence to the extent of 30%.

7. On perusal of salary certificate Exh.42, it appears that deceased Suryakant was serving as Gramsevak on the establishment of Panchayat Samiti Vasmata and he was drawing gross salary of Rs.2741/-. His date of appointment is on the salary certificate is 6.2.1991. Even professional tax of Rs.40/- is deducted, then it is clear that deceased Suryakant was getting salary of Rs.2700/- p.m. The date of birth of deceased Suryakant is mentioned in the salary certificate and the same is not disputed. His

date of birth is 22.10.1969. It thus appears that deceased was 26 years of age at the time of his accidental death. In view of this, the Tribunal should have added 50% of his salaried income towards future prospectus. Furthermore, 7x12 extract is produced on record, which shows that deceased Suryakant was owner in possession of land admeasuring 1 H 80 R and he was personally cultivating the same. Learned counsel for the respondent M.S.R.T.C. has rightly pointed out that there is no total loss of agriculture income, as the corpus of land remained as it is and appellants are competent enough to cultivate the land and fetch the income even after death of Suryakant. However, in my opinion, the Tribunal should have considered the loss on account of lack of supervision by deceased Suryakant. It would be appropriate to add Rs.500/- p.m. as loss of income towards supervision charges.

8. In view of the above discussion, the monthly income of deceased Suryakant thus comes to Rs.4550/- and after deducting his 1/3 personal expenses, the monthly income comes to Rs.3,033/-, correspondence to Rs.36,396/- per year. Considering the age of deceased Suryakant, the Tribunal has correctly applied multiplier 17. The the total income, as worked out above, comes to Rs.6,18,732/- (Rs.36,396x17= Rs.6,18,732/-). Deceased Suryakant had contributed negligence to the extent of 30%. Thus, after deducting the

contribution to the extent of 30% in causing the accident, total loss of income/dependency comes to Rs.4,33,112/- rounded up to Rs.4,33,000/-. It also appears that the Tribunal awarded Rs.16,000/- only as loss of consortium. Under the heads of loss of estate, loss of shelter and loss of love and affection, the claimants are entitled for compensation. The claimants are thus entitled for Rs.10,000/- for loss of love and affection for claimant No.2, Rs.10,000/- for loss of shelter for claimant Nos. 3 and 4 and for Rs.10,000/- for loss of estate.

9. Thus, the break up of compensation, which can be broadly categorized, is as under:-

i)	Loss of income/dependency	Rs. 4,33,000.00
ii)	Loss of consortium	Rs. 16,000.00
iii)	Loss of love and affection for claimant No.2	Rs. 10,000.00
iv.	Loss of shelter for claimant Nos. 3 and 4	Rs. 10,000.00
v)	Loss of estate	Rs. 10,000.00

		Rs. 4,79,000.00
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10. Thus the claimants are entitled for total compensation of Rs.4,79,000.00 (Rupees Four lacs seventy nine thousand only). In view of the above, I proceed to pass the following order:-

O R D E R

- I. The first appeal is partly allowed with proportionate costs.
- II. The judgment and award dated 12.1.1998 passed by the Member, M.A.C.T. Latur in M.A.C.P. No. 145 of 1994 is modified in the following manner.

The claimant Vandana Suryakant Solav and others in M.A.C.P. No. 145 of 1994 do recover Rs.4,79,000/- (Rupees Four lacs seventy nine thousand only) from respondent Nos. 1 and 2 jointly and severally alongwith proportionate costs with interest @ 12% p.a. from the date of petition till realization of entire amount.

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up in tune with the modification of award.
- V. Appeal is disposed of accordingly.

(V. K. JADHAV, J.)