

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

FIRST APPEAL NO. 1941 OF 2015

NANDUBAI W/O BHIMSEN BERAD @ BODARE AND
ORS

VERSUS

MAHARASHTRA STATE ROAD TRANSPORT
CORPORATION, OSMANABAD AND OTHERS

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Advocate for Appellants : Mr S B Bhosale

Advocate for Respondents : Mr Bagul D S For R/1,
Mr Santosh C Bhosale For R/3

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CORAM : V.K. JADHAV, J.

Dated: June 13, 2016

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PER COURT :-

1. With the consent of learned counsel for parties,
heard finally.

2. Being aggrieved by the Judgment and Award dated
14.3.2008 passed by the Adhoc District Judge-3
Member, Motor Accident Claims Tribunal, Osmanabad
in MACP No.268 of 2002, the original claimants
preferred this appeal to the extent of quantum.

3. Brief facts, giving rise to the present appeal, are as
under :-

a] On 21.1.2002 deceased Bhimsen had been to

Bhoom for his personal work. After completing his work at Bhoom, he had started returning to his village in a jeep bearing registration No.MH-25/A-945. On way, when the said jeep reached in hilly area of Kunthalgiri Ghat situated on District Road No.8 at about 04.30 to 05.00 p.m., one S.T.Bus bearing registration No.MH-20/D-1647 came from the opposite direction in a high speed. The driver of the S.T.Bus was driving the said bus in a rash and negligent manner and consequently bus gave dash to the Jeep by its driver side by coming to the wrong side of the road. It has contended that, accident occurred only on account of rash and negligent driving of the driver of the S.T.Bus. In consequence of which, deceased Bhimsen has sustained severe injuries in the accident. He was immediately shifted to Rural Hospital, Washi and there from to Civil Hospital Osmanabad, however, he succumbed to the injuries in Civil hospital, Osmanabad.

b] At the time of accident, deceased Bhimsen was 45 years old and he was getting military pension of Rs.4,946/- p.m. Besides that, he was having 4 acres 20

gunthas of land at village Ramkund and he was getting agricultural income from it. He was also doing milk business and was getting Rs.5,000/- to Rs.6,000/- p.m. Thus, the claimants, who were entirely depending upon the earning of deceased Bhimsen, preferred a claim petition before the Tribunal, Osmanabad for grant of compensation under various heads.

c] Respondent MSRTC has strongly resisted the claim by filing written statement at exh.13. It has contended that deceased Bhimsen who was driving the jeep at the time of accident alone responsible for the accident. It has further contended that the driver of the bus was not at all responsible for the accident. It has also contended that the claim is very excessive. It is further contended that, the respondent-MSRTC is not liable to pay any compensation to the claimants.

d] Respondent no.2-insurer has also resisted the claim on the same ground that deceased was the owner/insured and also the driver of the jeep at the relevant time of accident and as such risk of the owner

is not covered under the policy issued by it.

d] The learned Member of the Tribunal by its impugned judgment and award dated 14.3.2008 partly allowed the claim petition and thereby directed the respondent No.1 M.S.R.T.C. to pay the claimants an amount of Rs.1,60,500/-(Rs. One Lac sixty thousand five hundred only) alongwith interest. Being aggrieved by the same, the claimants preferred this appeal to the extent of quantum.

4. Learned counsel for the appellant submits that, the accident had taken place in Kunthalgiri area situated on District Road No.8. Learned counsel submits that, jeep involved in the accident was on the ascending side of the road, whereas the S.T.Bus was on the descending side of the road. Learned counsel submits that since the jeep was proceeding on ascending side, it was in a very slow speed. Learned counsel submits that S.T. Bus was on slope road and driver of the S.T.Bus had driven it in high speed and, therefore, he could not control his vehicle, consequently,

bus gave dash to the jeep from its driver side. Learned counsel submits that, respondent M.S.R.T.C. has not examined the driver of the S.T.Bus and has examined the conductor of the S.T.Bus who had no opportunity to witness the accident. Learned counsel submits that, the learned Member of the Tribunal has committed grave mistake in concluding that both the drivers of the vehicles are equally responsible for the accident. Learned counsel further submits that, the Tribunal has not considered that deceased Bhimsen was a retired military man and he was getting near about Rs.5,000/- p.m. pension. Learned counsel submits that, the Tribunal has not considered the income of the deceased from agricultural source and from milk business. The Tribunal has erroneously considered the notional income of Rs.3,000/- of deceased Bhimsen and thus awarded a meager amount of compensation to the claimants who were entirely depending upon the earnings of deceased Bhimsen.

5. Learned counsel for respondent M.S.R.T.C. submits that, the Tribunal has considered the contents

of spot panchnama and map drawn on it. Learned Member of the Tribunal has rightly considered that both the drivers are equally responsible for the accident and accordingly awarded compensation to the extent of 50%, as worked out by the Tribunal, to the claimants. Learned counsel submits that, the driver of the S.T.Bus after the accident left the job and therefore, the respondent M.S.R.T.C. has examined conductor who had also witnessed the accident. Learned counsel submits that, the claimants have not produced any documents to substantiate their claim nor produced 7/12 extract of the agricultural land to prove the income from the same. Claimants have also not produced any income proof of the milk business of deceased. Consequently, learned Member of the Tribunal has rightly considered the income of the deceased as Rs.3,000/- p.m. as notional income and accordingly awarded just and reasonable compensation. Learned counsel submits that, there is no substance in the appeal and the appeal is thus liable to be dismissed with costs.

6. I have also heard learned counsel for respondent no.3.

7. On 21.10.2002 said S.T.Bus was proceeding from Kunthalgiri towards Bhoom. In the hilly area of Kunthalgiri, bus was proceeding on descending side of road. It is also not disputed that jeep involved in the accident was on the ascending side of the road and the jeep was full with the passengers. Obviously, it was not possible for the driver of the jeep to drive said jeep in high speed. It is true that, speed is not the only criteria to decide the negligence. However, the claimants have examined one Tulshiram Hake who was the eye witness to the accident. He was working as a Gangman and he was present there on the road at the time of accident. He was removing grass and stones near the spot alongwith one R.V. Khandekar. He has deposed that, at the time of accident bus was coming from slope road and it was in high speed and said bus gave dash to the jeep. He has further deposed that after giving dash to the jeep said S.T.Bus dragged the jeep ahead. He has further deposed that, S.T.driver thereafter took the said

bus in a reverse direction. P.W. 2 Tulshiram is most independent witness and he has no reason to support the claimants or respondent MSRTC. If at all driver of the ST bus, after accident took his bus in reverse direction to some extent, then whatever the situation or the location of the vehicles on the spot would be meaningless. I do not think that the contents of spot panchnama indicates correct and true position.

8. Respondent M.S.R.T.C. has examined one Udaykumar Solapure who was conductor of the said bus at the time of accident. He was sitting near the left side front door of the bus. According to him he saw one jeep coming from opposite direction in zig zag manner and there was near about 25 persons in the said jeep and said jeep given dash to the driver side of the Bus. The same appears to be improbable for the reason that, if there were 25 persons in the jeep and, if, the jeep was on ascending side of the road, then, it is difficult to accept that the jeep at the time of accident was coming in zig zag manner and in a high speed. It further reveals from his testimony that, said jeep had near

about completed three curves of the said hilly area and the jeep was on the last upward curve of said ghat. The bus was on a slope road. I do not think that both the drivers thus contributed negligence equally. In the given set of facts, it cannot be said that driver of the jeep i.e. deceased Bhimsen had not contributed negligence at all. Deceased Bhimsen was driving the jeep in hilly area when the jeep was crowded with 25 passengers at the time of accident. It is difficult to drive the vehicle like jeep when the same is over crowded with passengers. However, considering the facts and circumstances of the case, in my opinion, driver of the S.T.Bus contributed negligence to the extent of 75% whereas driver of the jeep had contributed negligence to the extent of 25%.

9. So far as income of the deceased Bhimsen is concerned, the claimants have failed to substantiate their contentions that deceased Bhimsen was getting some amount as pension from military. Furthermore, the claimants have not produced on record 7/12 extracts of the land owned and possessed by the deceased Bhimsen. Furthermore, there is no evidence

at all to show that deceased Bhimsen was selling milk and earning Rs.5,000/- to 6,000/- p.m. It has stated that, deceased Bhimsen was having 4 cows and he was selling 20-25 liters of milk to the village in the society and earning Rs.5,000/- to Rs.6,000/-. However, the claimants have not produced on record receipts issued by the milk society nor produced any document to show that deceased Bhimsen was having 4 Jersey cows and he was doing business of selling milk. In absence of income proof, the Tribunal has rightly considered the notional income of deceased Bhimsen at Rs.3,000/- p.m. Learned Member of the Tribunal has deducted $1/3^{\text{rd}}$ of amount towards personal expenses, however, considering the dependency, the Tribunal should have deducted $1/4^{\text{th}}$ of the amount towards personal expenses. Even the tribunal has applied multiplier '13' instead of multiplier '14'. In the light of the observations made by me in the foregoing paragraphs, 25% of the amount is liable to be deducted towards negligence contributed by deceased Bhimsen while driving the jeep at the time of accident. In view of the above, re-calculation of the compensation awarded by

the Tribunal is necessary.

10. Notional income of deceased Bhimsen if considered as Rs.3,000/- p.m., and if the $\frac{1}{4}$ th of the amount of the same is deducted towards his personal expenses, then amount of Rs.2,250/- corresponding to (Rs.2,250 x 12) 27,000/- p.a. comes as loss of income. If multiplier '14' is applied then, comes to Rs.3,78,000/- total amount of compensation. Considering the negligence contributed by deceased Bhimsen, the claimants are entitled for the compensation to the extent of 75% of the total amount of compensation. In view of this, the claimants are entitled for total amount of compensation towards loss of future income/dependency to the tune of Rs.2,83,500/-.

11. So far as the compensation awarded under the non pecuniary heads are concerned, the Tribunal has awarded very meager amount towards loss of consortium, funeral expenses and for loss of estate. It further appears that the Tribunal has not awarded the compensation towards loss of love and affection so far as

minor claimants no.3 and 4 are concerned. Claimant no.1 is entitled for an amount of Rs.20,000/- for loss of consortium. The claimants are entitled to Rs.10,000/- towards funeral expenses for the reason that after the accident deceased Bhimsen was taken to District Head quarter and after his death his dead body was brought to his village for funeral. It would be appropriate that Rs.5,000/- is awarded for loss of estate, Rs.10,000/- each to respondents no.3 and 4 minor claimants for loss of love and affection.

12. In view of the above, break up of compensation which can be broadly categorized is as under :-

Loss of future income/dependency	Rs.2,83,500/-
Loss of consortium	Rs.0,20,000/-
Funeral expenses	Rs.0,10,000/-
Loss of Estate	Rs.0,05,000/-
Loss of love and affection Rs.10,000 each for minor claimants no.3 and 4.	Rs.0,20,000/-
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	Rs.3,38,500/-
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(Rs. Three lac thirty eight thousand five hundred only)

13. In view of the above, I proceed to pass the

following order.

ORDER

I. First Appeal is hereby partly allowed with proportionate costs.

II. The Judgment and Award dated 14.3.2008 passed by the Adhoc District Judge-3 and Member, Motor Accident Claims Tribunal, Osmanabad in MACP No.268/2002 is hereby modified in the following manner :-

“Respondent No.1 M.S.R.T.C. is directed to pay the claimants No.1 to 4 and 6 an amount of Rs.3,38,500/- Rs. Three lac thirty eight thousand five hundred only) inclusive of 'No Fault Liability' alongwith the interest @ 7.5.% p.a. from the date of filing of the petition till realization of the amount.

III. Rest of the Judgment and award passed by the Tribunal stands confirmed.

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

V. Appeal is hereby disposed of accordingly.

(V.K. JADHAV, J.)

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aaa/-