

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

904 FIRST APPEAL NO. 300 OF 2006

The Maharashtra State Road
Transport Corporation,
Through Divisional Controller,
Jalgaon.

..Appellant
(Orig. Resp.)

Versus

- 1) Hirabai Pralhad Patil
Aged: 35 years, Occ.: Household,
R/o. Dharangaon, Tq.Dharangaon,
District Jalgaon.
- 2) Sureskha D/o. Pralhad Patil
Aged: 17 years, Occ.: Student
- 3) Meena D/o Pralhad Patil
Aged: 15 years, Occ: Student.
- 4) Mangesh S/o. Pralhad Patil
Aged: 12 years, Occ: Student.

Nos.2 to 4 minor U/g. of
Respondent no.1 – Hirabai Pralhad Patil
R/o. Dharangaon, Tq.Dharangaon,
District: Jalgaon.

- 5) Anusayabai Babulal Patil
Aged: 65 years, Occ: Household,
R/o. Dharangaon, Tq.Dharangaon,
District: Jalgaon.

..Respondents
(Orig. Claimants)

...
Advocate for Appellant : Shri D.S.Bagul
Advocate for Respondent Nos.1 to 4 : Smt. Sangita Dhumal
(Tambat)

...
Respondent No.5 died. Her legal heirs are Respondent Nos.1 to 4.
...

CORAM : P.R.BORA, J.

DATE: 16th October, 2018

ORAL JUDGMENT:-

1. The Maharashtra State Road Transport Corporation (MSRTC) has preferred the present appeal against the Judgment and award passed in Motor Accident Claim Petition No.459 of 2001, decided by the Motor Accident Claims Tribunal, Jalgaon, on 21.10.2005.

2. The respondents had filed the aforesaid claim petition claiming compensation on account of death of Pralhad Babulal Patil alleging the same to have been caused in a vehicular accident happened on 07.08.2001. It was the contention of the respondents, who are hereinafter referred to as the claimants, that on the fateful day, when deceased Pralhad was waiting for Bus at the spot of occurrence of accident, the S.T.Bus bearing registration No.MH20/0053 which was in a high speed and was being driven in rash and negligent manner, gave dash to Pralhad and in the accident so happened, Pralhad suffered multiple injuries and he succumbed to the said injuries on the same day. As stated in the petition, age of the deceased was 40 years on the date of accident and he was serving as a Professor in the Arts and Commerce College of Dharangaon and earning Rs.11,211/-

per month by way of monthly salary. It was alleged by the claimants that the accident happened because of rash and negligent driving of the driver of S.T.Bus. The claimants have, therefore, claimed compensation of Rs.20,00,000/- from the MSRTC. The MSRTC resisted the claim petition by filing its written statement before the Tribunal on various grounds. The negligence of S.T. Driver was denied by the MSRTC and plea of contributory negligence was also raised. The age and income of the deceased was denied by the MSRTC. In order to substantiate the claim of the compensation raised in the petition, one of the claimants deposed before the Tribunal and some more witnesses were examined so as to prove age and income of the deceased. No oral evidence was adduced on behalf of the MSRTC. The learned Tribunal, after having assessed the oral and documentary evidence brought on record before it, held the claimants entitled for the total compensation of Rs.13,58,360/- inclusive of no fault liability compensation. The Tribunal has also awarded interest @ 9% p.a. on the said amount from the date of filing of the claim petition till its realisation. Aggrieved by, the MSRTC has preferred the present appeal.

3. Shri D.S.Bagul, learned Counsel appearing for the MSRTC

assailed the impugned Judgment mainly on two grounds. The learned Counsel submitted that the Tribunal has failed in considering the plea raised by the MSRTC as about contributory negligence on part of deceased Pralhad. The learned Counsel taking me through the documents on record and more particularly, spot panchanama, submitted that the averments made in spot panchanama, sufficiently show that deceased Pralhad had entered on the highway up to its middle and that was the reason that he was dashed by the S.T.Bus. The learned Counsel submitted that blood stains occurring on the spot of accident supports the contention of the MSRTC. According to the learned Counsel, the Tribunal failed in appreciating the aforesaid evidence and has erroneously held the entire negligence in occurrence of the alleged accident, that is of the S.T. driver. The learned Counsel submitted that even from the averments in the claim petition and the admissions given by the PW-1 in her cross-examination, a reasonable inference can be drawn that deceased Pralhad had instead of standing on the side of the road, had proceeded further on the road, which was admittedly a highway and that was the reason that he was dashed by the offending S.T.Bus. The learned Counsel submitted that in the light of the evidence, which has come on record, the Tribunal must have attributed some

negligence on the part of deceased Pralhad and entire negligence could not have been attributed on the part of driver of the S.T.Bus.

4. Another objection raised by the learned Counsel for MSRTC is about the amount of compensation determined by the Tribunal. The learned Counsel submitted that statutory deductions are also not considered by the Tribunal from the salary amount while determining the amount of compensation. The learned Counsel further submitted that there was no evidence brought on record to show that deceased Pralhad was in permanent employment. In the circumstances, according to the learned Counsel, merely salary certificate for temporary employment could not have been relied upon for determining the amount of compensation. The learned Counsel further submitted that the Tribunal has also erred in applying the multiplier of 15, whereas it must have been 14 having regard to the age of the deceased. The learned Counsel in the circumstances, prayed for suitable modification in the impugned Judgment and award.

5. The learned Counsel appearing for the original claimants opposed the submissions made on behalf of the appellant. The

learned Counsel submitted that the Tribunal has, in fact, not considered the aspect of future prospects, which needs to be considered in view of recent pronouncements by the Hon'ble Apex Court.

6. I have given due consideration to the submissions made by the learned Counsel appearing for the MSRTC and the learned Counsel appearing for the original claimants. I have also perused the impugned Judgment and the evidence on record. Since emphasis of the learned Counsel appearing for the MSRTC was on the averments in the spot panchanama, I have carefully read the said spot panchanama in light of the submissions made by learned Counsel, whereupon, it is revealed that the contentions as are raised by the learned Counsel for the MSRTC, cannot be accepted. Though, it was contended that the blood stains were noticed on the highway and that too near the middle of the road, the spot panchanama does not depict such situation. It is true that blood stains were noticed on the tar road, but not at the middle of the said road, but at 8 feet distance from the corner of the said road from east side.

7. It is consistent contention of the claimants that deceased

Pralhad was waiting for bus alongwith his wife at the bus stop and after he noticed that one S.T.Bus is coming from Dharangaon side, he moved forward to give signal to the said bus so that he can board in the bus. Considering the evidence on record, which has remained unshattered in the cross-examination, it appears to me that no case is made out for attributing any negligence on the part of the deceased in occurrence of the alleged accident. On the contrary, after having seen the passengers waiting for the bus, it was the duty of the bus driver to slow down his bus and he was supposed to be more careful even while taking the bus ahead from the said spot, even if he was not willing to stop the bus at the said stop. Moreover, when it was the contention of the MSRTC that deceased contributed the occurrence of the alleged accident by his negligence, the MSRTC was under an obligation to prove the said plea by leading positive evidence. Admittedly, the MSRTC has not adduced any oral evidence. It was quite possible for the MSRTC to adduce evidence of driver, who was allegedly driving the said S.T.Bus. There is no explanation as to why such endeavour was not made by the MSRTC. The Tribunal has considered all these aspects and ultimately reached to the conclusion that the accident happened due to negligence of the driver of the S.T.Bus alone. It does not appear to me that the

Tribunal has committed any error in reaching to such conclusion.

8. The another objection raised by the appellant is, as about the quantum of the compensation determined by the learned Tribunal. The findings on record show that in order to prove the salary of deceased Pralhad, the claimants had examined Manga Puna Visave (PW-2), a person, who at the relevant time was working as Junior Clerk in the Arts and Commerce College at Dharangaon. In the evidence of Manga Puna Visave (PW-2), salary certificate came to be proved and was marked as Exh.22. The salary certificate shows that deceased Pralhad was receiving monthly salary @ Rs.11,211/- per month. It was the objection to the salary certificate by the MSRTC that no deductions were shown in the salary certificate. In the cross-examination, a specific question was asked in that regard to Manga Puna Visave (PW-2) and he has admitted that the deductions from the salary of deceased Pralhad, are not shown in the salary certificate. The deductions as were admitted by the said witness are as follows:-

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|------|----------------------|--------------|
| i) | College Society Loan | - Rs.2,062/- |
| ii) | H.D.F.C. Loan | - Rs.3,861/- |
| iii) | J.G.G.S. Loan | - Rs.2,800/- |
| iv) | G.P.F. | - Rs.850/- |
| v) | L.I.C. | - Rs.1,080/- |
| vi) | G.I.S. | - Rs.40/- |
| vii) | Professional Tax | - Rs.200/- |

Having regard to the deductions, it was the contention of the learned Counsel for the MSRTC that the deductions as are shown, were equal to the salary of the deceased and in such circumstances, it was the further contention of the learned Counsel that it leads to an inference that the claimants may not be depending on the income of the deceased. I am, however, not convinced with the submissions so made. From the salary certificate, it has been sufficiently proved that deceased Pralhad was in the employment of the Arts and Commerce College at Dharangaon and was receiving salary to the tune of Rs. 11,211/-. It need not be stated that while determining the income of the deceased for the purpose of determining compensation in the accident claim cases, the only deductions which are permissible are the Professional Tax and the Income Tax. Deductions towards the Provident Fund contribution and the installments of loan etc. are not to be considered while determining the compensation. In the circumstances, it does not appear to me that by holding the said monthly income whatever the amount of compensation has been determined by the Tribunal, can be said to be incorrectly determined.

9. The learned Counsel for the appellant also sought to contend that the Tribunal has wrongly applied multiplier of 15, whereas the appropriate multiplier in the present case would be of 14 having

regard to the fact that deceased was falling in the age group of 40 to 45.

10 It is true that according to the law laid down by the Hon'ble Apex Court in the case of *Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another* [(2009) 6 SCC, 121], 14 is the appropriate multiplier considering the age of the deceased. It is also true that if the said multiplier is applied, the amount of compensation as determined by the Tribunal is liable to be decreased to that extent. However, I am not inclined to cause any interference in the amount of compensation so determined by the Tribunal for the reason that the Tribunal has not considered the future prospects of the deceased. Had the said aspect been considered, the amount of compensation would have been increased to that extent. In the aforesaid circumstances, I deem it appropriate to maintain the award as it is. The amount of compensation so determined by the Tribunal would be just and fair compensation payable to the claimants. In the result, the following order is passed:-

ORDER

- I) Appeal is dismissed, however, without any order as to the costs.

II) The amount of compensation deposited by the appellant Corporation in this Court is permitted to be withdrawn by the claimants, if not withdrawn already.

III) Appeal stands disposed of in the aforesaid terms.

(P.R.BORA)
JUDGE

SPT