

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 1225 OF 2006.

Maharashtra State Road Transport
Corporation, Through Divisional Controller,
MSRTC, Ahemadnagar Division,
Ahemadnagar.

**....Appellant.
(Ori. Respondent)**

Versus

1. Sunita Somanath Sonawane
Age-36 Yrs., Occu - Household,
2. Kum. Rajashri Somnath Sonawane
Age- 16 Yrs., Occu - Education,
3. Ganesh Somnath Sonawane
Age- 14 Yrs., Occu - Education,
4. Shraddha Somnath Sonawane
Age- 9 Yrs., Occ - Education,

(Respondent No. 2 to 4 minors, through
their guardian respondent No.1.)
All R/o. Shirdi, Tq. Rahata,
Dist. Ahmednagar.

**....Respondents.
(Ori. Applicants)**

Mr. M.K. Goyanka, Advocate for appellant.
Mr. Rahul Tambe, Advocate for Respondents Nos. 1 to 4.

WITH
FIRST APPEAL NO. 999 OF 2009.

1. Sunita Somanath Sonawane
Age-37 Years, Occu - Household,
2. Kum. Rajashri Somnath Sonawane
Age- 21 Years, Occu - Education,
3. Ganesh Somnath Sonawane
Age- 21 Years, Occu - Education,

4. Shraddha Somnath Sonawane
Age- 16 Years, Occ - Education,

All R/o. Shirdi, Tq. Rahata,
Dist. Ahmednagar.

**...Appellants.
(Ori. Claimants)**

VERSUS

1. Shaikh Mohammad Maheboob
(Deleted vide order below Exh.12)
2. Maharashtra State Road Transport
Corporation, Through Divisional Controller,
MSRTC, Ahemadnagar Division,
Ahemadnagar.

**....Respondent.
(Ori. Respondent)**

Mr. R. A. Tambe, Advocate for appellants.

Mr. M. K. Goyanka, Advocate for Respondent No. 2.

CORAM : T.V. NALAWADE, J.

DATED : 14th January 2016.

JUDGMENT :

1) First Appeal No. 1225/2006 is filed by Maharashtra State Road Transport Corporation (M.S.R.T.C.), the owner of offending vehicle and the other appeal bearing No. 999/2009 is filed by the original claimants for enhancement of compensation. Both the sides are heard.

2) The accident took place on 30.12.2000 within local jurisdiction of Kotwali Police Station, Ahmednagar. Deceased Somnath was a pillion rider on motorcycle of his friend and

accident took place at 11.00 p.m. on Ahmednagar - Pune road near Kedgaon village. It is contended that bus of M.S.R.T.C. bearing No. MH-12/F-8121 gave dash to the motorcycle from backside and in the accident, Somnath died.

3) It is the case of claimants that the age of the deceased was 45 years and he was making income from various sources like transport business, brick kiln business, agriculture and from paper agency business. It is contended that the monthly income of the deceased was more than Rs. 8,000/- and all the claimants were depending for their livelihood on the income of the deceased. The claim was filed by the widow aged about 36 years and and three minor issues of the deceased. The compensation of Rs. 10,00,000/- was claimed.

4) M.S.R.T.C. had contested the matter. It had contended that there was no negligence on the part of bus driver. It was contended that the motorcycle skidded due to the rain water and the bus was not involved in the accident. Other contentions made regarding the quantum of compensation were also denied.

5) Before the Tribunal, the claimants gave evidence and

they placed reliance on police papers. They produced the record in respect of some sources of income. They produced the record like registration particulars of truck showing that trucks, goods carrier were standing in the name of deceased and he had obtained permission for transport business. They produced 7/12 extract to show that the deceased and his brothers were having brick kiln in Survey No. 77/3.

6) The Tribunal has considered the circumstance like no record of exact income from the brick kiln business was produced by the claimants. Similarly, there was no record of exact income made in transport business. On the basis of 7/12 extract in which brick kiln is mentioned, the Tribunal presumed that minimum income from that business was Rs. 20,000/- p.a. and on the basis of record like R.T.O. record, the Tribunal presumed that he was earning income from transport business and it was Rs. 50,000/- per annum. Thus, the Tribunal presumed annual income of Rs. 70,000/-. The Tribunal deducted 1/3rd amount for personal expenses of the deceased and held that the annual income of the deceased was around Rs. 46,000/-. In view of the age of the deceased, which was around 45 years, the Tribunal adopted 15 as a multiplier. However, meager amount was given under the heads like loss of consortium, love and

affection and funeral expenses. Total amount of Rs. 7,56,320/- is awarded as compensation on the principal of fault. Interest at the rate of 6% p.a. is given by the Tribunal.

7) M.S.R.T.C. has taken the defence of non involvement of the truck, but the record is not consistent with that stand. The record shows that report to police was given by driver of bus and he had informed that his bus was involved in the accident. It appears that motorcycle skidded, but the bus was coming from backside and it had given dash to the deceased. Case was filed against the bus driver out of this accident by police. In view of the police papers, it was necessary for the M.S.R.T.C. to examine the bus driver. That was not done. So, it is not possible to hold that there was no fault on the part of bus driver. In any case, the deceased was pillion rider of the motorcycle and it was not case of contributory negligence.

8) On the point of quantum of compensation, it can be said that the Tribunal has considered the material which was available with the claimants. The transport vehicle was standing in the name of deceased and he had also atleast a share in the brick kiln business. It can be said that the amount of Rs. 4,000/- per month is taken as income from all sources. As the accident

had taken place in the year 2000 and there was aforesaid record, this Court holds that it is not possible to interfere on the point of quantum of compensation.

9) The learned counsel for claimants placed reliance on the case reported as **(2014) 4 Supreme Court Cases 505 [Savita Vs. Bindar Singh and Ors.]** and he submitted that sufficient compensation atleast under other heads like loss of consortium needs to be given. In the said matter, accident had taken place in the year 2010 and in the present matter, accident took place in the year 2000. Rs. 25,000/- amount is given under the said head. So, this Court holds that more amount cannot be given under such head. The Tribunal has given interest at the rate of 6% p.a. which is on lower side. In the year 2000 the nationalised banks were giving interest at the rate between 8% and 9%. In view of these circumstances, this Court holds that interest rate need to be enhanced. In the result, following order is made.

ORDER

- (i) First Appeal No. 1225/2006 is dismissed.
- (ii) First Appeal No. 999/2009 is partly allowed.
- (iii) Judgment and award of the Tribunal is modified to make the rate of interest as 9% p.a. The interest will be payable

from the date of petition till the date of depositing of amount by M.S.R.T.C. in the Court.

- (iv) Amount already deposited is to be disbursed.
- (v) In those terms the award is to be prepared.

[T.V. NALAWADE, J.]

SSC/