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

FIRST APPEAL NO. 1960 OF 2003

1. Jafar Babulal Tamboli
age 52 years, Occupation Service.
 2. Jubadabi Jafar Tamboli
age 45 years, Occupation Household.
 3. Jamir Jafar Tamboli
age 12 years, Occupation Education.
All are resident of Village Kaneri
Taluka Khandala, Dist. Satara.
- ... Appellants

Versus

The Maharashtra State Road Transport
Corporation, Summons to be served on
Divisional Controller, Satara Division
Satara.

... Respondent

.....

Mr. Prabhanjan Gujar, Advocate for the Appellant.

Mr. Gopal Krishna Shivram Hegde with Mr. C.M. Lokeshappa, Advocates
for the Respondent.

.....

CORAM : R.D. DHANUKA, J.
RESERVED ON : 27th FEBRUARY, 2020
PRONOUNCED ON : 19th MAY, 2020

JUDGMENT :

. By this appeal filed under Section 173 of the Motor Vehicles Act, 1988, the appellants (original claimants) have impugned part of the judgment and award dated 10th July, 2003 passed by the Motor Accident Claim Tribunal, Satara (hereinafter referred to as “M.A.C.T., Satara”)

rejecting substantial part of the claims made by the appellants. Some of the relevant facts for the purpose of deciding this First Appeal are as under :-

2] It was the case of the appellant that on 19th June, 1995, Jakir Tamboli who was son of the appellant no.1 was driving his motorcycle bike bearing No. MH-11-D-751 in normal speed with due and proper caution. When the said Jakir Tamboli passed village Aasavali, the ST Bus bearing No.MWQ 6747 belonging to the respondent came from the opposite direction in high speed in rash and negligent manner, without observing the traffic rules and gave a severe dash to the motorcycle of the said Jakir Tamboli. The said Jakir Tamboli died on the spot (hereinafter referred to as “the said deceased”). On 12th February, 1996, the appellants filed claim for compensation before the M.A.C.T., Satara thereby claiming a compensation of Rs.3,60,000/- against the respondent. On 15th August, 1997, the respondent filed a written statement and denied that the said offending vehicle was driven in rash and negligent manner. It was alleged by the respondent that the accident took place because of the rash and negligent driving of the said deceased. In the alternate submission, the respondent contended that the said deceased had contributed 75% and the driver of the offending vehicle had contributed 25% respectively for the said accident.

3] The appellant no.1 examined himself on behalf of the appellants and produced documentary evidence to show the earning capacity of the said

deceased. The appellant no.1 was cross-examined by the learned advocate for the respondent. The appellants also examined Sunil S. Dalvi who was a passenger in the said ST Bus i.e. offending vehicle in support of the case of the appellants. The said witness was also cross-examined by respondent's advocate. The respondent thereafter examined Prakash N. Kambale who was the driver of the offending vehicle at the time of accident as one of the witness. The respondent also examined the bus conductor of the said offending vehicle as second witness. Both the witnesses were cross-examined by the appellants' advocate.

4] On 10th July, 2003, the Tribunal allowed the said claim petition filed by the appellants partly holding that the appellants were entitled to receive Rs.1,01,730/- with interest @ 9% p.a. from the date of claim petition i.e. 12th February, 1996 till the date of deposit in the Court or payment to the appellants by way of compensation for the death of said deceased inclusive of the compensation under Section 140 of the Motor Vehicles Act, 1988 granted by the Tribunal. The appellants have impugned part of the said judgment and award dated 10th July, 2003. The respondent has neither filed any appeal against the said judgment and award allowing part of the claims made by the appellants nor filed any cross-objection in this appeal.

5] Mr. Prabhanjan Gujar, learned counsel for the appellant invited my attention to the findings rendered by the Tribunal in the said judgment and

award which were rendered against the appellants and rejecting part of the claims made by the appellants. It is submitted by the learned counsel that the finding of the Tribunal that there was contributory negligence on the part of the said deceased and also on the part of the driver of the respondent in the ratio of 75:25 is contrary to the evidence led by the parties. He submits that the driver of the offending vehicle was driving the said vehicle without exercising reasonable care and was rash and negligent in his driving, as a result of which the said accident took place in which the said deceased lost his life.

6] Learned counsel invited my attention to the map produced on record before the Tribunal and would submit that the Tribunal has not taken into consideration the said map properly which was showing the exact location of the accident. The offending vehicle had stopped at a distance of 40 feet from the place of accident i.e. from the point of impact, which clearly establishes that the driver of the offending vehicle was driving the said vehicle in high speed and could not control the speed even after the accident. The said driver could apply the brakes only after the said offending vehicle was driven further for a distance of 40 feet from the point of impact with the said motor cycle driven by the said deceased. The driver of the offending vehicle ought to have reduced the speed being a larger vehicle after noticing the motorcycle driven by the said deceased coming from the opposite side. The driver of the offending vehicle was thus solely responsible for the said

accident and not the said deceased.

7] It is submitted by the learned counsel that the Tribunal has also overlooked the evidence of Sunil Dalvi without any basis who was an eye-witness and was a passenger in the offending vehicle. The observation made by the Police Officer in FIR could not have been considered as conclusive and were only *prima-facie* in nature. It is submitted by the learned counsel that on the spot where the accident had taken place, there was a stop on both sides and therefore the driver of the offending vehicle was required to reduce the speed of the said vehicle which the said driver failed causing accident resulting in the death of the said deceased. Learned counsel submits that the appellants have impugned the findings rendered by the Tribunal on issue nos. 2, 3 and 4 partly. He submits that the Tribunal has erroneously distinguished the judgment of Supreme Court in case of ***Smt. Sarla Dixit and another v/s. Balwant Yadav Others, AIR 1996 SC 1274*** and in particular 7. He submits that the said judgment clearly apply to the facts of this case and was binding on the Tribunal.

8] Learned counsel for the appellants invited my attention to the findings rendered by the Tribunal in paragraph 13 of the impugned judgment and award and would submit that the findings of the Tribunal that the negligence on the part of the said deceased was 75% whereas the negligence on the part of the driver of the offending vehicle was 25% without any reasons.

9] In so far as the issue no.4 is concerned, learned counsel for the appellants submits that the date of birth of the said deceased was 17th March, 1970. However, in paragraph 19 of the impugned judgment and award, the Tribunal has applied the multiplier of 16 instead of 18 contrary to the judgment of Supreme Court in case of **Sarla Varma (Smt) and Others v/s. Delhi Transport Corporation and Anr., (2009) 2 SCC (Cri 1002)** and in particular the chart summarized in paragraphs 40 and 42 of the said judgment.

10] It is submitted by the learned counsel that though the said deceased has passed his B.Pharm examination and was duly registered as a registered Pharmacist on 30th March, 1991 and had obtained a licence to run a medical shop on 28th August, 1991, his licence was renewed from time to time, the Tribunal did not grant claim of 50% towards future prospect. In support of this submission, learned counsel placed reliance on the judgment of Supreme Court in case of **Sarla Varma (Smt) and Others** (supra).

11] Next submission of the learned counsel for the appellants is that the Tribunal failed to consider the doctrine of last opportunity and the principles laid down under the said doctrine while rendering a finding of alleged contributory negligence on the part of the said deceased to the extent of 75%. In support of this submission, it is submitted by the learned counsel

that the appellants had examined a passenger who was an eye-witness to the said accident and was travelling in the said offending vehicle. He also invited my attention to the cross-examination of the witnesses examined by the respondent.

12] Mr.Hegde, learned counsel for the respondent on the other hand invited my attention to some of the documents annexed to the compilation of documents tendered by him across the bar. He strongly placed reliance on the map showing the position of the road annexed to the said compilation. He submits that there was 13 feet tar road. There was 6 feet kaccha road on one side of the road and 6 feet kaccha road on the another side of the road. Considering the size of the offending vehicle, half of the road was already covered by the offending vehicle. He submits that the offending vehicle was driving on the correct side of the road. The deceased had 11 and ½ feet available for him to drive on the said road. The said deceased however entered the path way of the bus and met with an accident. The offending vehicle being heavy vehicle, the driver has to take time to understand the situation on the road to avoid any accident.

13] It is submitted by the learned counsel that the offending vehicle could not have applied the break with full force in view of the fact that the said vehicle was full of passengers. The said vehicle was being driven in a reasonable speed. Learned counsel submits that the appellants who had

examined the witness and more particularly Mr.Sunil Dalvi has admitted in his cross examination that the offending vehicle was slightly in speed. The offending vehicle was being driven on the correct side whereas the said deceased came on the road on the wrong side. There was a slope and curve on both the sides of the tar road.

14] It is submitted that there was no negligence on the part of the driver of the offending vehicle which resulted in the accident of the said deceased. The motor cycle being driven by the said deceased could take a turn at the last minute whereas the offending vehicle being a bus could not take turn at the last minute. The offending vehicle was thus not responsible for any accident. It is submitted that the Tribunal thus rightly held that the driver of the offending vehicle could be atmost negligent to the extent of 25% and not 100%.

15] Insofar as the multiplier applied by the Tribunal is concerned, it is submitted by the learned counsel that the said deceased was 25 years and 3 months old at the time of his accident. The Tribunal ought to have applied the multiplier of 17 and not 18. He placed reliance on the judgment of Supreme Court in case of **Sarla Varma** (supra) in support of this submission.

16] Insofar as claim for loss of future prospect made by the appellants

across the bar is concerned, it is submitted by the learned counsel that there was no such claim for loss of future prospect made before the Tribunal by the appellants. He also invited my attention to the evidence led by the father of the said deceased and more particularly his cross examination. It is submitted that the said medical store which was being run by the said deceased has not been admittedly closed after the demise of the said deceased. The said medical store is continued to be run by the daughter of the deceased. The income earned by the said deceased prior to the date of his death is thus continued in the hands of the family members of the said deceased. No loss is thus suffered by the appellants.

17] Learned counsel for the appellants in rejoinder submits that the medical store which was being run by the said deceased is not run by the daughter of the said deceased but is run by the daughter in law of the appellant nos.1 and 2 who is wife of another son of the appellants. There is hardly any income out of the said medical shop run by the daughter in law of the appellants who is wife of the other son of the deceased.

REASONS AND CONCLUSIONS:-

18] The appellants have filed this First Appeal *inter alia* praying for enhancement of the claim awarded by the Tribunal. By a judgment and award dated 10th July, 2003, the Tribunal has awarded only a sum of Rs.1,01,730/- together with interest at the rate of 9% per annum from the

date of filing claim petition till the date of deposit in court or payment to the appellants by way of compensation for the death of the deceased Jakir. The case of the appellants before the Tribunal was that the son of the appellant nos. 1 and 2 was 25 years old and was carrying on business.

19] According to the appellants, the monthly income of the deceased was Rs.4,500/- per month at the time of his accident. The said deceased was riding his motor bike at about 7.45 a.m. from Khandala to his house situated at village Kaneri in a normal speed and with due caution. The offending vehicle however came from the opposite direction in a high speed and in rash and negligent manner without observing traffic rules and without taking into consideration the road condition. The said offending vehicle gave a severe dash to the motor bike being driven by the said deceased which resulted into death of the said deceased. The said deceased was thrown ahead of the offending vehicle.

20] The motor bike driven by the said deceased was heavily damaged due to the said dash given by the offending vehicle. The appellants also claimed a sum of Rs.15,000/- towards the damage caused to the said motor bike driven by the said deceased. The appellants also claimed compensation of Rs.3,60,000/- with interest at the rate of 18% against the respondent. The respondent resisted the said claim by filing a written statement. It was alleged in the written statement that when the offending vehicle came near

village Asawali, S.T. driver saw one motor cycle coming from the opposite direction in a very high and excessive speed. The driver of the offending vehicle slowed down the speed of the S.T. bus and took the said bus on extreme left side as there was a bruchlet and there was no space to move extreme left side. The said deceased came on the wrong side and gave a forcible dash to the offending vehicle and died. In paragraph 7 of the written statement it was contended that without prejudice to the contentions raised in the written statement, the said deceased had contributed 75% negligence whereas the driver of the offending vehicle had contributed 25% negligence or responsibility for the said accident.

21] The appellant no.1 entered the witness box on behalf of the appellants who was cross examined by the learned counsel for the respondent. In the examination in chief of the appellant no.1, he deposed that the said deceased had studied upto Diploma in Pharmacy at Appasaheb Birnale College, Sangli. The appellant no.1 had produced the certificate issued by the Maharashtra State Pharmacy Council in favour of the said deceased. The said deceased had started a medical shop at Khandala, District Satara under the name and style of Shraddha Medical Store in the year 1991 and had obtained a medical shop licence to run the said shop. The said licence was renewed from time to time. The said witness produced copies of various licenses obtained by the said deceased to run the said medical shop.

22] In his examination in chief, the appellant no.1 deposed that he had

obtained a loan through Samarth Vidyamandir Kanheri and had given that loan for business to his deceased son for running the said business of medical shop. He had also taken loan from Swami Vivekanand Shikshan Sanstha in the sum of Rs.50,000/- in the year 1991-92. He deposed that the said accident took place at the spot called as Aswalicha Odha. The said road was East-West. At the spot of accident, the road coming from village Kaneri had sharp slope. There was a bridge on the road and the road was damaged. There was a curve on the said road. The offending vehicle was coming from opposite direction i.e. from Kaneri to Khandala.

23] The said deceased was going from Khandala to Kaneri. The offending vehicle gave a dash to the said deceased which caused serious injuries due to the said dash given by the offending vehicle. The said motor bike driven by the said deceased was damaged. The said deceased was taken to the hospital however, before reaching the hospital, he expired. The appellant no.1 deposed that he had spent a sum of Rs.9,905/- towards spare parts and labour charges of Rs.3,025/- in repairing the said motor bike driven by the said deceased.

24] In paragraph 6 of his examination in chief, the appellant no.1 deposed that the said deceased was getting the income of Rs.5,000/- to Rs.6,000/- per month from the said medical shop. There was balance of Rs.4,500/- to Rs.5,000/- per month after deducting the expenses of the shop. The said

deceased was repaying the loan installment of Rs.500/- to Rs.600/- per month and was giving rest of the amount to the appellants for household affairs. After the said accident of the said deceased, the appellant no.1 repaid the loan of Rs.30,000/- from his salary. The appellant no.1 produced the income tax record of the said deceased showing the payment of income tax and the income of the said deceased. He also produced the document of income tax statement bearing the signature of the said deceased.

25] In his cross examination the appellant no.1 deposed that he had seen the spot of accident. He also deposed that the said offending vehicle was coming from West to East. The said deceased was coming by his motor bike from East to West. There was slope at both the sides of the bridge. The appellant no.1 denied that the accident took place due to the alleged negligence on the part of the said deceased. He had not seen the actual accident.

26] In paragraph 13 of his cross examination, he deposed that at the time of giving evidence, the said medical store was being conducted by his daughter in law, i.e. wife of Jamir i.e. another son of appellant nos. 1 and 2. He denied the suggestion that his son Jakir was not getting the income of Rs.5,000/- to Rs.6,000/- per month. The appellant no.1 has retired from service and was getting a pension of Rs.4,700/- per month. His son Jamir who is appellant no.3 was not doing anything. His wife was unable to meet

out their family expenses from the income of the medical store.

27] The appellants also examined Mr.Sunil Dalvi who was one of the passengers travelling in the said offending vehicle. In his examination in chief he deposed that he was travelling by the said offending vehicle from Kaneri to Shirwal on the date of accident. He was sitting in the first row of the bus and more particularly towards window side. He was able to see through the window. He knew the place of accident. He deposed that when the offending vehicle came near the streamlet and as there was slope, the offending vehicle was slightly in the speed. There was a curve near the spot and also the slope. The accident took place at the spot of turn and slope. After accident, the offending vehicle proceeded further 40 feet. The said witness got down from the offending vehicle and saw the situation. The body of the said deceased was lying behind the said offending vehicle. The motor bike of the said deceased was dragged by the offending vehicle and it was hanged with the front portion of the offending vehicle.

28] In his cross examination, the said witness deposed that his statement was recorded by the police. The door of the offending vehicle was on the back side. He was sitting on the front seat behind the seat of the driver. He denied the suggestion that nothing could be seen from the seat occupied by him in the offending vehicle. He deposed that there was a slope on both the sides and the streamlet was in the middle of those two slopes. There was a

bridge which was large and two vehicles could pass. The road was East West. The accident took place at the western side of the bridge. He had not seen the motor bike of the deceased which was coming from the opposite direction. He denied the suggestion put to him by the respondent's advocate that he was giving false evidence.

29] The appellants had also examined Mr. Shivaji R. Jadhav as one of the witness who was running an automobile shop at Paragaon. He was selling the spare parts of two wheelers and three wheelers in the said shop and was also carrying out repairs of the motor vehicles. He deposed that the said motor bike driven by the said deceased was brought for repairs by the appellant no.1 to his shop. The appellant had paid the sum of Rs.9,905/- to the said witness towards the spare parts and repairs of the said motor bike. The said witness was also cross examined by the respondent. He denied the suggestion of the respondent that he was giving false evidence on behalf of the appellants.

30] The respondents had examined the driver of the said offending vehicle as the only witness before the Tribunal. The said driver in his examination in chief deposed that accident took place between Atit to Khandala near village Asavali. The accident occurred at about 7.30 a.m. The offending vehicle came near village Asavali. There was a bridge but its width was large. The said motor bike came in the speed by opposite side.

The offending vehicle was at the left side of the road. He deposed that the said motor bike straight way dashed against the said offending vehicle. The motor bike had ample space of 13 feet. The accident took place due to the negligence of the said deceased in driving the said motor bike.

31] The said witness was cross examined by the appellants' advocate. In his cross examination, the witness admitted that the spot of the accident was on the slope towards Western side of the streamlet called as 'than-thanicha odha'. He admitted that there was a curve towards East at the spot of accident. The road was towards the western side of the bridge. He deposed that when there is a curve on the road, the S.T. driver has to take turn from some long distance. The S.T.driver while taking turn has to go slightly towards right. He denied the suggestion that as there was curve at the spot of accident, he had taken the turn. He also denied the suggestion that on the spot of the accident, the offending vehicle had come towards the right side of the road. He also denied the suggestion that he had seen the motor cycle of the deceased when it came near to the offending vehicle.

32] The said witness admitted that the said motor bike was dragged by the offending vehicle ahead. He volunteered that the motor cycle was dragged ahead to the extent of 2 and ½ feet. He admitted that due to speed of the offending vehicle, the said motor bike was pushed ahead. The respondent did not examine any other witness including the conductor of the bus.

33] In the impugned judgment and award, the Tribunal gave a finding that there was a slope on both the sides of the concerned stream bridge and such slopes on both the sides of the concerned stream bridge and such slopes were downwards towards the said bridge. It is held that the said sketch as well as the spot panchanama clearly shows that the said accident took place on the western side of the concerned bridge. The tar road at the said place was at 13 feet in width and the place of the accident on the said tar road was at a distance of 3 feet from the western end at the distance of 7 feet from the eastern end of the said tar road.

34] It is held by the Tribunal that the motor bike of the deceased had gone 1 feet from the right side from the middle line of the said road and thus it appeared that he was the person who could be said to be mainly responsible for the said accident. The Tribunal also held that however it was also the duty of the driver of the offending vehicle to see as to any other vehicle was coming from the concerned side and to apply breaks in time. The evidence showed that the offending vehicle had stopped at a distance of 40 feet from the spot of accident and thus it appeared that the driver of the offending vehicle had failed to apply the breaks of the offending vehicle at a proper time and thus he had also contributed the negligence for the said motor accident.

35] In paragraph 13 of the impugned judgment and award, it is held by the Tribunal that it can be said that the negligence on the part of the deceased was 75% whereas the negligence on the part of the driver of the offending vehicle was of 25%. While awarding compensation in the sum of Rs.1,01,730/-, the Tribunal awarded compensation at the rate of 25% of the total compensation of Rs.4,06,930/- derived by the Tribunal on the basis of the finding of the contributory negligence in the ratio of 75% : 25% between the said deceased and the driver of the offending vehicle.

36] A perusal of the oral evidence led by the appellant no.1 and the AW-2 who was one of the passenger travelling in the offending vehicle clearly indicates that the speed of the offending vehicle was more and as a result thereof the offending vehicle could not apply the break at the relevant time. The Tribunal has also recorded a finding in this regard in paragraph 11 of the impugned judgment and award. The finding of the Tribunal that the driver of the offending vehicle ought to have applied the break and was thus responsible and that the concerned offending vehicle had stopped at a distance of 40 feet from the spot of accident has not being impugned by the respondent by filing any separate appeal or even cross objection in the appeal preferred by the appellants.

37] These findings have thus attained finality. I am thus not inclined to accept the submissions made by Mr.Hegde, learned counsel for the

respondents that the speed of the offending vehicle was moderate and could not have caused any accident. I am also not inclined to accept the submission of Mr.Hegde that the said deceased was negligent in driving the motor cycle in any manner whatsoever. The submissions made by the learned counsel for the respondent across the bar before this court is contrary to the averments made in the written statement.

38] In my view, since there was slope on both the sides of the road, the offending vehicle ought to have been driven in a slow speed or at least speed ought to have been reduced on the slope and also when there was a curve on the road. The driver of the offending vehicle however had driven the offending vehicle in a speed admittedly which caused the accident of the said deceased causing serious damage to the motor bike and also various injuries to the said deceased causing his death in the said accident. The tribunal ought to have applied the doctrine of last opportunity to the facts of this case and ought to have held the driver of the offending vehicle negligent exclusively.

39] The Tribunal has totally ignored the evidence of AW-2 who was an eye witness to the said accident and was one of the passenger travelling in the offending vehicle and was sitting in the first row behind the seat of the driver of the offending vehicle. The Tribunal also totally overlooked the admissions of the driver of the offending vehicle in his cross examination.

Though the Tribunal has rendered a finding that the offending vehicle had stopped at a distance of 40 feet from the spot of accident that itself would clearly demonstrate that the speed of the offending vehicle was high and thus the driver of the offending vehicle could not apply break earlier and even after committing the accident of the said deceased at the spot of accident.

40] I am thus not inclined to accept the submission of Mr.Hegde, learned counsel for the respondent that the driver of the offending vehicle could not be held negligent even to the extent of 25% by the Tribunal. After considering the evidence on record, the driver of the offending vehicle was solely negligent in driving the said offending vehicle. There was thus no question of apportionment of any alleged contributory negligence on the part of the said deceased while awarding compensation in favour of the appellants. The finding of the Tribunal that the said deceased was negligent to the extent of 75% is thus totally perverse and contrary to the evidence on record and thus deserves to be set aside.

41] Supreme Court in case of ***Sarla Dixit and another*** (supra) has considered similar facts arising out of an accident of a scooter by a truck. It is held by the Supreme Court that there would be two types of negligence on the part of the truck driver i.e. (i) he was proceeding with very high speed even though he was approaching an intersection on that road and (ii) the

driver did not care to look out for the safety of the scooterist who had already crossed half of the intersection and almost come to the middle of the intersection and who would naturally be very much visible to the truck driver coming from the western side and proceeding towards the east. The driver of the offending vehicle did not care even to slow down his speed. If he had done so, the unfortunate accident would not have taken place. This showed that either he did not notice the scooterist who had come almost half way diagonally across the breadth of the road at the intersection or that he might not have not cared for the safety of the scooterist who had come across his path. This was the most reckless and unsafe driving resorted to by the driver of the offending vehicle.

42] The Supreme Court also noticed that even after the accident, the driver of the offending vehicle had not slowed down his vehicle and went on driving with great speed. Even after the accident, his vehicle could not stop there but had travelled further and had gone upto to 70 feet further and had then stopped after the collision. The Supreme Court accordingly held that the driver of the offending vehicle while driving the offending truck was in a position to see in the broad day light the scooterist who had already entered the intersection and was almost half way in it, still had continued to drive recklessly in a totally careless manner. In my view the principles of law laid down by the Supreme Court in case of **Sarla Dixit** (supra) would squarely apply to the facts of this case. I am respectfully bound by the principles laid

down by the Supreme Court in the said judgment.

43] In my view, if the driver of the offending vehicle would have taken proper care and would have applied the break at the relevant time and would have reduced the speed at the curve and the slope, the accident could have been avoided by the driver of the offending vehicle.

44] The question now that arises for consideration is whether the compensation awarded by the Tribunal being 25% of Rs.4,06,930/- was adequate and fair and reasonable compensation. The question also arises whether the Tribunal had rightly arrived at the gross compensation of Rs.4,06,930/- in the impugned judgment and award or not.

45] The Tribunal has considered the loss of dependency at Rs.3,84,000/- in the impugned judgment. The Tribunal while awarding the said amount has considered the income of the said deceased on the basis of his income tax statement in Form No.4-A filed by the appellants in their evidence before the Tribunal. According to the said income tax statement, the said deceased had shown his annual income in the previous year i.e. 1993-1994 as Rs.35,000/-. He had also paid income tax of Rs.1,400/- on the said income. The Tribunal accordingly considered the gross income of the deceased per annum at Rs.36,000/-.

46] The Tribunal deducted 1/3rd of the said amount as personal expenses of the said deceased. The Tribunal did not consider the compensation under the head of future prospect while deriving the loss of dependency amount though the said deceased was admittedly running a business of medical shop. In my view, the Tribunal ought to have allowed 50% of the said amount of Rs.36,000/- per annum as future prospect in view of the age of the said deceased as 25 at the time of the accident. The Tribunal thus ought to have added Rs.18,000/- towards future prospect to the income of Rs.36,000/- per annum. After deducting 1/3rd expenses of Rs.54,000/-, the Tribunal ought to have applied multiplier according to the principle laid down by the Supreme Court in case of **Sarla Varma** (supra) after considering the age of the said deceased.

47] A perusal of paragraph 19 of the impugned judgment and award indicates that the Tribunal has while considering the multiplier of 16, has considered the age of the said deceased as 25 years and also the age of the appellant no.1 and appellant no.2 at 52 years and 45 years respectively and accordingly applied the multiplier of 16. It is not in dispute that the said deceased was 25 years 3 months at the time of accident. The Tribunal ought to have followed the principles of law down by the Supreme Court in case of **Sarla Varma** (supra). Since the age of the said deceased was 25 years at the time of his death, the Tribunal ought to have applied the multiplier of 18 and not 16. I am not inclined to accept the submission of the learned counsel for

the respondent that the said deceased was 26 years old or his age ought to have considered at 26 for the purpose of applying multiplier and Tribunal could have applied the multiplication of 17 and not 18. In my view, since the said deceased was not above 25 years 6 months, his age ought to have been rounded off and considered as 25 and not 26.

48] Supreme Court in case of ***Munnalal Jain and another*** (supra) has clearly held that multiplier has to be applied with regard to the age of the deceased and not the age of the applicants. In my view the multiplier thus applied by the Tribunal as 16 is totally contrary to the principles laid down by the Supreme Court in case of ***Sarla Varma*** (supra) and in case of ***Munnalal Jain*** (supra). In my view the Tribunal ought to have applied the multiplier of 18 and not 16 in the facts of this case. Since this court is of the view that the driver of the offending vehicle was solely responsible for the said accident, there was no question of apportionment of any amount towards the alleged contributory negligence of the deceased.

49] The compensation awarded by the Tribunal in the sum of Rs.12,930/- towards repairs of the motor bike and Rs.10,000/- towards love and affection have not been impugned by the respondent and have attained finality. In my view after computing the yearly income of the said deceased at Rs.36,000/- and after applying 50% of the future prospect thereon, the yearly income of the said deceased would be Rs.54,000/-.

50] After deducting 1/3rd towards personal expenses at Rs.18,000/-, the net yearly income would be at Rs.36,000/-. After applying the multiplier of 18 to the said amount of Rs.36,000/-, the loss of dependency would be arrived at Rs.6,48,000/-. After adding the sum of Rs.12,930/- towards repairs and spare part of the damaged motor bike and Rs.10,000/- towards love and affection, the compensation amount would be at Rs.6,70,930/-. The Tribunal has awarded interest at the rate of 9% per annum on the amount arrived at by the Tribunal. No appeal is filed by the respondent insofar as rate of interest applied by the Tribunal is concerned. In my view, the appellants thus have made out a case for enhancement of the claim for compensation.

51] I, therefore, pass the following order:-

(a) The respondent is liable to pay the a sum of Rs.6,70,930/- with interest at the rate of 9% per annum from the date of the claim petition i.e. 12th February, 1996 till the date of payment or realization after deducting the amount already withdrawn, if any, by the appellants. If there is any shortfall in the amount of deposit by the respondent, the respondent shall deposit such shortfall amount within two weeks from the date of computation of such shortfall by the Tribunal.

(b) If there is any excess amount deposited by the respondent, the Tribunal shall refund such surplus amount to the respondent after

paying the decretal amount as awarded by the Tribunal and enhanced by this court to the respondent.

(c) If any additional amount of court fees is required to be paid by the appellants, such differential amount of court fees shall be paid by the appellants within two weeks from the date of computation of such shortfall by the Tribunal.

(d) Impugned judgment and award dated 10th July, 2003 passed by the Motor Accident Tribunal, Satara in M.A.C.P. No. 116 of 1996 is modified by the aforesaid judgment.

(e) First Appeal is partly allowed to the aforesaid extent. No order as to costs.

(f) Office is directed to transmit the records and proceedings of the trial Court received by the office, if any, to the concerned trial Court expeditiously.

52] This judgment will be digitally signed by the Private Secretary of this Court. Sheristedar of this Court is permitted to forward the appellant and the respondents copy of this order by e-mail. All concerned to act on digitally signed copy of this order.

(R.D. DHANUKA, J.)

Prachi P.
Nandiwadekar
Digitally
signed by
Prachi P.
Nandiwadekar
Date:
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