

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 2743 OF 2015

DIVISIONAL CONTROLLER,
MAHARASHTRA STATE ROAD TRANSPORT CORPORATION,
DIVISION PARBHANI AND ANOTHER
VERSUS
MUKUND RAMRAO KADAM AND OTHERS

AND

FIRST APPEAL NO. 2744 OF 2015

DIVISIONAL CONTROLLER,
MAHARASHTRA STATE ROAD TRANSPORT CORPORATION,
DIVISION PARBHANI AND ANOTHER
VERSUS
VYANKAT VITTHAL KADAM AND OTHERS

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Advocate for Appellants : Mr. Anand D. Wange.

Advocate for Respondents : Mr.P. N. Kalani.

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CORAM : **V. K. JADHAV, J.**

DATE : 23rd January, 2017.

ORDER:

. Being aggrieved by the common judgment and award passed by the Member, Motor Accident Claims Tribunal / District Judge-1, Parbhani dated 28th November, 2014 in MACP No.196 of 2012 alongwith MACP No.197 of 2012, the original Respondent / MSRTC has preferred these two separate appeals on the point of negligence as well as to the extent of quantum.

2 Brief facts giving rise to the present two appeals are as follows:

- i. On 18th May, 2012, deceased Sharad s/o Ramrao Kadam alongwith Jaywant Vyankatrao Kadam had been to Kandhar for routine work / business on motorcycle bearing registration No.MH-26-X-6493. After completion of the work, they started returning to their village on the same motorcycle. Deceased Sharad was riding the motorcycle in slow and moderate speed and from correct left side of the road. On Kandhar-Ghodaj road, near the temple of Ganpati, one bus bearing registration No.MH-07-C-7066 came from the opposite side in fast and excessive speed and given dash to the aforesaid motorcycle. The driver of the bus had driven the said bus in rash and negligent manner. In consequence of which, the rider as well as the pillion rider as stated above died on the spot. The legal representatives of deceased Sharad preferred MACP No.196 of 2012, whereas the parents of

deceased Jaywant preferred MACP No.197 of 2012 for grant of compensation under the various heads.

- ii. The learned Member of the Motor Accident Claims Tribunal, Parbhani vide its impugned judgment and award partly allowed MACP No.196 of 2012 and thereby directed the Respondents to pay Rs.46,78,128/- to the Petitioners therein as a compensation inclusive of NFL alongwith interest @ 6% per annum; whereas in MACP No.197 of 2012, the learned Member of the Tribunal directed the Respondents to pay Rs.8,54,000/- to the Petitioners therein as a compensation inclusive of NFL alongwith interest @ 6% per annum. Being aggrieved by the same, Respondent / MSRTC has preferred these two appeals separately.

3 The learned counsel for the Appellant / MSRTC submits that the Appellant / MSRTC has examined one witness Datta More, who happened to be a passenger of the bus involved in the accident and at the time of accident, he sat in the cabin of the driver. He has

deposed that the speed of the bus was moderate, however, the motorcycle coming from the opposite direction was in speed as a result of which the said motorcycle gave dash to the front right side of the bus. He has also deposed that the driver of the bus has applied the brakes on seeing the motorcycle coming in high speed. The Appellant / MSRTC also examined the driver of the bus namely Balaji, who has deposed that the motorcycle was coming in high speed from the middle of the road and the pillion rider was making some strange movements of his hands due to which the rider of the motorcycle could not maintain the balance. Thus, he took the bus below the road, but the motorcycle dashed against the S.T. bus on its front right side. He has deposed that the accident occurred because of the negligence of the rider of the motorcycle. The learned Member of the Tribunal has not considered the evidence of these two eye-witnesses. The learned counsel submits that the Tribunal has also awarded exorbitant amount of compensation in both the claim petitions. The learned Member of the Tribunal has awarded exorbitant amount of compensation under the non-pecuniary heads such as loss of estate.

4 The learned counsel for Appellant / MSRTC submits that

so far as the death of Jaywant Kadam is concerned, the claim petition was preferred by his parents and therefore, the amount towards his personal expenses liable to be deducted 1/2 instated of 1/3 as done by the Tribunal. The learned counsel submits that the Claimants in the claim preferred against the death of Jaywant, failed to prove the income of deceased Jaywant and therefore, the Tribunal has considered the notional income. Deceased Jaywant was an agriculturist. However, no documentary evidence is produced before the Tribunal. Even 7/12 extract is also not produced. The learned counsel submits that the Tribunal even then has erroneously considered the future prospects of deceased Jaywant.

5 The learned counsel for Respondents / original Claimants submits that the Tribunal has considered the evidence on record. The Claimants have produced on record the certified copies of police documents and those documents are duly exhibited. On careful perusal of spot Panchanama, which is exhibited in both the claims, it is clear that the bus involved in the accident, went in the wrong direction and gave a dash to the motorcycle, which was coming from its correct left side. The Tribunal has therefore, rightly

held that accident had taken place on account of rash and negligent driving of the driver of the bus alone and deceased Sharad was not at all responsible for the accident. The learned counsel submits that the Tribunal has rightly awarded the just and reasonable compensation in both the claim petitions. No interference is required.

6 On perusal of the evidence of witness examined by Respondent / MSRTC and also the evidence of the driver of the bus, it appears that the driver of the bus has altogether brought a new story before the Tribunal without there being any specific pleading to that effect. Even the other witness Datta More, who happened to be a passenger in the bus, has not deposed anything about it. The driver of the bus has deposed that the pillion rider of the motorcycle was making some strange movements of his hands due to which the rider of the motorcycle could not maintain the balance. Witness Datta More has deposed that on seeing the motorcycle, the driver of the S.T. Bus has applied the brakes, however, the driver of the bus has not stated anything about it. He has nowhere stated that on seeing the motorcycle coming in fast speed he has applied the brakes of the bus. Further, witness Datta

More has admitted in cross-examination that besides him, there were other 4-5 passengers sitting in the cabin. He has further admitted in his cross examination that out of those 4-5 persons in the cabin, two persons were sitting on engine. In view of this, it appears that this witness had no opportunity to witness the actual incident. The evidence of the driver of the S.T. Bus also does not inspire confidence. He has exaggerated the story by deposing that the accident had taken place on account of the strange movements on the part of the pillion rider and therefore, the rider of the motorcycle lost the balance and dashed against the S.T. Bus.

. On perusal of the spot Panchanama Exhibit – 19 in MACP No.196 of 2012 and the map drawn on it, it appears that the road at the spot is 12 feet in width and it is East-West in direction. Admittedly, the S.T. Bus involved in the accident was proceeding towards East. The motorcycle involved in the accident was coming from the opposite direction and it was proceeding towards West. Thus, the northern side is the correct side for the bus whereas the southern side is the correct left side for the motorcycle. It appears from the map drawn on spot Panchanama that the spot of actual accident is shown towards the extreme southern side of the road.

Thus, the only inference could be drawn that the S.T. Bus though shown towards the northern side of the road, after giving dash to the motorcycle on wrong side of the road, the driver of the bus took the said bus towards its correct left side of the road. I do not find any fault in the findings recorded by the learned Member of the Tribunal that the driver of the bus was alone responsible for the accident and none else.

7 In MACP No.196 of 2012, deceased Sharad was serving as an Army man on a monthly salary of Rs.28,410/-. After deduction of certain amount, the learned Member of the Tribunal has rightly considered his monthly income at Rs.25,346/- corresponds to Rs.3,04,152/- per annum. After deducting 1/3 amount towards the personal expenses of deceased Sharad, the learned Member of the Tribunal has rightly considered the yearly loss of income at Rs.2,02,268/- and by applying the multiplier 14, assessed the compensation by considering the future prospects having regard to the age of the deceased at the time of his accidental death. The learned Member of the Tribunal has also awarded the just and reasonable compensation under the non-pecuniary heads, except under the head of loss of estate. The

Tribunal has awarded Rs.3,00,000/- towards loss of estate. The same appears to be exorbitant. It would be just and reasonable if the amount of Rs.1,00,000/- is granted under the head of loss of estate. The impugned judgment and award in MACP No.196 of 2012 is required to be modified to that extent alone otherwise no interference is required.

8 So far as the death claim bearing MACP No.197 of 2012 in respect of the death of Jaywant is concerned, it appears that the Claimants have failed to prove the income of deceased Jaywant and therefore, the learned Member of the Tribunal has considered the notional income of deceased Jaywant at the rate of Rs.3,000/- per month. The learned Member of the Tribunal has considered the future prospects of deceased Jaywant, however, deceased Jaywant was not in the employment nor he was self employed. There is absolutely no evidence about his income. In such a case, in my opinion, it would not be appropriate on the part of the Tribunal to consider the future prospects of deceased merely on the basis of his age at the time of his accidental death. Further, the Tribunal has also committed error while deducting 1/3 of amount towards the personal expenses of deceased Jaywant instead of 1/2 of the

amount. Deceased Jaywant was unmarried at the time of accidental death and therefore, 1/2 of the income is required to be deducted towards his personal expenses. The learned Member of the Tribunal has also committed error in applying the multiplier 17 by considering the age of the deceased Jaywant at the time of accidental death. It is well settled that the average age of the parents is required to be considered in case of death of unmarried son. In the instant case, considering the average age of the parents, the relevant multiplier would be 13. However, considering the unmarried sister of deceased Jaywant, it would be appropriate to apply the multiplier of 14 in this case. The learned Member of the Tribunal has awarded just and reasonable compensation under the non-pecuniary heads. No interference is required in that. In view of the above discussion, the impugned judgment and award thus required modification. Hence, I proceed to pass the following order:

ORDER

- I. First Appeal No.2743 of 2015, is hereby partly allowed.
- II. The judgment and award passed by the Member,

Motor Accident Claims Tribunal / District Judge-1,
Parbhani dated 28th November, 2014 in MACP
No.196 of 2012, is hereby modified in the following
manner:

“Respondent Nos.1 and 2 do jointly and
severally pay Rs.44,78,128/- (Rupees Forty-
Four Lacs Seventy-Eight Thousand One
Hundred and Twenty-Eight only) to the
Petitioners as a compensation inclusive of
NFL compensation alongwith interest @ 6%
per annum from the date of petition till
realization of the entire amount”

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up in view of the above
modification.
- V. First Appeal No.2744 of 2015, is hereby partly
allowed.
- VI. The judgment and award passed by the Member,
Motor Accident Claims Tribunal / District Judge-1,
Parbhani dated 28th November, 2014 in MACP
No.197 of 2012, is hereby modified in the following

manner:

“Respondent Nos.1 and 2 do jointly and severally pay Rs.4,22,000/- (Rupees Four Lacs and Twenty-Two Thousand only) to the Petitioners as compensation inclusive of NFL compensation alongwith interest @ 6% per annum from the date of petition till realization of the entire amount.”

- VII. Rest of the judgment and award stands confirmed.
- VIII. Award be drawn up in view of the above modification.
- IX. Needless to say that if any amount is withdrawn during the pendency of these appeals, the same shall be adjusted towards the compensation as per the modified award.
- X. Both the appeals are accordingly disposed of.
- XI. Pending civil applications stand disposed of.

[V. K. JADHAV, J.]