

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 208 OF 1993

Smt.Usha Pandurang Prabhu & Anr.

...Appellants

Versus

Garmeet Singh Jogindar Singh & Ors.

...Respondents

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Mr.S.J.Ghogre for the Appellants.

Mr. G.S.Hegde for Respondent No. 6.

Ms.Varsha Chavan for Respondent No. 2.

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CORAM: MRS.MRIDULA BHATKAR, J.

DATED : OCTOBER 05 , 2017

P.C. :

1. This Appeal is filed for enhancement of the compensation amount of Rs. 78,400/- alongwith interest @ 12% p.a. from the date of default till realization of that amount. This compensation was awarded by the learned Member, Motor Accident Claims Tribunal, Kolhapur by order dated 30.06.1992 in MACP No. 203 of 1985.

2. Appellant no.1 is a widow and appellant no.2 is a minor son of the deceased Pandurang Prabhu. This claim application was filed in the year 1985.

3. As per case of the appellants/original claimants, the deceased Pandurang Prabhu was traveling from Kolhapur to Pune in luxury bus no. JKC 8129, which was insured with respondent no. 2. The accident took place on 23.05.1985 at 6.10 a.m. when a bus dashed against the right side of the tanker bearing registration no. MWT-4342, which was coming from opposite direction and the bus thereafter gave dash to the railing towards left side of the bridge and fell inside the stream about 30 feet in depth. Pandurang Prabhu alongwith 9 passengers died on the spot. At the time of death, the deceased Pandurang Prabhu was 40 years old and he left behind the claimants as the dependents, who filed the claim application for compensation. The said application was partly allowed as the appellants/original claimants asked for the compensation of Rs. 2,50,000/-. Opponent no.1 though served did not appear before the tribunal. Opponent no.2 i.e. the insurance company appeared and filed its written statement thereby denying

the liability though it was admitted that opponent no. 1 is the owner of the luxury bus and was insured with the insurance company. Opponent nos. 4 and 5, who are the owners of the truck, filed their joint written statement and opposed the claim application on the ground that they are unnecessarily impleaded in this proceeding. Opponent no. 6 though admitted that the truck was insured with them, but denied that the insurance company is liable to pay amount. Before the tribunal, one Narsinha Vyankatesh Prabhu, who is the brother of the deceased, tendered his evidence. After considering the oral and documentary evidence of both the parties, the learned Member, M.A.C.T., Kolhapur, has held that the accident took place on account of rash and negligence driving of the driver of the luxury bus i.e. opponent no. 3 and, therefore, opponent no. 1- the owner of the luxury bus, opponent no.2-the insurance company and opponent no. 3- the driver of the luxury bus are jointly and severally deposit the compensation amount. Being aggrieved by the said judgment and award, this appeal is filed.

4. Mr.Hegde,learned counsel for respondent no.6, has submitted that Oriental Insurance Co. Ltd. is absolved from the liability and hence, no relief is claimed against the said insurance company.

5. Mr.Ghogre, learned counsel for the appellants, has submitted that the learned Member, M.A.C.T., Kolhapur by judgment and award dated 30.06.1992 has granted very less amount of compensation and it is to be enhanced. He has further submitted that appellant no.1 has tendered evidence by producing salary certificates of the deceased Pandurang and the tribunal has committed error in not accepting monthly salary of Rs. 2,500/-. The tribunal has erroneously fixed the salary of Rs. 900/- p.m. He has further submitted that at the time of accident the deceased Pandurang was 40 years old and hence, multiplier 16 ought to have been adopted instead of wrong multiplier of 12 has been adopted by the tribunal. He has argued that the tribunal has granted only Rs. 5000/- towards loss of consortium. In view of recent judgment in the case of *Rajesh v. Rajbir Singh*, reported in (2013) 9 SCC 54, an amount of loss of consortium is to be granted Rs. 1 lakh each. He has further submitted that this appeal be allowed.

6. Learned counsel for respondent no.2 has opposed this appeal and supported the judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Kolhapur.

7. Perused the judgment and award and the evidence of Narsinha Prabhu. The manner in which the accident has taken place, the learned Member, M.A.C.T., Kolhapur has rightly saddled the responsibility on the owner, driver of the luxury bus and the insurance company, wherein 10 passengers have lost their lives and the deceased Pandurang Prabhu was one of them. The said judgment and award is challenged on the point of quantum. The witness Mr. Narsinha Prabhu, the brother of the deceased, has stated that at the time of the accident the deceased Pandurang was 40 years old. He was serving in private company by name Metal Alloys Company at Andheri since 1981 and drawing monthly salary of Rs. 2,500/- p.m. He has produced salary certificate of the deceased Pandurang, which is marked at Exhibit 47. The salary certificate shows that the salary of the deceased Pandurang was Rs. 825/- p.m. with other benefits. He has further stated that since

1983 he was also doing part time job in Mumkes Block Company at Andheri and earning Rs. 750/- p.m. He has produced salary certificate of that company also, which is marked at Exhibit 48. He was doing his F.Y. Commerce, the certificate of his education is marked at Exhibit 49. On the point of standard of living of the deceased Pandurang, he has stated that the appellants/original claimants were staying in rented house by paying monthly rent of Rs. 700/-. As per the evidence of the witness, while doing job in Metal Allois Company, the deceased Pandurang simultaneously doing another part time job, which shows that he was active in earning more money. The said salary can be considered as Rs. 525/- p.m. Thus, it is reasonable to fix his salary as Rs. 1350/- p.m., out of which $\frac{1}{3}^{\text{rd}}$ amount if deducted, then it comes to Rs. 900/- p.m. The evidence of other benefits is not accepted.

8. The learned tribunal has erred in fixing the multiplier 12. The deceased was 40 years old. As per the scheduled prescribed in the judgment in the case of *Smt. Sarla Varma & Ors. Vs. Delhi Transport Corporation & Anr* reported in 2009 6 SCC 121 passed

by the Division Bench of the Supreme Court, the multiplier 15 is to be adopted. The learned tribunal did not consider the amount of loss of consortium. I am of the view that Rs. 50,000/- towards loss of consortium is to be granted to the wife of the deceased and Rs. 50,000/- is to be granted to minor son towards loss of love of his father and Rs. 2000/- towards funeral charges is also to be granted to the appellants. The amount of compensation is enhanced as per the following table.

Head	Amount
Salary (Rs.1350/- p.m.) After deducting 1/3 rd amount from the salary	Rs.900/- p.m.
	900 X 12 months = 10,800 per year
Multiplier 15	10,800 X 15 = 1, 62,000/-
Loss of Consortium	Rs. 50,000/-
Loss of love of the father	Rs. 50,000/-
Funeral Charges	Rs. 2000/-

plus interest @ 12 % p.a. from the date of filing of application till realization as per Section 171 of the Motor Vehicles Act. The amount of compensation granted by the tribunal i.e. Rs. 78,400/- alongwith interest accrued thereon is to be deducted if deposited by the insurance company.	1,62,000 + 50,000 + 50,000 + 2,000 = 2,64,000/-
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9. The entire amount alongwith interest accrued thereon is to be deposited by the insurance company within a period of three months from today.

10. In view of the above, First Appeal is allowed and disposed of accordingly.

(MRIDULA BHATKAR, J.)