

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

FIRST APPEAL NO. 3542 OF 2011

M.S.R.T.C. THR. DIVNL. CONTROLLER JALGAON
VERSUS
VIJAYA PRABHAKAR GAVANE AND OTHERS

...

Advocate for Appellant : Mr Goyanka M.K
Advocate for Respondents : Mr M M Bhokarikar

...

WITH

CROSS APPEAL ST NO.18838/2017 IN FA 3542/2011

SMT VIJAYA PRABHAKAR GAVANE AND OTHERS
VERSUS
THE MAHARASHTRA STATE ROAD TRANSPORT
CORPORATION LTD.

...

Mr M M Bhokarikar, advocate for the appellants.
Mr M K Goyanka advocate for respondent.

CORAM : V.K. JADHAV, J.

Dated: June 14, 2017

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PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award passed by the Member, Motor Accident Claims Tribunal, Jalgaon, dated 13.7.2011 in MACP No.493/2004, the respondent MSRTC has preferred this appeal and respondent-original claimants also preferred cross

appeal to the extent of quantum of compensation as awarded by the Tribunal.

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

a] On 16.1.2003 deceased Prabhakar was travelling in S.T. Bus bearing registration No.MH-12/UA-8635 from Buldhana to Chalisgaon. Deceased Prabhakar wanted to go to Pachora. According to the claimants, the driver of the ST Bus was driving the said ST Bus in rash and negligent manner. Thus deceased Prabhakar due to excessive speed of the said bus and due to jerk sustained injuries on his fore head and thereafter died because of the head injury sustained by him. The legal representatives of the claimants approached the Tribunal, Jalgaon by filing MACP No.493/2004 for grant of compensation under various heads. It has been contended that deceased Prabhakar was 45 years of age at the time of his accidental death. He was in private employment on monthly salary of Rs.3,000/-. He was the bread winner of the family and the claimants were

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entirely depending on his income. The claimant-wife has also lost the company of her husband and children lost love and affection of their father. On all these counts the claimants have claimed compensation of Rs.2,50,000/-.

b] The appellant-MSRTC has strongly resisted the claim petition by filing written statement. It has been contended that there was no fault on the part of the driver of the ST Bus. The appellant MSRTC has denied happening of the accident and contended that the claim is not at all maintainable. It has also been contended that deceased Prabhakar died natural death and claim petition as such liable to be dismissed.

c] Both the parties led their oral and documentary evidence in support of their rival contentions. The learned Member of the Tribunal, Jalgoan, by its impugned judgment and order dated 13.7.2011 allowed the claim petition with costs and directed the appellant MSRTC to pay the compensation of Rs.2,50,000/-

alongwith interest @ 7.5% from the date of filing of claim petition till realization of the entire amount. Being aggrieved by the same, the appellant-MSRTC has preferred this appeal and respondents-claimants preferred cross-appeal against the inadequacy of the compensation as awarded by the Tribunal.

4. The learned counsel for the appellant-MSRTC submits that, deceased Prabhakar was travelling as a passenger in the bus and during the course of the travelling, he had made complaint to the conductor as he was not feeling well. Thereafter, deceased Prabhakar went to the back portion of the bus and slept on the back side seat. Learned counsel submits that, he was found dead there. The conductor Raju Pawar had taken S.T. Bus to the concerned police Station and informed to the police about death of passenger. Learned counsel submits that the claimants have examined one Ankush Thakare, who claims to be a co-passenger in the bus. His evidence is not at all reliable. He had narrated the incident for the first time in the court. His conduct

prior to the alleged accident and even after the accident is doubtful. Though, he was knowing deceased Prabhakar, he did not accompany him, nor informed to the police about injuries sustained by Prabhakar on his forehead during the journey as a passenger in the said bus. Learned counsel submits that, conductor Raju Pawar would have informed the incident of the injuries sustained by deceased Prabhakar during the course of the journey, however, deceased Prabhakar had not sustained any injury and therefore, conductor Raju Pawar has informed to the concerned police station that deceased Prabhakar died a natural death. Said report is placed before the tribunal and the same is marked at exh.17. On the basis of the said report, concerned police station has registered the A.D. and further inquired into the said A.D. Learned counsel submits that, concerned police has not registered any crime nor submitted any charge-sheet against the driver of the S.T. Bus. Learned counsel submits that, without prejudice to his earlier submissions, so far as quantum of compensation is concerned, the tribunal has

erroneously applied multiplier '15' instead of multiplier '13'. The claimants themselves placed on record xerox copy of ration card, wherein the age of the deceased Prabhakar is mentioned as '46' years. In view of the same, relevant multiplier would be '13' and not '15' as applied by the Tribunal. Learned counsel submits that, deceased Prabhakar was in private employment and, therefore, there cannot be any addition in his income towards future prospects.

5. Learned counsel for respondents-claimants submits that, the evidence of the passenger Ankush Thakre is required to be tested in the light of spot panchnama exh.18, inquest panchanama exh.19, and postmortem report exh.20. In column No.17 of the postmortem notes, external injuries have been mentioned by the concerned Medical Officer who has conducted the postmortem examination. Deceased Prabhakar had sustained injuries on forehead and subdural haemotoma and also fracture to the frontal bone. As per the injuries mentioned in column no.18,

there are corresponding injuries to the said external injuries which are noted in column no.17. The learned counsel submits that conductor Raju Pawar has suppressed these material facts and lodged false report in the concerned police station. It is difficult to believe that conductor Raju Pawar had not noticed any injury on the forehead sustained by deceased Prabhakar during the course of his journey. Learned counsel submits that, there is three and half hours journey from Buldhana to Pachora and there was crowd in the bus. Passengers were boarding and alighting from the bus on every stop. Deceased Prabhakar slept on the back portion of the S.T.Bus occupying 3-4 seats. It is therefore, difficult to believe that, conductor Raju Pawar had noticed no injuries on the forehead of deceased Prabhakar. It is also pertinent to note that, even after receipt of postmortem report, concerned police station has not registered the crime. Learned counsel submits that, the Tribunal has, therefore, rightly recorded finding to issue nos. 1 and 2 in the affirmative and held that deceased Prabhakar had sustained injuries in the

accident while travelling in bus on account of rash and negligent driving on the part of the driver of the bus.

6. So far as quantum of compensation is concerned, learned counsel submits, that the learned Member of the Tribunal has not made any addition in the income of deceased Prabhakar towards future prospects. Considering the age of the deceased Prabhakar, the Tribunal ought to have made addition to the extent of 30% in his income. Learned counsel submits that, even the Tribunal has not awarded any compensation under the non-pecuniary heads such as loss of consortium, loss of love and affection. Even, the Tribunal has not awarded any compensation towards funeral expenses and loss of estate. Learned counsel submits that, considering the number of dependents/claimants, the Tribunal ought to have deducted $\frac{1}{4}^{\text{th}}$ of the amount instead of $\frac{1}{3}^{\text{rd}}$ of the amount towards personal and living expenses of deceased Prabhakar. Learned counsel submits that, the Tribunal has awarded 7.5% rate of interest instead of 9%. Learned counsel submits that,

the claimants are entitled for the said compensation and as such, the impugned judgment and award requires modification.

7. On careful perusal of the pleadings, evidence and the judgment and award passed by the Tribunal, most particularly, postmortem report Exh.20, it appears that, in column No.17 of the postmortem report, it has been specifically mentioned about the swelling on forehead, right frontal region alongwith crush injury, right forehead, even clotted blood also seen alongwith subdural haematoma. Even oozing of the blood from the said injury is also noted. In column No.18, subdural haematoma and fractured crack or right frontal bone is also noted. Probable cause of death is opined as shock due to sub-dural haemotoma alongwith crack fracture of right frontal bone.

8. The appellant-MSRTC have examined witness No.2 Dr. Ramkrishna Teli, who has stated in his cross examination that injuries as mentioned in column No.17

can be caused due to accident. These type of injuries can be caused when a head of person travelling in bus get dashed against the rod of front seat if the vehicle gets jerked. In his opinion, deceased Prabhakar died due to shock due to sub-dural haematoma i.e. crack right frontal bone. He has ruled out the possibility that deceased Prabhakar was suffering from any other disease. He has admitted unequivocally in his cross examination that sub-dural hematoma can occur when a head is dashed against blunt object and that deceased Prabhakar not died due to natural death. In the light of the above evidence alongiwth notes taken in the postmortem report exh.20, I find the evidence of passenger Ankush Thakare reliable and trust worthy. He has deposed that, deceased Prabhakar was travelling in the said bus and driver was driving the bus speedily and rashly and the said bus was jumping. He has further deposed that deceased Prabhakar was sitting in the middle, and due to the jerk of the bus, his head was dashed against the iron rod of front seat and as such he sustained injuries on his head. He become

unconscious there only. I find nothing in his cross examination to disbelieve his version. So far as his admission that, he has deposed this fact first time is concerned, this is a tricky question and since he has come in the court for the first time, witness answered said question in the said manner. He was not asked specifically in the cross examination that whether he has narrated such a incident to anybody till he narrated the incident before the court. In the backdrop of this evidence, I find the evidence of the conductor Raju Pawar highly objectionable and doubtful. He has not only suppressed the injuries sustained by deceased Prabhakar, but also in his affidavit of evidence stated that deceased Prabhakar died a natural death. It is pertinent to note that, even after receipt of the postmortem report exh.20, concerned police station has not registered crime against the driver of the said S.T.Bus. As per the submissions made on behalf of the learned counsel for the appellant-MSRTC, the appellant MSRTC has also not taken any departmental action against the driver of the S.T.Bus. It is surprising that,

even though death of a passenger occurred in a moving S.T.Bus, neither concerned police station has taken cognizance of the said offence and registered the crime, nor appellant MSRTC has initiated a departmental action/inquiry against the driver of the S.T.Bus. I do not find any substance in the submissions made on behalf of the appellant-MSRTC that the appellant MSRTC is not responsible for the death of deceased Prabhakar and he died a natural death. Learned Member of the Tribunal after appreciating the evidence as discussed above rightly recorded the finding in the affirmative to issue o.1 and held that deceased Prabhakar died due to injuries received by him in the accident while driving the bus bearing registration No.MH-12/UA-8635 by its driver rashly and negligently.

9. So far as quantum of compensation is concerned, it appears that, the learned Member of the Tribunal has erroneously deducted $1/3^{\text{rd}}$ of the amount towards personal and living expenses of the deceased Prabhakar instead of $1/4^{\text{th}}$. In view of the ratio laid down in **Sarla**

Verma & Ors vs Delhi Transport Corp.& Anr reported in **(2009) 6 SCC 121**, the Tribunal ought to have deducted the income of deceased Prabhakar to the extent of 1/4th instead of 1/3rd considering the number of dependents/claimants. The learned Member of the Tribunal has also not considered the future prospects of deceased Prabhakar. I do not find any substance in the submissions made on behalf of the appellant MSRTC that deceased Prabhakar since in private employment, there cannot be addition by way of future prospects. Considering the age of deceased Prabhakar 30% addition in his income required to be made towards future prospects. I accept the submission made on behalf of the appellant-MSRTC to the extent that the learned Member of the Tribunal has erroneously applied multiplier '15' instead of '13'. The learned counsel for respondents-claimants has also not disputed the same. The Tribunal has not awarded any compensation towards loss of consortium. The claimant No.1 has lost company of her husband and as such, in view of the authoritative pronouncement of the Supreme Court in

the case of **Rajesh and others Vs. Rajbir Singh and others reported in** reported in (2013) 9 Supreme Court Cases 54, the claimant No.1 is entitled for an amount of Rs.1.00 lacs towards consortium. Minor claimant nos.2, 3 and 4 are entitled for an amount of Rs.20,000/- each towards loss of love and affection. The claimants are also entitled for an amount of Rs.25,000/- towards funeral expenses and further Rs.10,000/- towards loss of Estate. In view of the above discussion, the impugned judgment and award passed by the Tribunal requires modification.

10. Thus, the break up of compensation under different heads, awardable to the claimants, is broadly categorized as under :-

1.Loss of future income	:	Rs.4,10,670/-.
1/4 th deduction towards personal and living expenses	:	
(Rs.3,510 x 12 x 13)		
as against Rs. 3,24,000/- awarded by the Tribunal)		
2.Loss of Consortium	:	Rs.1,00,000/-
3.Loss of Love and affection for claimant nos. 2to4:		Rs.0,60,000/-
4.Funeral expenses		Rs.0,25,000/-

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5.	Loss of Estate	Rs.0,10,000/-

		Rs.6,05,670/-

(Rs.Six lacs five thousand six hundred and seventy only).

11. Though, the claimants have restricted their claim to the extent of Rs.2,50,000/-, they are entitled for the just and reasonable compensation. The claimants are thus entitled for an amount of Rs.6,05,670/- (Rs.Six lacs five thousand six hundred and seventy only) alongwith interest @ 9% p.a. The claimants shall pay the deficit court fees. Hence, following order.

O R D E R

1. First Appeal No.3542/2011 and Cross appeal Stamp No.18838/2017 are hereby partly allowed. No costs.
2. The judgment and award passed by the Member, Motor Accident Claims Tribunal, Jalgaon, dated 13.07.2011 in M.A.C.P.No.493/2004 is modified in the following manner :-
 - a) Respondent do pay compensation of Rs. Rs.6,05,670/-(Rs. Six lacs five

thousand six hundred and seventy) with interest thereon @ 9% p.a from the date of registration of the claim till its realization to the claimant nos. 1 to 4 in equal shares. The claimants are entitled for the said interest from the date of application till the award passed by the Tribunal i.e. 13.7.2011. The claimants are not entitled to the interest for the delay of 1861 days caused in filing the cross appeal. However, the claimants are entitled for the interest from the date of this order, till the amount is realized.

3. Rest of the Judgment and award stands confirmed.
4. Award be drawn up as per the above modifications.
5. If any amount is deposited as per the award passed by the Tribunal, the same shall be the part of the award after modification and the claimants are entitled to withdraw the same.

6. Appeal and cross appeal accordingly disposed of. Pending civil application, if any, also stands disposed of.
7. The claimants shall deposit the deficit Court fees within four weeks from the date of this order.

(V.K. JADHAV, J.)

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