

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 2100 OF 2008

1. Devappa Ganpat Maskar
2. Kum. Manisha Devappa Maskar
3. Kum. Shilpa Devappa Maskar
Appellant nos.2 and 3 being
minors through next friend
and father Shri Devappa G. Maskar
R/o. Sanjivani Hsg. Society
Jawahar Nagar, Golibar Road,
Khar (E), Bombay 400 055

..Appellants

v/s.

Maharashtra State Road Transport
Corporation, through
General Manager, Belasis Road,
Bombay Central, Bombay 400 008.

..Respondents

Ms. Krutika Pokale i/b. A.M.Gokhale for the Appellant.
Mr. C.M.Lokesh i/b. Mr. G.S.Hegde for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 03rd OCTOBER, 2019.**

ORAL JUDGMENT.

1. The appellants, who are the original claimants have challenged the judgment and award dated 20.3.1996 passed by the learned Member of the Claims Tribunal, Satara in MACP No.413 of 1992. By

the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.51,800/- with interest at the rate of 12% per annum from the date of the petition till final realization. The Tribunal has directed the respondent Corporation to deposit Rs.38,850/- being 75% of the total compensation along with proportionate interest thereon, by holding that it was a case of contributory negligence.

2. The appellant no.1 is the father and appellant nos.2 and 3 are the siblings of the deceased Savita who expired in a motor vehicle accident on 27.4.1990, involving a ST Bus bearing No. MWR 635, owned by the respondent Corporation. The deceased was 10 years of age and she was studying in 5th standard in Kherwadi Municipal School no.2, at Bombay. On the relevant date the deceased and her mother were traveling from Bombay to Kolhapur by the offending bus bearing No.MWR 635. The said bus dashed against an oncoming tractor trolley bearing No. MTP 7409 at Khodashi, Kolhapur. Savita and her mother died as a result of the injuries sustained in the said accident. The appellants alleged that the accident was caused solely due to rash and negligent driving by the driver of the S.T. bus.

Hence, an application under Section 166 of the Motor Vehicles Act came to be filed claiming total compensation of Rs.1,00,000/-.

3. The respondent Corporation did not dispute the factum of accident. The respondent denied that the accident was caused due to rash and negligent driving of the driver of the ST bus and attributed negligence to the driver of the tractor trolley. In the alternative the respondent Corporation raised the plea of composite negligence and stated that the liability, if any, should be apportioned accordingly.

4. The Insurer of the Tractor trolley which was arrayed as the Opponent No.8 in the Claim petition denied that the driver of the Tractor trolley No. MTP 7409 and the trailer Nos. MTL 7021 and MHF 1839 was responsible for the accident. The insurer of the said tractor trolley stated that the fact that a crime had been registered against the driver of the ST Bus itself suggests that the accident was caused due to rash and negligent driving by the driver of the bus. The opponent no.8 therefore disputed its liability to pay compensation to the applicant-claimants.

5. Upon considering the evidence on record, the Tribunal held that the deceased was 10 years of age and was a bright student studying in 5th standard in Municipal School at Bombay. The Tribunal awarded compensation of 30,000/- on account of the mental shock and agony suffered by the appellants due to untimely death of the deceased. The Tribunal also held that the appellants are entitled for compensation of Rs.15,000/- towards loss of love and affection, Rs.10,000/- towards loss of dependency, Rs.5000/- for funeral expenses and Rs.1800/- as Ambulance charges. The Tribunal therefore held that the appellants are entitled for total compensation of Rs.51,800/-. The Tribunal has recorded a finding that it was a case of contributory negligence and hence directed the Corporation to pay Rs.38,550/- being 75% of the total compensation with further direction to the insurer of the tractor trolley to pay the balance 25% compensation with proportionate interest thereon. Being dissatisfied with the quantum of compensation, the appellants /claimants have filed this appeal under Section 173 of the Motor Vehicles Act.

6. Ms. Pokale, the learned Counsel for the Appellants has raised a grievance that the Tribunal has not awarded any compensation towards future prospects. She further submits that the appellant no.1 being the father of the deceased is also entitled for compensation for loss of filial consortium.

7. Mr. Hegde, the learned Counsel for the respondent submits that in a connected appeal being First Appeal No.1402 of 2003 this Court (Coram: Shalini Phansalkar-Joshi, J.) has held that it was a clear case of composite negligence. This Court has further observed that the appellant-claimant is entitled to recover the entire compensation from the owner or insurer of any of the offending vehicles and that there was no necessity to apportion the inter-se liability of joint tort feors. He submits that this Court has given liberty to the Corporation to recover 25% from the owners or insurer of the tractor trolly involved in the accident. He submits that similar liberty can be given in this case. He submits that compensation awarded by the Tribunal is just and fair and that it does not warrant any interference.

8. It may be mentioned that FA/106/2001, arising from the same accident, involving death of the wife of the appellant no.1 has been disposed of by judgment dated 11.19.2019. After considering the principles laid down by the Apex Court in ***Khenyei vs. New India Assurance Co. (2015) 9 SCC 273*** and upon considering the evidence on record, this court has recorded a finding that the deceased had not contributed to the accident in any manner and it could never be a case of contributory negligence. It has been held that when the accident is caused due to negligence of joint tort feasons, it is a case of composite negligence and not contributory negligence.

9. Since the insurer had not challenged the findings on the issue of rash and negligent driving or the extent of their liability or apportionment, as determined by the Tribunal, this Court deemed it fit not to go into the merits of the findings and proposed to decide the issue of quantum of compensation by accepting the said finding. The learned Counsel for the respondent concedes that even in this case, no substantive appeal or cross objections have been filed by the

Corporation challenging the said finding. Hence I propose to decide the issue of compensation by accepting the said finding.

10. The Tribunal has awarded lumpsum compensation of Rs.25,000/- without considering the fact that the deceased, though a student had potentiality to earn income. The Tribunal has also not awarded any compensation towards loss of filial consortium and/or loss of estate. In my considered view, the compensation awarded by the Tribunal is not just and reasonable and hence it is necessary to compute the compensation on the basis of the binding principle and formula laid down by the Apex Court .

11. In *R.K.Malik & Anr. vs. Kiran Pal & Ors. (2009) 14 SCC 1* the Apex Court has observed that “the injury inflicted by deprivation of the life of a child is extremely difficult to quantify. In view of the uncertainties and contingencies of human life, what would be an appropriate figure, an adequate solatium is difficult to specify. The Courts have therefore used the expression “Standard Compensation” and “Conventional amount/sum” to get over the difficulty that arises

in quantifying a figure as the same ensures consistency and uniformity in awarding compensation.”

12. It is well known that in case of children there is no clear proof of pecuniary loss resulting from accidental death. Nevertheless, want of proof of pecuniary loss would not lead to an inference, much less a conclusion, that no pecuniary loss accrues due to their death. As it has been held by the Apex Court in R.K.Malik (supra), human life cannot be measured only in terms of loss of earning of monetary losses alone. There are emotional attachments involved and a loss of a child can have a devastating effect on the family which can be easily visualised and understood.

13. In the instant case, the deceased Savita was a 10 years old student. The deceased as well as her mother-Shakuntala had expired due to the injuries sustained in the same accident. The mental shock and trauma suffered by the appellants can only be understood and visualized. No amount of compensation can alleviate intensity of pain and suffering or restore their devastated

lives. But all the same, the court can only try to calculate the incalculable and endeavor to compensate them to the extent of payment of money.

14. Considering the fact that the deceased was a child, and non-earning member, the income can notionally be assumed as Rs.15,000/- per annum. Upon deducting 50% towards her personal expenses, adding 40% towards future prospects, and applying multiplier of 15 the pecuniary damages are assessed at Rs.1,57,000/-. The appellant no.1 being the father of the deceased would also be entitled for compensation of Rs.40,000/- towards filial consortium. In addition the appellants are also entitled for compensation of Rs.30,000/- towards loss of estate and funeral expenses, and Rs.1800/- towards Ambulance charges. Thus, the appellants are entitled for total compensation of Rs.2,29,300/-.

15. The appellant-claimants had claimed total compensation of Rs.1,00,000/-. *In Ramla vs. National Insurance Co. Ltd. (supra)* has observed thus:

“There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award “just compensation” The Motor Vehicles Act is beneficial and welfare legislation. A “just compensation” is one which is reasonable and welfare legislation. A “just compensation” is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time barred. Further, there is no need for a new cause of action to claim and enhanced amount. The Courts are duty bound to award just compensation (see the judgments of this Court in the cases of Nagappa v. Gurudayal Singh (b) Magma General Insurance v. Nanu Ram , (c) Ibrahim v. Raju.”

16. Considering the facts and circumstances of the present case, in my considered view, the compensation of Rs.2,29,300/- is just and fair compensation. In the connected appeal being Appeal No.1402 of 2002, the rate of interest has been reduced to 7.5%. Hence in this case also the appellant-claimants would be entitled for compensation with interest at the rate of 7.5%.

17. Since this is a case of composite negligence, and considering the principles enunciated in *Khenyei* (supra) the appellant-claimants

are entitled to recover the entire compensation from the respondent Corporation. The Respondent Corporation would be at liberty to recover 25% amount from the owner/insurer of the tractor trolley involved in the accident.

18. Hence the following order :-

- (i) The appeal is allowed.
- (ii) The compensation awarded to the appellants is enhanced from **Rs.51,800/-** to **Rs.2,29,300/-** with interest @ 7.5% from the date of petition till the date of actual payment.
- (iii) The Respondent Corporation shall deposit the enhanced compensation with proportionate interest thereon before the Tribunal within a period of eight weeks from the date of the order.
- (iv) The Respondent Corporation is at liberty to recover 25% of compensation with proportionate interest from the insurer of the tractor trolley No. MTP 7409.
- (v) The appellants are at liberty to apply to the Tribunal for withdrawal of the amount, upon payment of additional court fee, if payable under the statute.

(vi) The award of the Tribunal under challenge in this appeal stands modified accordingly.

. Appeal stands disposed of in above terms.

(ANUJA PRABHUDESSAI, J.)