

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

FIRST APPEAL NO. 228 OF 2007

1. Mariyambi W/o Sk. Miskin
Age : 74 years, Occ : Household,
R/o Nanded, Tq. Mehkar, Dist. Buldhana.
2. Halimabi W/o Sk. Rehman
Age : 50 years, Occ : Household,
R/o as above.
3. Sk. Chand Pasha S/o Sk. Rehman
Age : 27 years, Occ : Education,
R/o as above.
4. Sk. Zahir S/o Sk. Rehman
Age : 26 years, Occ : Education,
R/o as above.

**..APPELLANT
(Ori. Claimants)**

VERSUS

1. Maharashtra State Road
Transport Corporation (M.S.R.T.C.),
through its Divisional Controller,
Parbhani.
2. Bhagorao S/o Fakirrao Pole
Age : 39 years, Occ : Agri.,
R/o Jamdaya, Tq. Sengaon,
Dist. Hingoli.
3. The Oriental Insurance Co. Ltd.
Through its Branch Manager,
Daulat Building, Shivaji Chowk,
Parbhani.

**..RESPONDENTS
(Ori. Respondent Nos.1 to 3)**

...
Mr.S.U. Shaikh h/f Mr. Y.M. Khan, Advocate for the
appellants.
Mr.A.D. Wagh, Advocate for respondent no.1.
Mr.A.D. Kanade, Advocate for respondent no.3.

...
CORAM: V.L. ACHLIYA, J.
DATED : 27.08.2019

JUDGMENT:

. Being aggrieved by the judgment and order passed by the learned Member, Motor Accident Claims Tribunal, Hingoli in M.A.C.P. No.72/2002 dated 18.10.2006, the appellants – claimants have preferred this appeal seeking enhancement of compensation.

2. Heard the learned counsel for the appellants and learned counsel representing the respondent nos.1 and 3. Respondent no.2 though served, absent.

3. Before adverting to deal with the submissions advanced, it is useful to refer few facts leading to filing of Claim

Petition. The appellants-claimants had filed application U/Sec. 166 of the Motor Vehicles Act seeking compensation of Rs.3,00,000/- on account of accidental death of deceased Shaikh Rehman Shaikh Miskin. The appellant nos.1 and 2 (original claimant nos.1 and 2) are respectively the mother and wife of deceased Shaikh Raheman. The appellant nos.3 and 4 are sons of deceased Shaikh Raheman. The claimants have approached with a case that on the date of accident i.e. on 04.11.2001, deceased Shaikh Raheman had gone to village Bhankheda to meet his relative. While he was returning from village Bhankheda and travelling in a Jeep bearing registration no.MH-22-D-989, the offending vehicle i.e. S.T. Bus bearing registration no.MH-22-F-2107 was coming from opposite directions. The drivers of both the vehicles were driving their respective vehicles in an excessive and an unmanaged speed. Both the vehicles

colluded with each other. It resulted into causing serious injuries to deceased Shaikh Rahemanm, who succumbed to injuries while undergoing treatment in S.G.M. Hospital at Nanded. On account of incident, the Police have registered offence under sections 279 and 338 of the Indian Penal Code with Police Station Sengaoon, vide C.R. No.128/2001 against drivers of both the vehicles.

4. The appellants-claimants have claimed that at the time of incident, the deceased was 54 years old and running grocery shop. He was also managing and supervising the agricultural land owned by him. By doing the business and cultivating the agricultural land, the deceased was earning Rs.3,500/- per month. On account of pecuniary and non-pecuniary loss, the claimants have claimed compensation of Rs.3,00,000/- making the respondent nos.1 to 3 jointly and severally

liable to pay the compensation. The respondent no.1 is the owner of S.T. Bus. The respondent no.2 is claimed to be the owner of Jeep, which was insured with the respondent no.3.

5. The respondent no.1 resisted the claim application by filing written statement and denied the liability to pay the compensation. In brief, it is contended that the accident was occurred due to sole negligence on the part of driver of Jeep. According to appellant no.1 at the time of accident, the farmers had burnt the dried sticks and twigs of Soyabin crop by the side of road. Due to smoke emitting dark smoke screen was created. Therefore, it was not possible for the driver to watch on front side. He therefore stopped the bus by the side of road. The driver of Jeep in which the deceased was travelling gave dash to S.T. Bus

which standing by the side of the road. The driver of Jeep was driving the Jeep in an excessive and manageable speed. He could not control the Jeep and hit the Stationary S.T. Bus.

6. The respondent no.3-insurance company resisted the claim by filing written statement with contention that the accident was occurred due to sole negligence on the part of driver of Bus. It is claimed that the respondent no.3 is not liable to pay compensation on account of breach of policy condition. Respondent no.3 has claimed that the driver of Jeep was not holding the effective driving licence to drive the vehicle and the deceased was carried in Jeep as a fare paying passenger. The risk of passenger carried in Jeep was not covered under terms of policy.

7. On due consideration of rival pleadings and evidence adduced in the case, the Tribunal has partly allowed the application and awarded compensation of Rs.75,000/- by apportioning the liability in equal proportion in between respondent no.1 and respondent nos.2 and 3. Respondent no.1 has been ordered to pay the compensation of Rs.37,500/- with interest @ 6% p.a. from the date of application till realization of whole amount to the claimants. The respondent nos.2 and 3 are jointly and severally made liable to pay compensation of Rs.37,500/- with interest @ 6% p.a., from the date of petition till realization of whole amount. Being aggrieved, the appellants-claimants have preferred this appeal restricting challenge to compensation of amount awarded by Tribunal.

8. Mr.Shaikh, learned counsel for

appellants assailed the reasons and findings recorded by the Tribunal in assessing the compensation to the tune of Rs.75,000/- as against claim of Rs.3,00,000/- with contention, Tribunal has wrongly considered the age of deceased as 60 years for the purpose of assessment of compensation. It is contended that the evidence adduced by the claimants more than sufficient to prove that at the time of accident the deceased was 54 years of age. It is submitted that considering the age of deceased as 54 years, the multiplier of 9 ought to have been made applicable in determining the compensation. It is further submitted that the Tribunal determined the compensation by considering the income of deceased notionally as Rs.1800/- per month by ignoring the evidence adduced by the appellants-claimants. By referring the evidence adduced in the case, the learned counsel submits that the

appellants have sufficiently proved that the deceased was doing the business and running grocery shop. So also deceased was cultivating and managing the agricultural land owned by him and monthly income of deceased was not less than Rs.3,500/- per month. There is absolutely no justification for Tribunal to assess the compensation by considering the notional income of the deceased s Rs.1500/- per month by ignoring the evidence in respect of actual income of deceased. It is contended that compensation of Rs.3,00,000/- as claimed by claimants ought to have been awarded by Tribunal.

9. On the other hand, learned counsel representing the respondents have supported the judgment and order passed by the Tribunal. It is contended that the appellants have failed to produce the proof of age of deceased. So also they have failed to produce

cogent and convincing evidence to prove that the deceased was earning Rs.3,500/- per month by cultivating the land and running grocery shop. It is further submitted that the reasons and findings recorded by the Tribunal are quite consistent with the pleadings and evidence on record and suffers from no infirmity so as to call for interference in exercise of appellate jurisdiction of this Court.

10. I have carefully considered the submissions advanced, in the light of oral and documentary evidence adduced in the case and documents produced on record.

11. The claimants have approached with a case that the deceased was running grocery shop. So also he was managing and cultivating the agricultural land owned by him and his monthly income was not less than Rs.3,500/-

per month. They have claimed that at the time of accident, the deceased was 54 years.

12. In order to prove their case, the claimants have examined Halimabi Shaikh Raheman - claimant no.2. She has deposed that at the time of accident, deceased was 53 years of age and running grocery shop and cultivating agricultural land owned by him. She has deposed that at the time of accident, the deceased was earning Rs.3,500/- per month and contributing Rs.3,000/- to his family. In support of the claim that the deceased was running grocery shop, the claimants have produced the certificate issued by the Village Panchayat to the effect that the deceased was running grocery shop and bills of purchase of grocery items for sale. The claimants have further relied upon the bills of repairs of scale of measurement by the repairer as well as the licence issued by

Weight and Measures Department in the name of deceased in respect of grocery shop run by deceased. In support of the case of the claimants that the deceased was owner and cultivating agricultural land, they have produced 7/12 extract of land admeasuring 2 H 34 R standing in the name of deceased Shaikh Raheman.

13. So far as the age of the deceased is concerned, the appellants-claimants have relied upon the extract of copy of electoral roll of Assembly Constituency of Mehkar published in the year 1998 showing the name of the deceased and age as 50 years. The claimants have examined Shaikh Khalil Shaikh Abdul (PW-2) as witness to the incident. No evidence adduced on the part of the respondents.

14. The Tribunal has awarded the

compensation of Rs.75,000/- and apportioned the liability in between two vehicles in equal proportionate by holding the drivers of both the vehicles responsible for the accident. The Tribunal has considered the age of the deceased as 60 years on the basis of age recorded in postmortem report as the claimants have failed to produce any evidence to show the age of deceased as 54 years at the time of accident. So also Tribunal has found the evidence adduced by the appellants as to the occupation and income of the deceased as not convincing. The Tribunal has assessed the compensation by considering the income of deceased notionally Rs.1800/- per month and by making deduction of 1/3rd towards personal expenses assessed yearly loss of income @ Rs.14,400/- and applying the multiplier of 5, assessed the pecuniary loss of income as Rs.72,000/- and further awarded Rs.3,000/- towards funeral expenses.

15. In my view, the assessment of compensation made by the Tribunal not in consonance with the evidence adduced by appellants-claimants. There is perversity in the reasons and findings recorded by the Tribunal. The Tribunal has ignored the vital evidence as to occupation and income of deceased while assessing the compensation. The claimants have approached with specific case that the deceased was running grocery shop and also managing and supervising the agricultural land owned by him. If we consider the pleadings then there is no specific denial as to the occupation of the deceased. In support of claim, the claimants have examined Halimabi (PW-1). She has categorically deposed as to age and income of the deceased. She has categorically deposed that the deceased was doing agricultural work and also running grocery shop. He was earning

Rs.3,500/- per month and out of which he was contributing Rs.3,000/- per month to family. In support of the oral testimony, the claimants have tendered in evidence the bills of purchase of articles sold from the Grocery shop purchased from Whole-Sellers. They have also tendered in evidence the certificate issued by Gram Panchayat and licence issued by the Weight and Measures Department. They also tendered in evidence the certified copy of 7/12 extract of land owned by deceased Shaikh Raheman.

16. If we consider the cross-examination of PW-1 then there is no challenge to her testimony as to facts deposed by her as to occupation and income of deceased. In absence of any challenge to the oral testimony of the witness examined by the claimants on the point of occupation and income of the deceased and the oral testimony supported by

documentary evidence, the Tribunal should not have discarded such evidence adduced by claimants to prove the income and occupation of deceased. It is well settled position in law that strict rule of evidence are not applicable to proceedings filed under section 166 of the Motor Vehicles Act. The claim petition filed under Motor Vehicles Act is neither a suit nor as adversarial lis. The certified copy of 7/12 extract produced on record with list Exhibit-28 reflects that the land admeasuring 2 H 34 R was standing in the name of deceased. He was in physical and cultivating possession of the said land and taking various types of crops. The licence/certificate issued by the Inspector of Weight and Measures Department of State Government in the name of deceased regarding his name and occupation support the case of the claimants that the deceased was running grocery shop. The bills of repairs of scale

of weights measure fortify the case of the appellants as to occupation of deceased as a businessmen and running the grocery shop. The certificate issued by the Gram Panchayat and the bills of purchase of grocery and other items purchased from whole-sale shop owners by appellants also provide due support to the testimony of PW-1 that the deceased was running grocery shop and cultivating the agricultural land. In that view, the case of the claimants that the deceased was earning Rs.3,500/- per month ought to have been considered by the Tribunal in absence of any evidence in rebuttal from respondents. There was no reason for the Tribunal to refuse to act upon such important evidence brought on record by claimants. In that view, the reasons and findings recorded by the Tribunal are perverse and calls for interference.

17. So far as the age of deceased is

concerned, the Tribunal was justified in considering the age of deceased as 60 years on failure to prove the date of birth of deceased by claimants as 54 years. In postmortem report and inquest panchanama, the age of deceased found to be recorded as 60 years. Hence the age as reflected in the inquest panchanama and postmortem report can safely accepted as basis to determine the age of deceased at the time of accident. Considering the guidelines laid down by Apex Court in the case of ***National Insurance Company Limited V/s Pranay Sethi and others*** reported in ***(2017) 16 SCC 680***, the multiplier of 9 is required to be applied in the facts of case for the victim in the age group of 55 to 65 years.

18. Thus considering overall facts of the case and evidence adduced by claimants, the income of deceased can be accepted as

Rs.3,000/- per month. The agricultural land owned by the deceased has remained intact as a source of income for the claimants. Because of death of deceased, the claimants have suffered to some extent as a loss on account of supervision of agricultural land by the deceased. Thus considering the occupation of the deceased as grocery shop owner and supervising and cultivating the agricultural land, the monthly income of the deceased can safely accepted as Rs.3,000/-. In that view, the yearly income of deceased worked out as Rs.36,000/- per year. After making 1/3rd as deduction from yearly income of deceased towards personal expenses of the deceased, the yearly loss of income worked out to Rs.24,000/- [i.e. Rs.36,000/- - Rs.12,000/- = Rs.24,000]. Applying the multiplier of 9 to be applied for victims in between the age group of 56 to 60, the pecuniary compensation to be payable to the claimants on account of

accidental death of deceased worked out as Rs.2,16,000/- [i.e. Rs.24,000/- X 9 = Rs.2,16,000/-]. Besides this the appellants-claimants deserves to be awarded compensation under conventional head towards funeral expenses, consortium loss of estate and loss of company etc. Since the accident had occurred in the year 2001 and the Tribunal has only awarded Rs.3,000/- on account of funeral expenses, I am of the view, under conventional head, the *lum-sum* amount of Rs.24,000/- be awarded to the appellants-claimants. Accordingly, the reasonable compensation to be payable to the claimants worked out as Rs.2,40,000/-.

19. In the result, the appeal is partly allowed with proportionate costs. The compensation awarded by the Tribunal is enhanced from Rs.75,000/- to Rs.2,40,000/- inclusive of No Fault Liability with interest

@ 6% p.a. from the date of application till realization of amount to be payable in terms of modified award. The respondents shall pay the amount jointly and severally in equal proportion as per award already passed by Tribunal as to apportionment of liability amongst the respondents. Amount if any paid and deposited in terms of award passed by the Tribunal to be adjusted towards the amount to be payable in terms of modified award.

20. The appeal is disposed of in above terms. The award be drawn accordingly.

[V.L. ACHLIYA]
JUDGE

SGA