

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

FIRST APPEAL NO. 959 OF 1999

Pimpri-Chinchwad Municipal TransportAppellant

V/s.

Shakuntala Laxman Walke and ors.Respondents

Ms. Madhavi Tavanandi for the appellant.

Mr. Rahul Kate for respondent nos.1 to 3.

Mrs. Poonam Mital for respondent no.5.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 30th AUGUST, 2019

ORAL JUDGMENT :-

. The appellant – Corporation has challenged the impugned judgment and award dated 06/10/1999 passed by the learned Additional Member, MACT, Pune in Claim Application No. 269/1988. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.1,52,000/- with interest @ 12% p.a. from the date of the application till final payment. The appellant - Corporation has been directed to pay compensation of Rs.1,02,000/- and the respondent no.5 - insurance company has been directed to pay the balance compensation of Rs.50,000/- with proportionate interest thereon.

2. The respondent no.1 is the widow and the respondent nos.2 and 3 are the children of the deceased – Laxman Wadke who expired in a motor vehicular accident involving Bus No. MTO-829 which was owned by the appellant – Corporation and driven by the respondent no.4. It was the case of the respondent nos.1, 2 and 3, who shall be hereinafter referred to as ‘the claimants, that the said accident was caused due to rash and negligent driving by the driver of the PCMT bus. The claimants claimed that the deceased was 42 years of age and was serving in Videsh Sanchar Nigam Ltd. and earning Rs.1210/- per month. He was the only earning member of the family and that they were totally dependent on his income. The claimants therefore filed a petition under Section 110(A) of Motor Vehicles Act, 1939 and claimed total compensation of Rs.2,00,000/-.

3. The appellant – Corporation as well as the respondent no.4 denied that the accident was caused due to the rash and negligent driving by the driver of the bus. They attributed negligence to the deceased by contending that the deceased who was riding a cycle, lost balance and dashed against the bus. They sought dismissal of the petition, as the claim was not sustainable.

4. The Tribunal after considering the oral and documentary evidence on record held that the accident was caused solely due to rash and negligent driving by the respondent no.4 – the driver of the offending vehicle. The Tribunal came to the conclusion that the deceased was earning Rs.1165/- per month. The Tribunal assumed that after incurring personal expenses, the deceased would contribute Rs.800/- and assessed annual loss of dependency at Rs.9,600/-. Considering the age of the deceased as 42 and upon applying multiplier of 14, the Tribunal computed loss of dependency at Rs.1,34,400/- . The Tribunal awarded Rs.5,000/- to the claimant no.1 towards loss of consortium, Rs.10,000/- towards loss of love and affection and Rs.2,600/- for funeral expenses. The Tribunal thus awarded total compensation of Rs.1,52,000/-. Being aggrieved by the judgment and award, the appellant – Corporation has filed this appeal.

5. Assailing the judgment, Ms. Madhavi Tavanandi, the learned counsel for the appellant contends that it was a case of contributory negligence and that the Tribunal was not justified in holding that the accident was caused solely due to rash and negligent driving by the respondent no.4. She submits that being the case of contributory negligence, the compensation awarded by the Tribunal is required to

be scaled down. She submits that the compensation awarded by the Tribunal is excessive and exorbitant.

6. Per contra, Mr. Rahul Kate, the learned counsel for the claimants submits that the accident was caused entirely because of negligence on the part of bus driver. He submits that the Tribunal has not awarded any amount towards future prospects and has also erred in awarding meager c on conventional heads viz. loss of consortium, loss of estate, and funeral expenses. He further submits that the deceased had expired leaving behind two minor children and that the Tribunal has not awarded any compensation towards loss of parental consortium. He submits that it is for the Tribunal / Court to determine just compensation. He urges that since the appeal is continuation of the claim petition, the Court is under obligation to determine the just compensation payable to the claimants and such an adjudication can be made even in the absence of cross appeal or cross objections. He has relied upon the decision of the Division Bench of this Court in ***National Insurance Co. Ltd. v/s. Vaishali Harish Devare and ors.*** He has also relied upon two other decisions of the Single Judge of this Hon'ble Court in (i) ***New India Assurance Company Ltd. v/s. Smt. Seema Sudam Auti and ors.*** 2017(5) ALL MR 552 and (ii) ***The State of***

Maharashtra (Through the Collector of Nashik) and ors. v/s. Kamaladevi Kailashchandra Kaushal and ors. [2017] 2 ACC 176.

7. Ms. Madhavi Tavanandi, the learned counsel for the appellant – Corporation countered these arguments by submitting that the accident had occurred in the year 1987. She submits that there are no justifiable reasons to enhance the compensation moreso when the claimants have not filed cross appeal or cross objections. She further submits that the offending vehicle is owned by the Corporation which is otherwise running in losses and that the Corporation cannot be burdened further by directing to pay enhanced compensation.

8. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

9. The evidence on record indicates that on 30/11/1987, at about 09:30 p.m., the deceased Laxman was proceeding to Bhosari on his bicycle. The offending vehicle owned by the appellant – Corporation dashed his cycle at Jai Maharashtra Chowk, resulting in death of Laxman Wadke. The offending vehicle was driven by the respondent no.4. He had deposed that on the relevant date, he was driving the bus

at a moderate speed. He claims that the cyclist came from the right side and suddenly lost control and lost his balance and fell down near the rear wheel and was injured. In his cross-examination, he admitted that the accident had occurred at Jai Maharashtra Chowk at Bhosari. He admitted that the width of the road was 18 ft with kachha road of 5 ft on either side. He has further admitted that he had pointed out the spot of the accident to the police at the time of the drawing the panchanama. He admits that the panchanama depicts the correct position of the vehicle. After considering the evidence on record and particularly the position of the vehicle as shown in the panchanama, the Tribunal has held that the front right wheel of the bus was at the distance of 5 ft from the northern edge of the road and its left rear wheel was at the distance of 17 ft. The cycle of the deceased was found lying on its right side facing to the west at a distance of 2 ½ ft. from the right rear wheel of the bus and the deceased was lying in the injured condition at a distance of 1 /12 ft close to the kachaa road and southern edge of the road from the right rear wheel of the bus.

10. The learned Member, MACT, Pune has appreciated the evidence on record and recorded a finding that the deceased was riding the cycle at the correct side of the road and that it was the bus which has

gone other side of the road and had dashed against the cycle. Under these circumstances, the Tribunal rejected the contention of the appellant that the deceased had contributed to the accident and has further held that the accident was caused solely due to rash and negligent driving by the driver of the bus. The findings recorded by the learned Tribunal, in my considered view, are based on the evidence on record. Furthermore, it is not in dispute that the criminal prosecution was launched against the respondent no.4 for driving the vehicle in rash and negligent manner. The appellant – insurance company has not been able to make out a case of contributory negligence. Hence, the finding on the issue of rash and negligent driving does not warrant interference.

11. As regards the quantum of compensation, the evidence on record amply proves that the deceased was 42 years of age and was employed in VSNL, Dighi – Pune. The claimants have produced salary certificate at Exhibit – 34 which proves that he was drawing salary of Rs.1165/- per month. As on the date of the accident, the widow, two minor children and the aged mother were dependent on the income of the deceased. Considering the number of dependents and deducting $\frac{1}{4}^{\text{th}}$ towards personal expenses of the deceased, monthly dependency

works out to Rs.874/- and not Rs.800/- as assumed by the Tribunal.

12. The deceased was employed in Videsh Sanchar Nigam Ltd. The deceased would have certainly strived hard to better his prospects and enhance his income. The Tribunal has not considered this aspect of future prospects while computing loss of dependency. There is no evidence to prove that the deceased was in permanent employment. Hence, as per the principles laid down by the Apex Court in ***National Insurance Co. Ltd. v/s. Pranay Sethi and ors. (2017 ACJ 2700)***, it is just and appropriate that an addition of 25% is made on established income towards future prospects. Thus, considering the annual income of the deceased as Rs.13,980/- and adding 25% towards future prospects, the income works out to Rs.17,475/- per annum. Upon deducting 1/4th towards personal expenses of the deceased, loss of dependency works out to Rs.13,106/- per annum. The deceased was 42 years of age and on applying multiplier of 14, the loss of dependency is assessed at Rs.1,83,484/-. As per the judgment of the Apex Court in ***Pranay Sethi (supra)***, the claimants would be entitled for compensation of Rs.70,000/- on conventional heads viz. Loss of Consortium, loss of estate and funeral expenses. In view of the judgment of the Apex Court in ***Magma***, the two minor children who have been deprived of love,

affection and guidance of their father would be entitled for compensation of Rs.40,000/- each towards parental consortium. The claimants are therefore entitled for total compensation of Rs.3,33,487/-.

13. The next question which now falls for consideration is whether this Court can enhance the compensation in the absence of appeal. In this regard, reference can be made in the judgment of this Court in ***National Insurance Co. Ltd. v/s. Vaishali Harish Devare and ors.*** wherein it was held that :-

“ The claim petition filed under section 166 of the said Act is not in the nature of the suit. Under Section 168 of the said Act, the Tribunal is duty bound to hold an inquiry to determine the amount of compensation which appears to be just. Thus, the concept of just compensation has been incorporated in Section 168 of the said Act. It is well settled that the Tribunal constituted under the said Act is not bound by the strict rules of the evidence. As we have stated earlier, the claim petition under section 166 is not a suit. While deciding the claim petition, the Tribunal is under an obligation to determine just compensation payable to the Claimants. This appeal being the continuation of the claim petition, even this Court is under an obligation to determine the just compensation payable to the claimants. Even if

there is no cross appeal or cross – objection preferred by the claimants, the exercise of determining the just compensation will have to be carried out. After carrying out the said exercise if it is found that the claimants are entitled to more amount than what is granted under the impugned Judgment and Award, in absence of appeal or cross objection, this Court may not enhance the compensation amount payable. Therefore, while deciding this appeal, an adjudication is required to be made whether the compensation granted by the Tribunal is a just compensation. Such adjudication can be made even without taking recourse to Rule 33 of Order XLI of the said Code. ”

14. Similar view has been taken by the Single Judge of this Court in ***New India Assurance Company Ltd. v/s. Smt. Seema Sudam Auti and ors. 2017(5) ALL MR 552*** and (ii) ***The State of Maharashtra (Through the Collector of Nashik) and ors. v/s. Kamaladevi Kailashchandra Kaushal and ors. [2017] 2 ACC 176***. It is thus evident that the appeal being continuation of claim proceedings, this Court is under statutory obligation to compute just and fair compensation even in the absence of cross objection or cross appeal.

15. In the instant case, the evidence on record reveals that the deceased was the sole earning member. He has expired leaving behind

two minor children, widow and aged parents who were totally dependent on him for their sustenance. Considering this aspect, in my considered view, the compensation awarded by the Tribunal cannot be considered as just compensation. In the factual matrix of the case and considering the evidence on record, in my considered view, the claimants are entitled for total compensation of Rs.3,33,487/- which in my considered view is just and reasonable.

16. Under the circumstances and in view of discussion supra, the following order is passed :-

(a) Appeal is dismissed with directions to the appellant- Pimpri Chinchwad Municipal Transport to pay to the claimants balance amount of Rs.1,81,487/- with interest @ 12% p.a. from the date of the petition till the date of deposit of compensation before the MACT, Pune.

(b) Considering that the Claim Petition is of the year 1987, the appellant – Corporation is directed to deposit the amount before the Claims Tribunal within a period of twelve weeks from the date of uploading of this order.

(c) Liberty is granted to the claimants to apply for withdrawal of the compensation before the Tribunal on payment of additional Court fee,

if any.

(d) Needless to state that the Claims Tribunal shall make the payment only after verifying the identity of the claimants.

17. First Appeal stands disposed of in the above terms.

Preeti
H.
Jayani

Digitally
signed by
Preeti H.
Jayani
Date:
2019.10.22
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+0530

(SMT. ANUJA PRABHUDESSAI, J.)