

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

FIRST APPEAL NO. 3849 OF 2008

1. Bibishan S/o. Digambara Mote
Age: 53 Years, Occ: Service
R/o. Anand Nagar, Osmanabad
2. Sushama W/o. Bibishan Mote
Age: 50 Years, Occ: Household
R/o. As above. ..Appellants

Versus

1. Maharashtra State Road Transport Corporation
Vahatuk Bhavan, Mumbai
Through: The Divisional Controller,
M.S.R.T.C. Osmanabad ..Respondents

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Mr. S.G. Chapalgaonkar, Advocate for Appellants.
Mr. Anilkumar B. Dhongade, Advocate for Respondent.

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CORAM : P.R. BORA, J.

DATE : 12th OCTOBER, 2018.

ORAL JUDGMENT:-

1. The claimants in Motor Accident Claim Petition No. 36 of 2004 decided by the Motor Accident Claims Tribunal at Osmanabad on 23.05.2007 have preferred the present appeal seeking enhancement in the amount of compensation awarded by the Tribunal.

2. The appellants, who are hereinafter referred to as the claimants had filed the aforesaid claim petition claiming the compensation on account of death of their son Yogesh alleging

the same to have been caused in a vehicular accident happened on 30.12.2003 having involvement of a S.T. Bus No. MH-11-T-9152. It was the contention of the claimants that deceased Yogesh while was proceeding on motorcycle bearing Registration No. MH-25-E-1255 was dashed by the aforesaid S.T. Bus coming from the opposite direction and in the accident so happened he suffered death. As stated in the petition, deceased Yogesh was of the age 22 years on the date of accident and was pursuing his education in the 3rd year engineering. It was alleged by the claimants that the accident in question happened because of the sole negligence of the bus driver and have therefore claimed the compensation of Rs. 4,00,000/- from the S.T. Corporation.

3. The petition was resisted by the S.T. Corporation on various grounds. The S.T. Corporation has denied that the accident happened because of the rash and negligent driving of the bus driver and had made counter allegation that the accident had occurred because of the negligence of deceased himself. The age and prospective income as was stated in the petition was also disputed by

the Corporation.

4. In order to substantiate the contentions raised in the petition, appellant no.1 Bibishan S/o. Digambara Mote deposed before the Court and some documents were also filed on record. The respondent-corporation adduced the evidence of the driver of the offending bus namely Krushna Kutti to substantiate the defence raised by it in its written statement. 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. 2,24,500/- inclusive of NFL compensation from the respondent-S.T. Corporation. Dissatisfied with the amount of compensation so awarded by the Tribunal, the appellants have preferred the present appeal seeking enhancement in the amount of compensation.

5. Shri Chapalgaonkar, the learned counsel appearing for the appellants assailed the impugned judgment more particularly on the quantum of compensation as has been determined by the Tribunal. The learned counsel invited my attention to the discussions made by the Tribunal in Para-12

of its judgment. The learned counsel submitted that the Tribunal has grossly erred in holding the income of deceased Yogesh by applying the criteria of notional income and thereby holding his income at the rate of Rs. 2,500/- per month which annually comes to Rs. 30,000/-. The learned counsel submitted that the Tribunal failed in appreciating that deceased Yogesh was a 3rd year engineering student and it was evident that had he survived would have certainly worked as an engineer. According to the learned counsel, the Tribunal must have therefore held the income of deceased Yogesh which could have been earned by an engineer.

6. The learned counsel submitted that in case of **"Sandhya Gopalrao Talokar and Another Vs. Balaji Keshao Pawar and Others, 2017(6) Bom.C.R.51"** this Court (Coram: Smt. Shalini Phansalkar Joshi, J.) has held the income of deceased who was also of the age of 22 years and was studying in the engineering course at Rs. 20,000/- per month and has accordingly enhanced the amount of compensation. The learned counsel also placed his reliance on the another judgment delivered by the learned single judge of this Court in the case of

"Branch Manager, United India Insurance Company Limited Vs. Shivbodhansingh Keshav Singh and Others, 2015(6) All.M.R.139" wherein the appeal filed by the insurance company was dismissed and the amount of compensation was enhanced to Rs. 10,24,500/- in respect of death of an engineering student. The learned counsel submitted that the case of the present appellant stands at par with the claimants in the aforesaid judgment cited by him.

7. The learned counsel also relied upon the judgment of the Hon'ble Apex Court in the case of **"Radhakrishna and Another Vs. Gokul and Another, 2013(16) SCC 585"** wherein the Hon'ble Apex Court has awarded the lump sum compensation of Rs. 7,00,000/- to the parents of the deceased who was aged 19 years and was an engineering student.

8. The learned counsel further submitted that the Tribunal also must have awarded adequate compensation for loss of their son at a young age. The learned counsel relied upon the judgment of the Hon'ble Apex Court in the case of **"Magma General Insurance Co. Ltd Vs. Nanu Ram, 2018 SCC OnLine SC**

1546" wherein the Hon'ble Apex Court has held the parents of the unmarried son entitled to be awarded the loss of consortium under the head of Filial Consortium. The learned counsel in the circumstances prayed for adequate enhancement in the amount of compensation. It was submitted by the learned counsel that the notional income of deceased Yogesh can be held as Rs. 7,000/- per month and accordingly if the compensation is determined, the appellants would be entitled for the total compensation of Rs. 9,36,000/-. The learned counsel, therefore, prayed for modification of the award and to enhance the amount of compensation to the aforesaid extent.

9. Shri Dhongade, the learned counsel appearing for the S.T. Corporation resisted the submissions made on behalf of the appellants. The learned counsel supported the impugned judgment and award. The learned counsel submitted that in absence of any sufficient evidence as about the income of deceased, the Tribunal cannot be said to have committed any error in holding the notional income of deceased at the rate of Rs. 2,500/- per month. The learned counsel submitted that even the

multiplier applied by the Tribunal of 11 is also correctly applied. The learned counsel pointed out that in the judgment relied upon by the appellants in case of "Radhakrishna and Another" also the Hon'ble Apex Court has applied the multiplier based on the age of the parents of deceased. The learned counsel invited my attention to the observations made by the Apex Court in Para-14 of its judgment. The learned counsel, therefore, prayed for dismissal of the appeal stating that no interference is warranted in the well reasoned judgment and order passed by the Tribunal.

10. I have given due consideration to the submissions made by the learned counsel appearing for the appellants and the learned counsel appearing for the respondent-corporation. I have perused the judgment as well as the evidence on record. It is not in dispute that, only the quantum of compensation as has been determined by the Tribunal, is disputed by the appellant. On perusal of the discussion made by the Tribunal in Para-12 of its judgment, it is revealed that the Tribunal has held the income of deceased as Rs. 2,500/- per month by applying the criteria of

notional income. It appears to me that the Tribunal has failed in appreciating that the notional income as was being held at the rate of Rs. 2,500/- per month in the relevant period was of a person not holding any additional qualification; in other words of a person employed as a labourer or for carrying out similar activities. In the present case, ample evidence was there on record to show that the deceased was a 3rd year engineering student. The said fact has not been denied or disputed by the corporation also.

11. Having regard to the fact that deceased was a last year engineering student, the Tribunal must not have applied the criteria of notional income at the rate of Rs. 2,500/-. It was the contention of the learned counsel appearing for the appellants that in the similar circumstances, the learned Single Judge of this Court in the case of "Sandhya Gopalrao Talokar and Another Vs. Balaji Keshao Pawar and Others" had held the income of an engineering student at the rate of Rs. 20,000/- per month. It was the contention of the learned counsel that applying the same criteria in the present case also the amount of compensation shall

be assessed by holding income of deceased at the rate of Rs. 20,000/- per month. Another judgment was also relied upon by the learned counsel wherein the another learned Single Judge has enhanced the amount of compensation to Rs. 10,24,500/- holding the income of deceased who was also engineering student at the rate of Rs. 10,000/- per month. I have carefully perused the judgment in the case of "Sandhya Gopalrao Talokar and Another" (cited supra) in the said matter, the accident had admittedly occurred on 21.01.2013. In the circumstances, the income of the deceased in the present case cannot be considered at par with the deceased in the said case. I am, therefore, not inclined to rely upon the judgment so relied upon by the learned counsel.

12. The facts in the case of "Branch Manager, United India Insurance Company Limited Vs. Shivbodhansingh Keshav Singh and Others" were like that the deceased in the said case was 25 years old and was a student of final year of polytechnic college. It was the contention of the claimants that the father of the said deceased in the said matter stated that his son was very brilliant and

could have earned the salary in the sum of Rs. 10,000/- per month and accordingly the said contention was accepted by the learned Single Judge of this Court and the amount of compensation was accordingly enhanced.

13. The learned counsel also relied upon the judgment of the Hon'ble Apex Court in the case of "Radhakrishna and Another Vs. Gokul and Another". On perusal of the said judgment, it is revealed that in the said case the accident had occurred on 20.01.2003 and deceased in the said case was 19 years old and was a student of engineering course. The Tribunal had determined the compensation by taking his annual income to be Rs 15,000/- and deducted $1/3^{\text{rd}}$ towards the personal expenses. The Hon'ble Apex Court estimated the earning of the deceased at the rate of Rs. 42,000/- p.a. and accordingly awarded the lump sum compensation of Rs. 7,00,000/- to the appellants. The facts involved in the present case are identical to the facts of the case before the Hon'ble Apex Court. In the circumstances, I deem it appropriate to enhance the amount of compensation on the similar lines as was enhanced by the Hon'ble Apex Court

i.e. to the extent of Rs. 7,00,000/-. It appears to me that it would be the just and fair compensation payable to the appellants in the present case.

14. For the reasons stated above, the following order is passed:

ORDER

- i) The appellants-claimants are held entitled for the enhanced compensation of Rs. 4,75,500/- in addition to the compensation awarded by the Tribunal.
- ii) The respondent-corporation shall pay the enhanced amount of compensation to the appellants with interest thereon at the rate of 9% p.a. from the date of filing of the present appeal till its realization.
- iii) The award be modified accordingly.
- iv) The appeal stands allowed in the aforesaid terms.

(P.R. BORA, J.)