

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

FIRST APPEAL NO.1004 OF 2002

Maharashtra State Road Transport
Corporation, Ahmednagar Division,
Ahmednagar, through its
Divisional Controller. ..Appellant

Versus

1. Sau Mobin Shaikh Kalim,
Age: 28 years, Occ: Household work
2. Tausif Shaikh Kalim,
Age: 8 years,;
3. Faisal Shaikh Kalim,
Age: 5 years;
4. Shahid Shaikh Kalim,
Age: 2 years;
5. Haliuma Shaikh Karim,
Age: 57 years,
Occ: Household work;

Respondents No.2 to 4
minor through their L.R.
Respondent no.1

All residents of Ramchandra Khunt,
Ahmednagar. ..Respondents

...

Mr. M.K. Goyanka, Advocate for Appellant.
Mr. U.S. Malte, Advocate for Respondents.

...

**CORAM : P.R. BORA, J.
DATE : 25th SEPTEMBER, 2018.**

ORAL JUDGMENT:-

. The Maharashtra State Road Transport

Corporation (for short 'S.T. Corporation') has preferred the present appeal against the judgment and award passed against it in Motor Accident Claim Petition No.606 of 1998 decided on 01.08.2002 by the Motor Accident Claims Tribunal at Ahmednagar.

2. The present respondents had filed the aforesaid claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'M.V. Act') claiming compensation of Rs. 5,00,000/- on account of the death of Shaikh Kalim Shaikh Karim alleging the same to have caused in a vehicular accident happened on 12.03.1998 having involvement of a S.T. Bus bearing registration no. MH-20-D-2867. It was the case of the respondents (hereinafter referred to as the claimants) that the tempo bearing registration no. MH-16-D-4012, which was being driven by deceased Kalim was dashed by the S.T. Bus and in the accident so happened, deceased Kalim suffered death.

3. The claimants had alleged that the accident in question happened because of the rash and negligent driving of the S.T. Bus. On the date of accident, age of deceased Kalim was stated to be

32 years and his income was stated to be Rs. 4,000/- to 5,000/- per month. The S.T. Corporation contested the claim petition by filing its written statement on various grounds. The plea of negligence on part of the deceased was also raised by the S.T. Corporation. The learned Tribunal however, after having assessed the oral as well as documentary evidence brought on record before it, awarded the compensation of Rs. 3,70,936/- to the claimants inclusive of the amount of NFL compensation. Aggrieved by, the S.T. Corporation has preferred the present appeal.

4. Shri M.K. Goyanka, the learned counsel appearing for the S.T. Corporation criticized the impugned judgment on various grounds. The learned counsel submitted that in view of the specific plea raised by the S.T. Corporation, the Tribunal must have framed the issue as about the contributory negligence of the deceased in occurrence of the alleged accident. The learned counsel submitted that the Tribunal neither framed the said issue nor considered the evidence on record clearly demonstrating the negligence of the deceased in occurrence of the alleged accident and has wrongly

held the S.T. driver to be solely negligent for causing the accident in question. The learned counsel further submitted that the Tribunal has also erred in determining the amount of compensation. The learned counsel submitted that in absence of any cogent evidence as about the income of deceased Kalim, the income of deceased Kalim in no case could have been more than Rs. 15,000/- p.a. The learned counsel on all these counts prayed for setting aside the impugned award.

5. The learned counsel for the respondent- i.e. original claimants supported the impugned judgment and award. On perusal of the impugned judgment and the evidence on record, in light of the submissions made by the learned counsel for the S.T. Corporation, it is apparently revealed that no case is made out by the S.T. Corporation for causing interference in the impugned judgment and award. Merely because the Tribunal did not specifically framed the issue as about the contributory negligence as alleged by the S.T. Corporation against the deceased, the finding recorded by the Tribunal to the effect that the alleged accident happened because of the sole

negligence of the driver of the S.T. bus cannot be set aside in view of the available evidence on record. The learned Tribunal in Para-7 of its judgment has elaborately discussed about the manner in which the alleged accident had happened and the situation on the spot of occurrence. The learned Tribunal has analyzed the evidence of the S.T. bus driver and has declined to believe the facts deposed by the said witness in his evidence. The Tribunal has observed that if the contention of the driver is to be accepted that after having seen the tempo being driven by deceased Kalim entering on wrong side, he lowered the speed of the S.T. bus, then the tempo could not have been dragged for the distance of about 15 feet. The Tribunal has in clear terms held that from the situation on the spot of occurrence, it was discernible that the driver of the S.T. bus could not control his bus and gave a forceful dash to the tempo and dragged the tempo to 15 feet.

6. It does not appear to me that the Tribunal has committed any error in arriving at the aforesaid conclusion. In so far as the objections raised as about the amount of compensation

determined by the Tribunal, I am to state that the Tribunal has assessed the compensation very conservatively and in any case it can not be said that the Tribunal has awarded unreasonable amount of compensation. The claimants had sufficiently proved that deceased Kalim was working as a driver. Though the claimants had claimed the income of deceased Kalim to the tune of Rs. 4,500 per month, in absence of the documentary evidence in that regard, the Tribunal on safer side held the income of deceased only to the tune of Rs. 2,000/- per month and on the basis of the said income has assessed the amount of compensation.

7. The learned counsel for the S.T. Corporation did not dispute the multiplier applied by the Tribunal for determining the amount of compensation. In so far as the non-pecuniary damages are concerned, the Tribunal has awarded a very reasonable amount. After having considered the entire evidence on record, it does not appear to me that there is any substance in the objections raised in the appeal by the S.T. Corporation that the compensation as awarded by the Tribunal is arbitrarily awarded on higher side. In view of the

fact that the compensation as awarded by the Tribunal is just and reasonable in the facts of the case, I see no reason to cause any interference in the impugned judgment and award. The appeal being devoid of any substance deserves to be dismissed and is accordingly dismissed however, without any order as to costs.

8. It would be open for the claimants to withdraw the amount of compensation alongwith interest accrued thereon, if any, deposited by the appellant-Corporation if not already withdrawn by them.

(P.R. BORA, J.)

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