

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

FIRST APPEAL NO.692 OF 2010

Maharashtra State Road Transport
Corporation through its
Divisional Controller,
Maharashtra State Road Transport
Corporation, Jalgaon

.. **APPELLANT**
(orig.Resp.No.2)

Versus

1. Jinat Begum Akhtar Husen
Age: 67 Yrs. Occu. Household
2. Fareedabee Ajmat Husen,
Age 34 Yrs., occ. Household
3. Iram Fatma Ajmat Husen,
Age: 16 Yrs. Occ.Education
4. Samreen Fatma Ajmat Husen,
Age: 13 Yrs., occu. Education
5. Sadaf Fatma Ajmat Husen,
Age: 8 Yrs. Occu. Education

All R/o Kasali Mohalla,
Amalner, Tq. Amalner,
District Jalgaon.
(Petitioner No.1 being mother,
Guardian of minor petitioner
Nos. 3 to 5)

6. Shaikh Bismilla Shaikh Yusuf
Age:Major, occu. Service
(ST driver) r/o Sayyad wada,
Bhadgaon, Tq.Bhadgaon,
Dist. Jalgaon.

.. **RESPONDENTS**
(Resp.Nos.1 to 5 are
orig.petitioners. Resp.
No.6 is orig.Resp.1)

...

Mr. M.K.Goyanka, for Appellant.

Mr. Vijay Sharma, Advocate for Resp. Nos.1 to 5.

Respondent No.6 served.

CORAM : P.R. BORA, J.

DATED : 10th October, 2018.

ORAL JUDGMENT:-

1. The Maharashtra State Road Transport Corporation (herein after referred to as the ST Corporation) has preferred the present appeal, challenging the Judgment and Award passed by the Motor Accident Claims Tribunal, at Amalner (hereinafter referred to as the Tribunal) in MACP No.96/2007 decided on 15th October, 2009.

2. Respondent Nos.1 to 5 had filed the aforesaid claim petition claiming compensation on account of death of Ajmat Husen Akhtar Husen alleging the same to have been caused in a vehicular accident happened on 9th August, 2007 having involvement of ST bus bearing registration No. MH-12/CH-8178. Respondent Nos. 1 to 5 are herein after referred to as claimants.

3. It was the case of the claimants that

deceased Ajmat while was proceeding on his motor cycle bearing registration No.MVD 6276 along with his friend Gopichand Bhura Rathod from Parola to Bhadgaon, was dashed by ST bus and in the accident so happened, suffered the death. The claimants had alleged that the accident in question happened because of the absolute negligence on part of the driver of the ST bus. The claimants had, therefore, claimed compensation of Rs.4,00,000/- from the ST Corporation. The Corporation resisted the claim petition by filing its written statement taking various defenses. The specific defense as was raised by the Corporation was that the ST driver was not at all negligent in driving the bus and the alleged accident had happened because of sole negligence on part of deceased Ajmat.

4. In order to substantiate the contentions raised in the petition, the claimants had relied upon the police papers pertaining to the criminal case filed in relation to the alleged accident; whereas the Corporation has examined the driver of the ST bus as its witness. The learned Tribunal, after having assessed the oral and documentary

evidence brought before it, held the claimants entitled for the total compensation of Rs. 7,72,500/- and held the Corporation liable to pay the entire amount of compensation. The Tribunal held the accident to have happened because of the sole negligence on the part of the ST driver. Aggrieved by the Judgment and Award passed by the Tribunal, the ST corporation has preferred the present appeal.

5. Shri Goyanka, learned counsel appearing for the ST corporation, submitted that the Tribunal has manifestly erred in recording a finding that in occurrence of the alleged accident, the negligence on the part of the ST driver is solely responsible. The learned counsel submitted that the legal heir of Gopichand, who was the pillion rider on the motor cycle of deceased Ajmat, had also filed a claim petition and in the said petition, the Tribunal has recorded a finding that deceased Ajmat has contributed the occurrence of the alleged accident by his negligence. The Tribunal has quantified the negligence on the part of deceased Ajmat to the extent of 30% and as such, the

Corporation was made liable to pay 70% of the total compensation determined by the Tribunal in the said matter. The learned counsel submitted that, in fact, in view of the finding of fact recorded by the Tribunal in another matter, in the present matter also, the Tribunal, which decided the present claim petition, must have taken the same view.

6. The learned counsel, taking me through the evidence of ST driver as well as the documentary evidence in the form of spot panchanama and more particularly the sketch of the spot of occurrence, appended with the said spot panchanama, submitted that from the averments in the spot panchanama as well as from the situation on the spot of occurrence also, it can be clearly gathered that deceased Ajmat has contributed the occurrence of alleged accident by his negligence. The learned counsel pointed out that it was the specific contention of the ST driver in his testimony before the court that deceased Ajmat was attempting to overtake one vehicle running ahead of him and after noticing him overtaking the said vehicle, though he

stopped his bus, deceased Ajmat dashed with the ST bus and the accident happened. The learned counsel submitted that considering the evidence of the ST driver, in fact, proportion of negligence could have been attributed only on the part of deceased Ajmat. The learned counsel submitted that in another claim petition, i.e. MACP No. 36/2008 arising out of the same accident, the Tribunal has recorded a finding that deceased Ajmat contributed occurrence of the alleged accident by his negligence and has quantified the proportion of his negligence to the extent of 30%.

7. The learned counsel, in the circumstances, prayed for setting aside the finding recorded by the Tribunal as about no negligence on part of deceased Ajmat and consequently to hold that in occurrence of the alleged accident, negligence of deceased Ajmat was to the extent of 30 per cent as has been held in the another claim petition arising out of the same accident.

8. The learned counsel further submitted that despite there being no cogent and sufficient

evidence brought on record by the claimants, the Tribunal has held the income of deceased Ajmat to the tune of Rs.6,000/- per month and has accordingly determined the amount of compensation. The learned counsel submitted that in absence of any cogent evidence as about income of the deceased, his income must have been held on the basis of the notional income i.e. to the tune of Rs. 3,000/- per month and not more than that. The learned counsel, in the circumstances, prayed for modification in the Award in so far as quantum of compensation is concerned. The learned counsel submitted that the multiplier of 16 has been wrongly applied by the Tribunal, which should have been 15, having regard to the age of deceased.

9. Shri Sharma, learned counsel appearing for the respondents I.e. original claimants, resisted the submissions made on behalf of the ST corporation. The learned counsel, taking me through the discussion made by the Tribunal on Issue Nos.1 and 2, submitted that, by assigning sound reasons, the Tribunal has rejected the defense raised by the corporation alleging

contributory negligence on the part of deceased Ajmat. The learned counsel submitted that no interference is required in the finding of fact so recorded by the Tribunal.

10. The learned counsel also referred to the evidence of ST bus driver as well as the documents of spot panchanama. The learned counsel submitted that the Tribunal has correctly observed that the ST bus was being driven from the center of the road, whereas the motorcycle was correctly driven on its side. In the circumstances, the learned counsel submitted that no negligence was liable to be attributed on part of deceased Ajmat. According to the learned counsel, the finding recorded by the Tribunal does not require interference.

11. The learned counsel further submitted that though the claimants may not have filed separate appeal against the judgment and award, this Court may consider the inherent mistake committed by the Tribunal while determining the amount of compensation and adequately enhance the amount of compensation. The learned counsel

submitted that the Tribunal has not considered the future prospects of the deceased while determining the amount of compensation. The learned counsel further submitted that having regard to the number of dependents, only 1/4th amount of compensation was liable to be deducted towards the personal expenses of the deceased, whereas the Tribunal has deducted 1/3rd of it. The learned counsel submitted that the compensation as awarded towards non-pecuniary damages is also inadequate and that also needs to be adequately enhanced.

12. I have given due consideration to the submissions made on behalf of learned counsel for ST corporation and learned counsel appearing for original claimants. I have perused the impugned judgment and the entire evidence on record. The fact that in MACP No. 36/2008 filed by legal heirs of deceased Gopichand, arising out of the same accident, the Tribunal, which decided the said claim petition, has held the contributory negligence of deceased Ajmat in occurrence of the alleged accident to the extent of 30%, has not been disputed by the original claimants. In Para 15 of

the judgment impugned in the present appeal, the Tribunal has referred to the said finding, but has declined to agree with the said finding. On perusal of the discussion made by the Tribunal in Para 14 of the impugned judgment as about the factum of negligence in occurrence of the alleged accident, it is apparently revealed that the Tribunal has failed in properly appreciating the evidence on record. I have carefully perused the spot panchanama and more particularly the sketch of the spot of occurrence appended to the said panchanama. Looking to the situation on the spot, and more particularly considering the spot of occurrence of the accident, there remains no doubt that deceased Ajmat had also contributed the occurrence of the alleged accident. The driver of the ST bus in his testimony before the court has specifically deposed as about the manner in which the alleged accident has happened.

13. The Tribunal while observing that the ST bus was at the middle of the road has also observed that the motorcyclist was on his proper side. The situation on the spot of occurrence does not

support the observation made by the learned Tribunal. On the contrary, it reveals that the motorcyclist was also driving the motorcycle not from his side, but as good as from the center of the road. The spot panchanama also demonstrate that the motorcycle was dashed to the right front side of the ST bus. It also demonstrates that the front light of the motorcycle and front show of the motorcycle was totally damaged. The description as above leaves no doubt that deceased Ajmat was not driving his motorcycle from his correct side. The spot of occurrence shows that the road was wide enough and had the motorcyclist been driving his motorcycle carefully, keeping the motorcycle on the left side of the road and keeping the adequate margin/distance from the center of the road, there was no possibility of the alleged accident. After having considered the evidence on the point, I have no hesitation in holding that deceased Ajmat contributed the occurrence of the alleged accident by his negligence. As has come on record, in MACP No.36/2008 arising out of the same accident, the Tribunal which decided the said claim petition, has held the negligence of deceased Ajmat to the extent

of 30%. I do not see any reason to record any different conclusion. I, therefore, hold the extent of negligence on part of deceased Ajmat to 30%.

14. The next objection raised by the ST Corporation pertains to the quantum of compensation as has been determined by the Tribunal. The Tribunal has held the income of the deceased to the tune of Rs. 6,000/- per month. It was the contention of the learned counsel for the ST Corporation that, without any evidence there for the Tribunal has wrongly held the income of the deceased to the tune of Rs.6,000/-.

15. In order to prove the income of deceased Azmat, the claimants had examined one Mukhtar Ali Nisar Ali Sayyed at Exhibit-35. Deceased Azmat was stated to have in the employment of said Muthtar Ali. Mukhtar Ali in his testimony before the court stated that he runs a shop in the name of Sana Movies and carries on the work of video shooting, mixing, dubbing and photography. He has further deposed that deceased Azmat was working with him

since 2003. He has further deposed that deceased Azmat in a day used to prepare 3-4 cassettes and used to earn around Rs.150/- per day. He has further deposed that accordingly, deceased Azmat used to earn around Rs.6,000/- to Rs.7,000/- per month.

16. Relying on the evidence of AW 2 – Mukhtar Ali, the Tribunal has held the income of deceased Azmat to the tune of Rs.6,000/- per month. It appears that the Tribunal has failed in appreciating that when it was the contention of AW 2 – Mukhtar that deceased Azmat used to earn around Rs. 150/- per day by preparing video cassettes, mixing and dubbing etc., his monthly income could not have exceeded to Rs.4,500/-. In the cross-examination, AW 2 – Mukhtar had admitted that his business was seasonal. Though AW 2 – Mukhtar denied the suggestion that he has falsely stated the income of deceased Azmat to the tune of Rs.6,000/- to Rs.7,000/-, from the evidence on record, it is apparent that the income of deceased Azmat was certainly not Rs. 6,000/-, as was stated by AW 2 – Mukhtar Ali. Even if it is assumed that

some times more income may have been derived by deceased Azmat, it also cannot be ignored that on some days, deceased Azmat may not be getting any sort of work. Having regard to the evidence on record, it appears to me that the income of deceased Azmat cannot be held more than Rs. 5,000/- per month. I accordingly hold his income to the said extent.

17. Further, there is substance in the objection raised by the learned counsel for ST corporation that the Tribunal has wrongly applied the multiplier of 16; whereas the multiplier of 15 was liable to be applied having regard to the age of the deceased. The submissions in that regard were resisted by Shri Sharma learned counsel appearing for the original claimants. The learned counsel, on the contrary, submitted that the Tribunal has erred in not considering the future prospects of the deceased while determining the amount of dependency compensation and has also failed in awarding the appropriate compensation towards non-pecuniary damages. The learned counsel placed his reliance on the judgments of the Hon'ble

Apex court in the case of Sarla Verma Vs. DTC – (2009) 6 SCC 121 as well as National Insurance Company Ltd. Vs. Pranay Sethi and Ors. – (2017) 16 SCC 680, and prayed for adequate enhancement in the amount of compensation.

18. It is true that the claimants have not preferred any separate appeal seeking enhancement in the amount of compensation. However, it cannot be ignored that at the first instance the Tribunal and thereafter the appellate court are under an obligation to see that just and fair compensation is awarded to the claimants in the claim petitions. In the circumstances, the errors pointed out by the claimants in the impugned judgment, which have resulted in not awarding the appropriate compensation are liable to be considered. The Hon'ble Apex court in the case of Pranay Sethi (cited supra) has settled the law that while determining the income, addition of 40% of the established income should warrant whereas the deceased was below the age of 40 years and was self-employed. In the present case, it is not in dispute that deceased was self-employed and was

below the age of 40. As such, while determining the amount of dependency compensation, addition of 40% of his established income is warranted. I have held the income of deceased Ajmat to the tune of Rs.5,000/- per month. Adding 40% of the same, i.e. Rs.2,000/- in the existing income of the deceased, the income on the basis of which the dependency compensation has to be determined comes to Rs.7,000/- (Rs.5,000/- + Rs.2,000/-) which annually comes to Rs.84,000/-. Having regard to the number of dependents on the income of deceased Ajmat, only 1/4th of his established income is liable to be deducted. Deducting the said amount towards the personal expenses of deceased Ajmat, the balance remains of Rs.63,000/-, which has to be multiplied by multiplier of 15 having regard to the age of deceased Ajmat, for determining the amount of dependency compensation. Thus, by applying the said multiplier of 15, the amount of dependency compensation comes to Rs.9,45,000/-. As noted herein above, the claimants are also entitled for non-pecuniary damages of Rs.70,000/- in addition to the aforesaid amount. Adding the said amount of Rs.70,000/-, the amount of total compensation comes

to Rs.10,15,000/-. As held by me herein above, deceased Ajmat had contributed the occurrence of the alleged accident by his negligence and I have also held the proportion of negligence on part of the deceased to the extent of 30%. In the circumstances, the ST corporation can be made liable to pay only 70% of the total compensation, as determined above, which comes to Rs. 7,10,500/-. In the facts and circumstances of the case, it appears to me that this would be the just and fair compensation payable to the claimants in the present appeal.

19. For the reasons stated above, following order is passed, -

ORDER

- i. The appellant ST Corporation is held liable to pay the compensation of Rs.7,10,500/- (Rupees seven lakh ten thousand and five hundred) to the respondents original claimants with interest thereon @ 9% per annum from the date of filing of the petition till realization of the said amount;
- ii. The impugned Award thus stands

modified to the aforesaid extent;

iii. 15% of the total amount of compensation be paid to Claimant No.1 – Jinat Begum; 40% of it be paid to claimant No.2 – Fareedabee; 15% each be paid to claimant Nos. 3 to 5, i.e. Iram Fatma; Samreen Fatma; and Sadaf Fatma respectively. Since by this time, the minors must have become majors, no orders are passed for investment of the amount of minors in Fixed Deposit Receipt.

iv. It would be open for the claimants to withdraw the amount of their respective shares;

v. After remittance of the amount of compensation, as per the present judgment, the balance, if any remains, be refunded to the appellant ST corporation;

iv. The appeal thus stands partly allowed in the aforesaid terms. Pending civil application, if any, stands disposed of.

(P.R. BORA)
JUDGE