IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2003 OF 2015

PRATIBHA KRUSHNARAO PAWAR AND OTHERS
VERSUS
THE MANAGER, MAHARASHTRA STATE ROAD TRANSPORT CORPORATION, JALGAON AND ANOTHER
...
Advocate for Appellants : Mr Patil Ujwal Subhash
Advocate for Respondent 1 :Mr Goyanka M.K.
Respondent No.2 Served.
...
CORAM : V.K. JADHAV, J.
Dated: February 06, 2017
...

PER COURT :-

1. Heard finally with the consent at admission stage.

2. Being aggrieved by the judgment and Award dated 17.2.2015 passed by the Member, Motor accident Claims Tribunal, Jalgaon, in MACP No.76/2008, the original claimants have preferred this appeal.

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

a] on 19.4.2002, deceased Krushnarao was proceeding on his motor cycle from Faijpur to Raver. On way, at a distance of two kilometers from Suki River bride, one S.T. Bus bearing registration No.MH-12/FA-

1802 gave dash to his motor cycle. After accident, he was shifted to hospital, where he succumbed to the injuries. The legal representatives of the deceased Krushnarao preferred MACP No.76/2008 before the Motor accident Claims Tribunal, Jalgaon for grant of compensation under various heads. It has contended in the said claim petition that accident had taken place on account of rash and negligent driving of the driver of the S.T.Bus. Deceased Krushnarao was serving as MSEB Engineer at Raver on monthly salary of more than Rs.15,000/-. In addition to it, he was also cultivating his agricultural land.

b] Respondent has strongly resisted the claim petition by filing his written statement at Exh.16. It has contended that, deceased Krushnarao was driving his motor cycle in rash and negligent manner and given dash to the cleaner side of the S.T. Bus by coming to the wrong side of the road.

c] Both the parties led their oral and documentary evidence in support of their rival contentions. The learned Member of the Tribunal, Jalgaon by impugned judgment and award dated 17.10.2015 dismissed the claim petition. Hence, this appeal.

4. The learned counsel for the appellants-claimants submits that, the learned Member of the Tribunal has erroneously recorded finding that the accident had taken place on account of rash and negligent driving of the motorcycle by deceased Krushnarao, who, approached from wrong side and dashed to the left side of the S.T.Bus. Learned counsel submits that, as per the evidence of driver of the S.T.Bus, he had seen from a distance the motorcycle coming from the wrong side. However, the driver of S.T.Bus had also driven his bus in speed and even applying of brakes, he could not control the S.T.Bus. Learned counsel submits that respondent driver of the bus is entirely responsible for the accident. Learned counsel in the alternate submits that, even assuming that deceased Krushnarao was driving his motor cycle from wrong side of the road, and, gave dash to the cleaner side of the S.T.Bus, it is evident from the documents placed on record and also appears

from the oral evidence of S.T. driver that driver of the ST Bus is also responsible and contributed negligence to certain extent. Learned counsel submits that instead of considering contributory negligence of the S.T.driver, the learned Member of the Tribunal has dismissed the claim petition in toto.

5. The learned counsel for the appellants-claimants submits that, deceased Krushnarao was serving as Engineer in M.S.E.B on monthly salary of Rs.17,210/- and certified copy of the pay roll are placed on record after verifying the original. Said certified copies of pay roll are exhibited and respondent MSRTC has also admitted the same. Said pay roll is duly proved and marked as Exh.50. Deceased Krushnarao had lastly drawn salary of Rs.17,210/-. In addition to that deceased Krushnarao was also personally cultivating his agricultural land and 7/12 extract to that effect are produced on record and the same are marked at Exh.41,42 and 43 respectively. Respondent MSRTC has also admitted the same. Learned counsel submits that the appellant claimant no.1 is widow and the appellants

claimants nos.2 to 4 were minor at the time of accidental death of their father. The appellants claimants have lost personal supervision, experience and skill of their father while cultivating the agricultural land and as such, there is loss in the agricultural income to some extent. The appellants claimants are also entitled for an amount under the non-pecuniary heads such as loss of consortium, loss of love and affection, loss of estate, funeral expenses, etc.

6. Learned counsel for respondent MSRTC submits that, it is established before the Tribunal that deceased Krushnarao drove the vehicle motorcycle from wrong side of the road and dashed against cleaner side of the S.T.Bus. The learned Member of the Tribunal has, therefore, rightly recorded finding to issue no.1 in the negative and concluded that claimants have failed to prove that accident occurred on account of rash and negligent driving of the S.T.Bus by its driver.

Respondent MSRTC has examined its driver, who was driving the S.T.Bus at the time of accident before the Tribunal. Furthermore, it is clear from the contents of the spot panchnama Exh.32 that head light of ST Bus from the left side found in broken condition. Said motorcycle was also lying towards wrong side of the road. It is thus clear that deceased Krushnarao approached from wrong side of the road, dashed to cleaner side of S.T.Bus and, therefore, bumper and head light of the bus damaged. There is no contributory negligence on the part of the driver of the S.T.Bus. He had driven his vehicle carefully with moderate speed. Even, driver of the S.T.Bus tried his level best to avoid the accident by applying brakes. However, deceased Krushnarao had driven the motorcycle in rash and negligent manner and caused the accident himself. No interference is required in the findings recorded by the Tribunal.

7. Learned counsel for respondent MSRTC submits that, if this Court inclined to consider the contributory negligence on the part of respondent driver of the S.T. Bus to some extent, then monthly salary of deceased Krushnarao as is evident from pay roll Ex.50, the amount towards income tax, professional tax,

conveyance allowance and medical allowance are liable to be deducted from his total salary.

So far as loss of income on account of lack of supervision, his experience and personal skill is concerned, the learned counsel for respondent MSRTC submits that, the appellants claimant nos. 2 to 4 are major and as per the entires in the 7/12 extract, the land is being cultivated by them even after death of deceased Krushnarao. Learned counsel submits that at the most amount of Rs.300/- p.m. can be considered as loss of agricultural income on account of lack of skilled experience and supervision.

8. I have carefully gone through the pleadings, evidence adduced by the parties and impugned judgment and award passed by the Tribunal. It is a matter of record that, left side bumper and head light of the bus came to be damaged in the accident. Respondent driver of S.T.Bus has also deposed that deceased Krushnarao was coming on his motorcycle from wrong side of the road. Even, he had given signals to deceased Krushnarao, who was riding his motorcycle

from wrong side of the road.

9. There are many reasons for rider of the motorcycle to drive his motorcycle from wrong side of the road. The claimants are not eye witnesses to the incident. It is not a case that initially deceased Krushnarao was riding his motorcycle from the correct side of the road and as of sudden taken his vehicle to wrong side of the road and dashed to the cleaner side of S.T,.Bus. On the other hand, evidence on record unmistakenly point out that all the while deceased Krushnarao was driving his motorcycle on wrong side of road. If the respondent driver of the S.T.Bus had noticed said motorcycle from long distance, and even if he had given signals through lights, he would have stopped his S.T.Bus, however, the brake marks of the S.T.Bus on the road for a distance of 50 feet also indicates that S.T.Bus was in speed and driver of the S.T.Bus could not control his vehicle as soon as he noticed that deceased Krushnarao was coming from wrong side of the road. Deceased Krushnarao was riding his motorcycle from wrong side of the road and the claimants have not tendered any

explanation as to why he was riding his motorcycle from wrong side of the road. In view of the same, it is clear that deceased Krushnarao had contributed negligence more compared to the negligence of the driver of the S.T. Bus. In my considered opinion, driver of the S.T.Bus had also contributed the negligence, but, comparatively at lower side. In view of the above discussion and considering the oral and documentary evidence on record, in my opinion, deceased Krushnarao had contributed the negligence to the extent of 75%, whereas, driver of the S.T.Bus had contributed the negligence to the extent of 25%. I accordingly record finding to that effect.

10. Respondent MSRTC has not disputed the copies of pay roll placed on record before the Tribunal. Deceased Krushnarao was a Government employee and that is the reason respondent MSRTC has admitted his pay roll placed on record. The same are marked at Exh.50,51,52 and 53 respectively. Deceased Krushnarao died in the month of April, 2002 and Exh.52 is pay roll of salary drawn by him in the month of March, 2002. As per this

document, deceased Krushnarao had drawn last salary of Rs.17,210/-.

On perusal of said pay roll and the pay slip in the month of March, 2002 certain deductions have been shown towards Income Tax, Professional Tax and after considering the same, it is evident that deceased Krushnarao was getting Rs.16,600/- as salary and said salaried income can be taken into consideration for determination of the compensation on account of loss of future income. Deceased Krushnarao met with an accidental death at the age of 45 years and his age details are there in the driving licence. His date of birth is 1.8.1957 as appearing on his driving licence. Thus, considering age of deceased Krushnarao addition is required to be made in his salaried income towards the future prospectus. There are four dependents on income of deceased Krushnarao and as such, $1/4^{th}$ of the amount is required to be deducted on account of his personal and living expenses.

11. So far as income from agricultural land is concerned, corpus of land would remain as it is. It is

also a matter of record that after death of deceased Krushnarao, the claimants are cultivating the land personally. However, the claimants have lost experienced and skilled supervision of their father in cultivating the agricultural land which is admeasuring near about 7 acres. In that way, amount of Rs.500/- p.m. corresponds to Rs.6,000/- per year required to be considered on account of loss in the agricultural income.

12. The claimants are also entitled for amount of compensation under the non-pecuniary heads. The appellant claimant no.1 is widow and she is entitled for compensation of Rs.50,000/- for loss of consortium. The claimants are also entitled for amount of Rs.10,000/- for loss of estate, Rs.25,000/- for funeral expenses. The appellant Claimants no.2 to 4 are also entitled for amount of Rs.15,000/- each for loss of love and affection. Since deceased Krushnarao had contributed negligence to the extent of 75% and driver of the S.T.Bus contributed negligence to the extent of 25% only, the claimants are entitled for the

compensation to the extent of negligence contributed by the driver of the S.T.Bus from the total compensation.

13. At the time of accidental death, deceased Krushnarao was of 45 years. Relevant multiplier would be '14'.

14. Thus, brake up of compensation under different heads which can be broadly categorized is as under :-

1. Loss of future income /dependency Rs.16,600x12 = 1,99,200/- p.a.

2. 30% of future prospectus comes to Rs.49,800/- Thus, total comes to Rs.1,99,200+49,800/- =2,49,000 x 14 = 34,86,000/-

3. 1/4th deductions towards personal expenses and living expenses corresponds to Rs.34,86,000/4=8,71,500/-

4. Thus, total comes to Rs.34,86,000-8,71,500=26,14,500/- and agricultural income @ Rs.500/-p.m. Corresponds to Rs.6,000 x14= 84,000/-. Total comes to Rs.26,98,500/-.

Non pecuniary damages :-

Loss of love and affection each claimant 2 to 4	Rs.15,000/-x3	= 45,000/-
loss of consortium	Rs.50,000	= 50,000/-
loss of estate	Rs.10,000	= 10,000/-
Funeral charges	Rs.25,000/-	= 25,000/-
		=1,30,000/-

15. Thus, the claimants are entitled to Rs.26,98,500 + 1,30,000/- = 28,28,500/- and 25% of the same as per liability of MSRTC comes to Rs.7,07,125/-. The claimants are entitled for the total compensation of Rs.7,07,125/-. Accordingly, I proceed to pass the following order.

O R D E R

I. First Appeal is hereby allowed with proportionate costs.

ii. The judgment and Award passed by the Member, Motor Accident Claims Tribunal, Jalgaon in MACP No.76/2008 is hereby quashed and set aside.

iii. Claim Petition No.76/2008 is hereby partly allowed with proportionate costs.

iv. Respondents No.1 and 2 are jointly and severally liable to pay the compensation of Rs.7,07,125/- (Rs. Seven lakh seven thousand one hundred and twenty five only) inclusive of 'No Fault Liability' to the claimants with interest @ 7.5% p.a. from the date of application i.e. 20.2.2008 till realization of the entire amount to the claimants.

v. Award be drawn up accordingly.

vi. On depositing the amount before the Court, the Tribunal shall fix the amount of Rs.5.00 Lakhs (Rs. Five Lakhs) in Fixed Deposit Receipts in the name of claimant no.1- Smt. Pratibha wd/o Krushnarao Pawar, for a period of five years and the remaining amount alongwith interest shall be paid to claimant no.1 to the extent of 75% and to claimant nos.2,3 and 4 to the extent of 25% in equal shares.

Vii. First Appeal is accordingly disposed of.

(V.K. JADHAV, J.)

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aaa/-