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

FIRST APPEAL NO. 534 OF 2018

Divisional Controller
Maharashtra State Road Transport
Corporation, Osmanabad
(Owner of S.T. Bus No.MH-20-BL-0192) … **APPELLANT**

Versus

1. Rukmin w/o Pandurang Shinde
Age: 36 years, Occu: Household,
R/o Hinglajwadi, Tq. And Dist. Osmanabad

2. Pooja d/o Pandurang Shinde
Age: 20 years, Occu: Education,
R/o As above

3. Manisha d/o Pandurang Shinde
Age: 18 years, Occu: Education,
R/o As above

4. Kranti d/o Pandurang Shinde
Age: 17 years, Occu: Education,
R/o As above.

5. Kalpana d/o Pandurang Shinde
Age: 15 years, Occu: Student,
R/o As above

6. Ashok s/o Pandurang Shinde
Age: 13 years, Occu: Student,
R/o As above

[Claimants no. 4 to 6 are minor u/g of
their natural mother i.e. respondent no.1]

7. Rohidas s/o Daula Shinde
Age: 75 years, Occu: Nil,
R/o As above

8. Gajrabai w/o Rohidas Shinde,
Age: 70 years, Occu: Nil,
R/o As above

9. Sunil Devidas Mule
Age: 43 years, Occu: Business
R/o Mulewadi, Tq. & Dist. Osmanabad
(Owner of Tempo No. MH-25-P-1028) ...**RESPONDENTS**

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Shri A. B. Dhongade, Advocate for appellant
Shri M. B. Kolpe, Advocate for respondent Nos. 1 to 6

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 26th JULY, 2021
PRONOUNCED ON : 29th OCTOBER, 2021

ORDER :-

. This appeal has been directed against the judgment and award dated 19.09.2017, passed by the Member, Motor Accident Claims Tribunal (M.A.C.T.), Osmanabad, in Motor Accident Claim Petition (M.A.C.P.) No. 195 of 2012. By the impugned judgment and award, the Maharashtra State Road Transport Corporation (M.S.R.T.C.), Osmanabad (appellant herein), has been directed to pay the respondent Nos.1 to 8 (claimants) a sum of Rs.35,07,120/-

towards compensation, including NFL amount, along with interest at the rate 9% per annum from the date of filing of the M.A.C.P. to the date of realisation of the entire amount. The M.S.R.T.C. has therefore, preferred this appeal.

2. The facts giving rise to the present appeal, are as follows:

Pandurang Rohidas Shinde (deceased) was driving his tempo MH-25/P-1028 along Jamkhed – Ahmednagar road. It was little past 3.30 a.m. on 24.10.2011. He was passing by Pandhari Shivar (village). The S.T. bus driven in high speed, came from opposite direction and dashed against the tempo. As a result, Pandurang suffered multiple injuries and succumbed thereto.

The claimants filed a claim for compensation of Rs.21,00,000/- (Rupees Twenty One Lakh). The Tribunal, after appreciating the evidence in the case, passed the award granting compensation of little over Rs.35,07,120/-.

3. Heard.

Shri A. B. Dhongade, learned Advocate appearing for the appellant would submit that it was a deceased, who was driving his tempo in rash and negligent manner. The First Informant Report

(FIR) at first instance was lodged against the deceased. The accident took place on the bridge. The S.T. bus had already cleared 80% of the bridge. The tempo crossed the middle line of the road and dashed against the S.T. bus. According to the learned Advocate, it is a case of exclusive negligence on the part of the deceased or at least a case of contributory negligence. On the question of quantum of compensation, the learned Advocate would submit that there was no evidence as regards income of the deceased. The deceased would ply the tempo. His agricultural land, if any, on his demise, remained with the claimants. On account of future prospects, addition is made 50% of the income of the deceased. It should have been 40%. On account of loss of consortium, much more amount has been granted than one prescribed. The learned Advocate, therefore, urged for interference with the impugned judgment and award.

4. Learned Advocate for the claimants would, on the other hand, submit that on due investigation, the police have charged the bus driver to be responsible for the accident. The panchanama would indicate break-marks 25 feet in length. The same indicates the speed the S.T. bus was being driven at. According to the learned Advocate, the deceased was the sole breadwinner of the family. The

dependents are eight in number. According to him, no interference with the impugned award is, therefore, warranted.

5. On due investigation of the crime, the charge-sheet has been filed against the bus driver.

True, in the first instance, the FIR was registered against the deceased. The same was filed at the instance of the bus driver when the deceased and the other injured were in the hospital. The bus driver appears to have lodged exculpatory report. It is reiterated that on due investigation, the charge-sheet has been filed against the bus driver. The panchanama (Exh.21) indicates a trail of break-marks 25 feet in length. The same indicates the S.T. bus must have been in high speed.

6. True, the spot of the accident appears to be at the middle of the road. Both the vehicles, however, were not at the spot where the accident took place. Since the investigating agency, on investigation of the crime, filed charge-sheet against the bus driver and there being no other material for this Court to take any other view, it is to be stated that the deceased could not be attributed with contributory negligence.

7. On the question of quantum, it is to be stated that the claimants had claimed compensation amounting to Rs.21,00,000/-. It is true that while assessing just and adequate compensation, the Tribunal may grant it in excess of what has been claimed in the petition. The deceased was self employed. He was in transport business. He would ply his tempo for hire. The Tribunal considered his income as Rs.8,000/- per month. In addition thereto a sum of Rs.50,000/- per annum has been considered as his income from agriculture. The 7/12 extract of the land standing in the name of the claimants on the demise of Pandurang has been placed on record before this Court. I, therefore, propose to interfere with the assumed income of the deceased. It, also, appears that towards future prospects, the addition is made at 50% of the income of the deceased. In view of the Constitution Bench judgment of the Apex Court in the case of ***National Insurance Company Limited vs Pranay Sethi and others – (2017) 16 SCC 680*** , it should be 40%. Para 59.4 of the said judgment, is reproduced here for ready reference:

> "***59.4*** *In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10%*

where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

8. Moreover, under conventional heads and particularly for loss of consortium or love and affection, the widow and children of deceased have been granted Rs.1,00,000/- (Rupees One Lakh) each. In para 52 of the ***Pranay Sethi's judgment*** (supra), it has been observed thus:

> "***52.*** *………… Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000/- and Rs.15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.*"

9. In view of the above, interference with the impugned award is called for. The amount of compensation, payable to the claimants is, therefore, worked out as under:

Annual income of the deceased from transport business was Rs.96,000/- (8000 X 12). Since, on the demise of the deceased, his agricultural land remained with the family. His annual income from agricultural land (loss of supervision charges)is considered at Rs.10,000/- instead of Rs.50,000/-. Therefore, his total annual income comes to Rs.1,06,000/-(96,000+10,000). On account of future prospects 40% is added thereto. After adding 40%, it comes to Rs.1,48,400/-(1,06,000+40% i.e. 42400). Considering the number of dependents, 1/5th thereof is deducted towards personal living expenses. As such, annual loss of dependency comes to Rs.1,18,720/- (1,48,400 – 29,680). Applying the multiplier of 16 thereto, it comes to Rs.18,99,520/- (1,18,720 X 16). Rs.30,000/- are awarded towards funeral expenses and loss of estate. Each of the claimant is awarded a sum of Rs.40,000/- towards loss of consortium. It comes to Rs.3,20,000/- (40,000 X 8), besides a sum of Rs.25,000/- towards medical expenses.

10. As such, total amount of compensation payable to the respondents-claimants comes to Rs. 22,74,520/-.

11. In view of the above, the appeal is partly allowed in terms of following order:-

ORDER

(i) The amount of compensation awarded by the Tribunal is scaled down from Rs. 35,07,120 to Rs.22,74,520/-. No change in the rate of interest awarded.

(ii) The amount of compensation be paid to the respondents-claimants, equally.

(iii) The amount of compensation payable to the minor claimant be kept in fixed deposit until attainment of age of majority.

(iv) The amount in deposit be paid to the claimants with interest accrued thereon. Balance amount be paid back to the M.S.R.T.C. with interest accrued thereon.

(v) Pending civil application No.1549 of 2018 is disposed of.

[R. G. AVACHAT, J.]

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