

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

First Appeal No. 01241 of 2017

District : Beed

Divisional Controller,
N.E. Karnataka State Road
Transport Corporation,
Bus Depot Manager,
Bus Depot, Division Bellari,
Taluka & Dist. Bellari.

.. Appellant
(Original
respondent)

versus

1. Shivaji s/o. Dattatray Shingare,
Age : 50 years,
Occupation : Service.
2. Vinod s/o. Shivaji Shingare,
Age : 25 years,
Occupation : Education.
3. Ashok s/o. Shivaji Shingare,
Age : 23 years,
Occupation : Education.
4. Nilesh s/o. Shivaji Shingare,
Age : 25 years,
Occupation : Business.

All R/o. Shivaji Nagar
(Gadi Karkhana),
Taluka Georai,
Dist. Beed.

.. Respondents
(Original
claimants)

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Mr. V.D. Gunale, Advocate, for the appellant.

*Mr. A.N. Sikchi, Advocate, for respondents
no.01 to 04.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 11TH SEPTEMBER 2019

JUDGMENT :

01. Present appeal has been filed by the original respondent challenging the judgment and award passed in M.A.C.P. No. 222 of 2009 by the learned Member of the Motor Accident Claims Tribunal, Beed, dated 26-03-2015, whereby the application filed by the present respondents under Section 166 of the Motor Vehicles Act, 1988 came to be partly allowed.

02. Original claimants contend that they are the legal heirs of Latabai w/o. Shivaji Shingare, who died in a vehicular accident which took place at about 17.15 hours on 11-08-2009 on Georai-Beed road in front of petrol pump at Shivajinagar Gadhi, Taluka Georai, District Beed. It is contended that the said accident had taken place due to the dash given by S.T. bus bearing No. KA-34/F-847. One Gurushantappa Yallapa s/o. Guruswami was driving the said bus which was owned by the respondent. After Latabai had received injuries, she was shifted to Sub-District Hospital, Georai; then she was referred to Nityaseva Hospital, Beed. Again, she was referred to Apex Super Specialty Hospital, Aurangabad, where she succumbed to the injuries on 24-08-2009. It is stated that the applicants have incurred more than Rs. 1,75,000/- on medical treatment of Latabai.

Latabai was doing business in bangles as well as grocery articles under the name and style 'Kalika Kirana and General Stores' at Shivajinagar Gadhi, Taluka Georai, District Beed. She was earning Rs. 6,000/- per month and therefore, the claimants had claimed compensation of Rs. 6,00,000/-. [Parties are referred as per their nomenclature before the Tribunal.]

03. The petition was resisted by respondent by filing written statement. Age, income and occupation of Latabai was denied. It was also denied that the driver of the S.T. bus was rash and negligent and due to his negligence the accident took place. According to the respondent, the accident took place due to the negligence on the part of the deceased who in fact, ran towards the vehicle suddenly.

04. Taking into consideration the rival contentions, issues were framed. Both the parties have led oral as well as documentary evidence. Taking into consideration the evidence on record, the learned Tribunal has come to the conclusion that the claimants have proved that Latabai died in the vehicular accident. It is stated that the deceased was responsible to the extent of 40 % of the accident and the respondent's driver was responsible to the extent of 60 %. The respondent was directed to pay compensation of Rs.5,26,641/- together with interest at the rate of 9 % per annum from the date of

petition till actual realization of entire amount. This award is under challenge in this appeal.

05. Heard learned Advocate Mr. V.D. Gunale for the appellant. Heard learned Advocate Mr. A.N. Sikchi for respondents no.01 to 04.

06. It has been vehemently submitted on behalf of the appellant that the learned Tribunal did not consider the facts and the evidence properly and wrongly held the driver of the respondent negligent to the extent of 60 %. It was not considered that there was heavy traffic on the road at the relevant time and the deceased had appeared suddenly in front of the bus. Further, it has been wrongly considered that the deceased might have been getting half of the salary of the husband of the deceased and then the calculation has been made that the deceased might be having income of Rs. 3,119/- per month and 30 % of the same was added towards future prospectus. In fact, no evidence was led to show that Latabai was doing any business or doing any work to earn. The amount of compensation that has been granted is excessive.

07. Per contra, learned Advocate appearing for the respondents supported the reasons given by the Tribunal.

08. Taking into consideration the above said submissions, following points arise for determination. Findings and reasons for the same are as follows :-

(I) Whether Latabai was negligent and due to her negligence alone, the accident had taken place ?

(II) Whether claimants were entitled to get compensation and whether the amount awarded by the Tribunal can be said to be just and fair ?

09. **Point No.I** : It is to be noted that the claimants have examined claimant no.02 Vinod, who was along with the deceased at the time of accident. That means, he was an eye witness to the accident and then given the manner in which the accident took place. The respondent had examined the driver who was driving the offending bus. Taking into consideration the evidence of both these eye witnesses, the learned Tribunal has come to the conclusion that both of them have not stated where exactly the impact was. The width of the tar road was 24 feet and it was having 8 feet *Kachha* road on both sides. Blood stains were found just near middle white stripe of the road. Perusal of the evidence of CW 01 Vinod would show that when he was along with the deceased and near the spot of accident, he met his friend and therefore, he was talking with his

friend; whereas deceased was walking ahead on the road. When she was at a distance of 15 to 20 feet away from him, at that time, she was dashed by the S.T. bus. It appears that in his testimony, he has not tried to explain as to how his mother went near the middle of the road. Further, perusal of the evidence of the driver would show that he has not given surrounding circumstances first. Secondly, he has not given his own approximate speed. Thirdly, he has not given from how much distance he could see the deceased when she had come almost in middle of the road. When the testimony of both these witnesses is not helping the Court, the situation stated in the *panchanama* was considered by the learned Tribunal. It appears from entire evidence that was adduced and gathered that the deceased tried to cross the road and in that process, she was dashed by the bus. Therefore, no fault or error which can be said to have affected the legality has been committed by the learned Tribunal while coming to the conclusion that the deceased was 40 % negligent and the respondent's driver was negligent to the extent of 60 %. The evidence adduced by the respondent cannot allow us to draw an inference that the accident had taken place due to the sole negligence on the part of the deceased. The point is therefore, answered accordingly.

10. **Point No.II** : In view of the fact that the

respondent's driver was negligent to the extent of 60%, definitely the claimants who are legal representatives of the deceased are entitled to get compensation to the extent of 60 %. Now, while calculating the compensation, though the claimants had come with a case that the deceased was doing business in grocery shop as well as bangles shop, yet, there was no proof led by them. Notional income ought to have been invoked by the learned Tribunal taking into consideration her capacity as housewife. However, the learned Tribunal went on to have evidence regarding the salary of the husband of the deceased and then calculated the monthly notional income of the deceased, 1/3rd of that salary. This exercise was in fact, not required at all. The accident had taken place in the year 2009 and therefore, the notional income ought to have been gathered from the catena of judgments of this Court as well as the Supreme Court and also on the basis of the fact that she was a housewife. In those catena of judgments, we could find the notional income is taken as Rs. 3,000/- per month. Here, in this case, the learned Tribunal has considered it at the rate of 3,119/- per month, which is just above the notional income and therefore, it cannot be stated that it is excessive. Further, 30 % of the same has been added as future prospectus. Since the compensation has been decided in 2015, consideration of that aspect can also be said to be justified. Therefore, the

calculation is based on the income of Rs. 4,055/- per month. The multiplier is also properly applied taking into consideration the age of the deceased shown in the post mortem, as there was no proof about her age. The non-pecuniary damages have also been properly considered and out of the total amount of compensation, only 60 % has been awarded as against the respondent. Therefore, there is absolutely no illegality or error committed by the learned Tribunal in the ultimate result or the final order. Point No.II is answered accordingly.

11. No interference is required at the hands of this Court. There is no merit in the present appeal. Hence, the first appeal is hereby dismissed. There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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