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

FIRST APPEAL NO. 3581 OF 2016

THE MAHARASHTRA STATE ROAD TRANSPORT CORPORATION
THROUGH ITS DIVISION CONTROLLER, OSMANABAD
VERSUS
BALIKA BHIMSHANKAR GHODKE AND OTHERS

...

Advocate for Appellant : Mr. D. S. Bagul.
Advocate for Respondents : Mr. P. S. Chavhan.

...

WITH

CROSS-OBJECTION (STAMP) NO.4234 OF 2017

BALIKA BHIMASHANKAR GHODKE AND OTHERS
VERSUS
THE MAHARASHTRA STATE ROAD TRANSPORT CORPORATION
THROUGH ITS DIVISIONAL CONTROLLER, OSMANABAD

...

Advocate for Petitioners : Mr. P. S. Chavhan.
Advocate for Respondent : Mr. D. S. Bagul.

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CORAM : **V. K. JADHAV, J.**
DATE : 16th February, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Osmanabad dated 8th February, 2016 in MACP No.210 of 2014, the original Respondent / MSRTC has preferred First Appeal No.3581

of 2016 and the original Claimants have preferred the cross objection to the extent of quantum of compensation under certain non-pecuniary heads.

3 On 4th August, 2014, deceased was riding a bicycle on his way to his house at Jalkot. In front of a brick-klin on Omerga to Solapur National Highway No.9, one S.T. Bus bearing registration No.MH-20-BL-2706 came from the opposite direction in a very high speed. The driver of the said S.T. Bus had driven the said bus in rash and negligent manner and gave a dash to the bicycle. In consequence of which, deceased Bhimashankar sustained the injuries. He was initially shifted to Primary Health Center, Jalkot and thereafter, to Gangamai Hospital, Solapur, where he succumbed to the injuries during the course of treatment. The legal representatives of deceased Bhimashankar preferred MACP No.210 of 2014 for grant of compensation under the various heads. The Appellant / MSRTC has resisted the said claim petition by filing the written statement on the ground that deceased Bhimashankar himself was negligent and the accident had taken place when he was trying to cross the road without taking care. It has also contended that the Claimants have claimed exorbitant amount of

compensation. The learned member of the Tribunal has partly allowed the claim petition with proportionate costs and directed the Appellant / MSRTC to pay the compensation amount of Rs.16,90,000/- to the Applicants inclusive of compensation under Section 140 of the Motor Vehicles Act with interest @7.5% from the date of application till its realization. Hence, this appeal and cross objection.

4 The learned counsel for Appellant / MSRTC submits that there is no satisfactory evidence placed on record about the income of deceased Bhimashankar. According to the Claimants, deceased Bhimashankar was running a brick-klin. The learned Member of the Tribunal discussed at length the evidence of PW-2 Sham Rathod, PW-3 Baswanappa Kawathe and PW-4 Sanjay More and observed that their oral evidence cannot be considered without any supporting documentary evidence. The learned counsel submits that the Tribunal has only considered the balance-sheets Exhibits 31 to 33 respectively prepared by PW-5 Deepak Bhatbhage, who happened to be a Chartered Accountant. The leaned counsel submits that in the year 2014 itself said Chartered Accountant has prepared the balance-sheets of previous three years at the instance of deceased

Bhimashankar. The said balance-sheets were not produced before any authorities. The Claimants have not produced any document on record to substantiate their contentions that deceased Bhimashankar was earning Rs.2,00,000/- per annum from his business of brick-klin. The learned counsel submits that though the pass-book of bank account of deceased Bhimashankar is placed on record before the Tribunal, the same is not exhibited. There are no entries in the pass-book in consonance with the entries shown in the balance-sheets. The learned counsel submits that there is no satisfactory evidence about the income of deceased Bhimashankar and even then the Tribunal has considered the monthly income of deceased Bhimashankar at Rs.10,000/-. The learned counsel submits that the Tribunal has also not considered the negligence contributed by deceased Bhimashankar by riding the bicycle on national highway. Deceased Bhimashankar was crossing the national highway at the time of accident without taking any care and thus he came in front of S.T. Bus. The Appellant / MSRTC has examined the driver of the S.T. Bus involved in the accident, who has deposed about the negligence on the part of deceased Bhimashankar. However, the Tribunal has not considered his evidence and erroneously held that the accident occurred on account of rash and negligent driving of the driver of S.T. Bus alone. The learned counsel submits that the Tribunal ought to have deducted the amount from the compensation towards negligence contributed by deceased Bhimashankar. The learned counsel submits that the Tribunal has awarded just and reasonable compensation under the non-pecuniary heads. No interference is required in that. So far as loss of future income is concerned, in absence of any satisfactory evidence about the income of deceased Bhimashankar, his notional income is required to be considered at the most at Rs.4,500/- per month. The learned Member of the Tribunal ought to have considered the same and accordingly worked out the compensation on that basis.

5 The learned counsel for Respondents / Claimants submits that the Appellant / MSRTC has pleaded that deceased Bhimashankar was trying to cross the road on his bicycle and met with an accident for which the driver of the S.T. Bus is not responsible. The driver of the S.T. Bus Witness Dilip Bhimrao Garad has however, deposed that he was proceeding from his left side of the road and suddenly one person riding a bicycle came in

from of his bus. Witness Dilip, driver of the S.T. Bus, had applied brakes and while stopping the said bus, the said bicycle rider himself dashed against the bus. The learned counsel submits that the oral evidence of the said driver of the S.T. Bus is against the pleadings of the Appellant / MSRTC and the same is thus, liable to be ignored. The learned counsel submits that on careful perusal of the spot Panchanama Exhibit – 28 and the map drawn on it, it is clear that the S.T. Bus went in wrong direction and gave a dash to the bicycle coming from the opposite direction. The learned Member of the Tribunal has therefore, rightly held that the accident occurred on account of rash and negligent driving of the driver of S.T. Bus alone.

6 The learned counsel for Respondents / Claimants submits that considering the balance-sheets Exhibit – 31 to 33, the Tribunal has rightly come to the conclusion that deceased Bhimashankar was earning Rs.10,000/- per month from his brick-klin business. The learned counsel submits that though the said balance-sheets were not produced before any authorities, Chartered Account Witness Deepak has deposed before the Tribunal that those balance-sheets were prepared at the instance of deceased

Bhimashankar as he wanted to avail a loan from the bank and after inspecting the bank record and other documents, he has prepared the balance-sheets. There is nothing in the cross-examination to disbelieve the evidence of Witness Deepak, who happened to be a registered Chartered Accountant. The learned counsel submits that the Tribunal has awarded meager compensation under the non-pecuniary heads. Though there are three minor daughters and one minor son and aged parents, the Tribunal has awarded Rs.1,50,000/- towards loss of love and affection. The Tribunal has not awarded any amount under the head of loss of estate. The learned counsel submits that even though the accident had taken place in the year 2014, the Tribunal has awarded interest @7.5 instead of 9%.

7 The Respondents / Claimants have succeeded in proving that deceased Bhimashankar was carrying brick-klin business. Though the Tribunal has not considered the evidence of PW-2 to 4 to find out the income of deceased Bhimashankar from his brick-klin business, however, evidence of those witnesses is consistent and trustworthy to come to the conclusion that deceased Bhimashankar was carrying the brick-klin business. So far as the

balance-sheets at Exhibits – 31 to 33 are concerned, I have carefully gone through the evidence of Chartered Accountant Witness Deepak Bhatbhage. He has deposed that in the year 2014, deceased Bhimashankar wanted to avail a loan from the bank for the purpose of his business and accordingly approached him for preparing the balance-sheets. Thus, he has inspected all the documents, record and prepared the balance-sheets of the year 2011-12, 2012-13 and 2013-14. According to him in the year 2011-12 the net profit was Rs.1,40,572/-, in the year 2012-13 the net profit was Rs.1,48,902 and in the year 2013-14 the net profit was Rs.1,60,127/-. He was subjected to cross-examination at length. He has admitted in the cross-examination that deceased Bhimashankar had given him the bank pass-book and the other documents. Deceased Bhimashankar has also given him the purchase and sale bills and the expenditure vouchers. He was subjected to cross-examination on the basis of entries in the pass-book. He has denied that there are no entries about the income in the pass-book. Apart from that, considering the brick-klin business, it cannot be expected that deceased Bhimashankar could have done that business by cashless transactions. It cannot be expected that in such business, transactions can only be done on the basis of cheques and without making the cash payment. The learned Member of the Tribunal on the basis of the said balance-sheets Exhibits – 31 to 33 rightly come to the conclusion that deceased Bhimashankar was earning Rs.10,000/- per month. Though the said balance-sheets Exhibits – 31 to 33 show more income, the Tribunal has considered the loss of future income on account of untimely death of deceased Bhimashankar of Rs.10,000/- per month. The learned Member of the Tribunal has also considered the said income inclusive of his future prospects.

8 So far as the negligence on the part of deceased Bhimashankar as alleged by the Appellant / MSRTC, I do not find any substance in it. Admittedly, the S.T. Bus was proceeding towards Hyderabad by National Highway No.9. As per the contents of the aforesaid spot Panchanama Exhibit – 28 and the map drawn on it, said National Highway No.9 at the spot of incident is east-west in direction. The said S.T. Bus was proceeding towards east i.e. towards Hyderabad. Thus, the northern side of the said national highway is the correct left side for the vehicle S.T. Bus. Deceased Bhimashankar was riding the bicycle and he was proceeding

towards west. His correct left side is towards southern side of the said national highway. On careful perusal of the contents of spot Panchanama and the map drawn on it, it appears that S.T. Bus went towards the southern direction i.e. wrong side of the road and gave a dash to the bicycle, which was at the extreme left correct side of the road. The learned Member of the Tribunal has therefore, rightly concluded that the accident had taken place on account of the rash and negligent driving of the driver of S.T. Bus alone.

9 So far as the compensation under the non-pecuniary heads are concerned, the Tribunal should have awarded some more amount under the head of loss of love and affection. There are three minor daughters, one minor son and two aged parents. The Tribunal has awarded Rs.1,50,000/-. In my considered opinion, the Claimants are entitled for an amount of Rs.2,00,000/- on that count. The Claimants are also entitled for an amount of Rs.20,000/- towards loss of estate. The Claimants are entitled for the total amount of compensation with interest @9% instead of 7.5%. With these modifications, the first appeal and the cross-objection can be disposed of. Hence, the following order:

O R D E R

I. First Appeal No.3581 of 2016 (The Maharashtra State Road Transport Corporation Vs. Balika Bhimshankar Ghodke and others), is hereby dismissed with costs.

II. Cross-Objection (Stamp) No. 4234 of 2017 (Balika Bhimashankar Ghodke and others Vs. The Maharashtra State Road Transport Corporation), is hereby partly allowed.

III. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Osmanabad dated 8th February, 2016 in MACP No.210 of 2014, is hereby modified in the following manner:

> "The Respondent do pay compensation amount of Rs.17,60,000/- (Rupees Seventeen Lacs and Sixty Thousand only) to the Applicants inclusive of compensation awarded under Section 140 of the Motor Vehicles Act with interest @9% from the date of application

till its realization.”

IV. Rest of the award stands confirmed.

V. Award be drawn up as per the above modification.

VI. Appeal and cross-objection are accordingly disposed of.

[V. K. JADHAV, J.]

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