

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2679 OF 2010

Maharashtra State Road Transport
Corporation,
Through its Divisional Controller
Nanded Division, Nanded

...Appellant

versus

1. Shabana Begum w/o Salim Khan
Age 38 years, Occ. Household,
2. Ataullah Khan s/o Salim Khan,
Age 17 years, minor u/g Pet. No.1
3. Imran Khan s/o Salim Khan,
Age 16 years, minor u/g Pet. No.1
4. Younus Khan s/o Salim Khan,
Age 14 years, minor u/g Pet. No.1
5. Ziyannah Khan s/o Salim Khan,
Age 11 years, minor u/g Pet. No.1
6. Muskan Begum s/o Salim Khan,
Age 10 years, minor u/g Pet. No.1
7. Nazrabee w/o Mohmood Khan
Age 71 years, Occ. Household

All R/o. Tamsa, Taluka Hadgaon
District Nanded

...Respondents

.....
Mr. M.K. Goyanka, advocate for appellant-claimant
Mr. G.R. Syed, advocate for respondent.
.....

CORAM : V. K. JADHAV, J.
DATED : 3rd MAY, 2017

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and award dated 4.9.2010, passed by the Member, M.A.C.T. Nanded in M.A.C.P. No. 213 of 2004, the respondent M.S.R.T.C. has preferred this appeal.

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

a) On 4.2.2004, at about 8.45 a.m. deceased Salim Khan was driving a taxi jeep bearing no. MH-26-B-8400 from Tamsa to Ardhapur. He was owner/driver of the said jeep. One S.T. Bus bearing registration No. MH-02/D-6075 came from opposite directions and gave dash to the taxi jeep of deceased Salim. As a result of which deceased Salim and other two persons died on the spot.

b) The legal representatives of deceased Salim approached the Tribunal by filing M.A.C.P. No. 213 of 2004 for grant of compensation under various heads. It has been contended that deceased was doing taxi business. He was having two taxi jeeps and out of the said two taxies, he was driving the jeep involved in the accident. He was earning more than Rs.10,000/- per month. The claimants were entirely depending upon his income and he was the only bread winner of the family.

c) The appellant M.S.R.T.C. has strongly resisted the claim petition by filing written statement. It has been contended that the driver of S.T. Bus was not driving the S.T. Bus in high speed and rash and negligent manner. It has been contended that the deceased Salim has driven the said jeep in rash and negligent manner and caused the accident. It has also been contended that owner and insurer of the jeep are not impleaded as party and therefore, claim petition is bad for non-joinder of necessary party. It has also been contended that there is hilly area on the spot of accident and the said jeep came from opposite direction in speed and on turn dashed against the S.T. Bus. There is no head on collision between the two vehicles. The respondent M.S.R.T.C. has also examined driver of S.T. Bus and produced on record the copy of judgment and order of acquittal passed by the Criminal court. The appellant M.S.R.T.C. has also filed on record the certified copy of judgment delivered by the Principal District Judge in sister claim bearing M.A.C.P. No. 301 of 2005.

d) The claimants adduced oral and documentary evidence in support of their contentions.

e) The learned Member of the Tribunal by its impugned

judgment and award dated 4.9.2010 allowed the claim petition and thereby directed the appellant M.S.R.T.C. to pay compensation of Rs.10,40,000/- to the claimants alongwith interest. Hence, this appeal.

3. The learned counsel for the appellant M.S.R.T.C. submits that there was no head on collision between two vehicles and at the time of crossing of U shape road, the jeep brushed against rear portion of S.T. Bus. The learned counsel submits that the driver of the S.T. Bus is not responsible for the accident in any manner. However, the Tribunal has not considered the evidence adduced by the appellant M.S.R.T.C. and also not given weightage to the admission given by the eye witness Vazirkhan, examined by the claimants. Learned counsel submits that the Tribunal has also awarded exorbitant amount of compensation. Learned counsel for the appellant submits that in sister claim the Tribunal has held that the driver of the jeep was alone responsible for the accident and exonerated the M.S. R.T.C. from paying the compensation. However, in the present claim petition, the Tribunal has recorded a finding contrary to its earlier decision. Though there is no income proof of the deceased, the Tribunal has considered the income of deceased on higher side and awarded exorbitant amount of compensation.

4. Learned counsel for the respondents/claimants submits that in the hilly area, the jeep fully loaded with the passengers was proceeding in ascending direction whereas the big vehicle like S.T. Bus was coming from opposite directions in descending manner in the said hilly area. Learned counsel submits that as per oral and documentary evidence, the driver of the S.T. Bus has not given sufficient space for the jeep and as such jeep brushed against the rear portion of the S.T. Bus. Deceased Salim, who was driving the jeep at the relevant time, died on the spot alongwith two other persons. Learned counsel submits that the damages caused to the jeep and the death of the passengers, including the driver of jeep unmistakably points out that the driver of S.T. Bus had driven the S.T. in high and excessive speed and caused the accident. The Tribunal has therefore, rightly held that the driver of S.T. Bus is responsible for the accident.

5. Learned counsel for the respondents-claimants further submits that in the said sister claim the claimants have not examined any eye witness and relying upon the evidence of the driver of S.T. Bus, the Tribunal has recorded the findings and exonerated the M.S.R.T.C. from liability to pay the compensation. In the instant case, the claimants have examined one eye witness and the Tribunal has rightly placed reliance on his evidence coupled with the police

documents and awarded the compensation. The learned counsel submits that the Tribunal has awarded just and reasonable compensation. Deceased Salim was the owner in possession of two taxi jeeps and out of that he was driving one jeep, which was involved in the accident and he had given another jeep on hire. The claimant No.1 has deposed that deceased Salim was earning more than Rs.10,000/- out of his taxi business. He was just 32 years of age at the time of his accidental death. He was having bright future and considering the same, the Tribunal has considered his monthly income at Rs.7000/- and as such , the compensation awarded by the Tribunal is just and reasonable.

6. On careful perusal of the pleadings, evidence and the judgment and award passed by the Tribunal, I find that the accident had taken place in the hilly area and the jeep fully loaded with the passengers was proceeding in ascending manner whereas the S.T. Bus was proceeding in descending manner. Obviously, the jeep which was fully loaded with the passengers could not have been driven in speed. It is thus for the big vehicle like S.T. Bus to leave sufficient space for the vehicle proceeding in ascending manner in the hilly area. Consequently, at U shape road the said jeep brushed against rear portion of the S.T. Bus. There was no head on collision between two vehicles, it cannot be said that the driver of the jeep

alone was responsible for the accident, as the jeep brushed against the rear portion of the S.T. Bus.

7. On careful perusal of spot panchnama and other documents, it appears that heavy damage was caused to the jeep and three persons travelling in the said jeep, including deceased Salim died on the spot. Thus, only irresistible inference could be drawn that the driver of S.T. Bus had driven the S.T. Bus in speed in hilly area and as such at U shape road, the said jeep brushed against the rear portion of S.T. Bus. However, deceased Salim could have avoided the accident by keeping distance while crossing the said S.T. Bus. Witness Vazirkhan has stated in his cross examination that the road in the hilly area where accident took place was so narrow and if the vehicle is taken at the other end while crossing, the vehicle could have been turned turtle. Thus, considering the entire evidence on record, in my opinion, the driver of S.T. Bus had contributed the negligence to the extent of 75% whereas the driver of the jeep i.e. deceased Salim had contributed the negligence to the extent of 25%. Thus, I record my findings to issue Nos. 2, 4 and 5 accordingly.

8. So far as the quantum of compensation is concerned, I do not think that the Tribunal has considered the income of deceased Salim on higher side. It is not disputed that deceased Salim was having

two taxi jeeps and he was maintaining the family consisting of seven members. Deceased Salim was 32 years old at the time of his accidental death. The Tribunal has also considered the future prospects and accordingly considered the income of deceased Salim at Rs.7000/- p.m. I do not find any fault in it. The Tribunal has awarded just and reasonable compensation by applying the correct multiplier, after deducting 1/5th of the amount from the income of deceased towards his personal and living expenses. Thus, the compensation amount is required to be re-determined in the light of the finding recorded by this Court holding the driver of S.T. Bus responsible to the extent of 75% whereas deceased Salim had contributed the negligence to the extent of 25%. In view of the same, the judgment and award under appeal requires modification. Hence, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby partly allowed. No costs.
- II. The judgment and award dated 4.9.2010, passed by the learned Member, M.A.C.T. Nanded in M.A.C.P. No. 213 of 2004 is hereby modified in the following manner:-

“The petitioners-claimants do recover an amount of Rs.7,85,000/- (Rupees Seven lacs eighty five thousand only) from the respondents with interest @ 6% p.a. from the date of petition till realization of the entire amount”.

- III. The award be drawn up as per the above modification.
- IV. The rest of the judgment and award stands confirmed.
- V. Needless to say that if any amount is deposited as per the judgment and award passed by the Tribunal, the same shall be the part of modified award and the amount in excess alongwith accrued interest, if deposited by the appellant M.S.R.T.C. before this Court, the same shall be refunded to the appellant M.S.R.T.C. The respondents claimants are permitted to withdraw the amount alongwith accrued interest as per the modified award.
- VI. The first appeal is disposed of.

(V. K. JADHAV, J.)