

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

FIRST APPEAL NO. 328 OF 2009

Maharashtra State Road Transport
Corporation, through the
Divisional Controller, M.S.R.T.C.,
Beed Division, Beed.

..Appellants

Vs.

1. Smt. Ratnamala wd/o. Baburao Pawar,
Age-35 years, Occ. Household,
2. Miss. Swati d/o. Baburao Pawar,
Age-15 years, Occ. Education,
3. Miss. Priti d/o. Baburao Pawar,
Age-12 years, Occ. Education,
Respondent. Nos.2 to 3 minors through
Guardian/mother i.e. respondent no.1
4. Smt. Mandubai w/o. Namdeo Pawar,
Age-50 years, Occ. Household
5. Shri Namdeo s/o. Gunaji Pawar,
Age-60 years, Occ. Agri.

All r/o. Antharwan Pimpri,
Tq. and Dist. Beed
Now residing at Shahunagar,
Beed

..Respondents

Mr.M.K.Goyanka, Advocate for appellant
Mr.Sachin Deshmukh, Advocate for respondent nos.1 to 3
Mr.Y.P.Jadhav, Advocate h/f. Mr.V.D.Salunke, Advocate for
respondent nos.4 and 5

**AND
CIVIL APPLICATION NO.5046 OF 2016 IN
FIRST APPEAL NO. 328 OF 2009**

Miss. Priti d/o. Baburao Pawar ..Applicant

Vs.

Maharashtra State Road Transport
Corporation, through the
Divisional Controller, M.S.R.T.C.,
Beed Division, Beed. ..Respondents

Mr.Sachin Deshmukh, Advocate for applicant
Mr.M.K.Goyanka, Advocate for respondent no.1

**CORAM : R.G. AVACHAT, J.
DATE : NOVEMBER 30, 2021**

JUDGMENT :-

The challenge in this appeal is to the judgment and award dated 22.10.2008 passed by the Motor Accident Claims Tribunal, Beed, ("the Tribunal", for short). Under the impugned award, a sum of Rs.13,47,042/- has been awarded as compensation on account of death in a vehicular accident. Original respondent – Maharashtra State Road Transport Corporation (M.S.R.T.C.) is, therefore, in appeal before this Court.

2. The facts giving rise to the present appeal are as under:-

The deceased Baburao was proceeding on his motorcycle bearing registration No.MH-23-M-1345 on 21.05.2006. It was about 12:30 p.m. Deceased - Baburao was negotiating Ghat section (Manjarsumba). S.T. bus bearing registration no.MH-20-B-5418 coming from opposite side (proceeding from Kallamb to Aurangabad), dashed against the motorcycle. It is the case of the appellant – M.S.R.T.C. that it was the motorcycle that dashed against the S.T. bus and not vice versa. As a result of the injuries suffered in the accident, deceased – Baburao died little over a month after the accident. His widow, children and parents, therefore, preferred the claim petition for compensation. The Tribunal, on appreciating the evidence, passed the impugned award.

3. Heard learned counsel for the parties.

4. Mr.M.K.Goyanka, learned counsel for the appellant - M.S.R.T.C., would submit that it was the deceased riding the

motorcycle in rash and negligent manner, dashed against oncoming S.T. bus. The spot of accident is in Ghat section. There was stiff curve at the site of the accident. The S.T. bus, therefore, could not have been driven in high speed. The accident took place at the centre of the road. At least, it was a case of head on collision between the two vehicles. As such, the deceased was equally responsible for the accident and his resultant death.

On the question of quantum, learned counsel for the appellant would submit that exorbitant amount has been awarded. The gross salary of the deceased has been taken into consideration, without deductions. He, therefore, urged for substantial reduction in the amount of compensation.

5. Mr.Sachin Deshmukh, learned counsel for respondent nos.1 to 3/claimants would, on the other hand, submit that it was the deceased who lodged the FIR on the very day of the accident. The scene of accident panchnama was drawn a day after the accident. The same is, therefore, of little consequence. The evidence of the offending bus driver is

self-serving one. The Tribunal has not granted compensation towards future prospects and under conventional heads as well. According to him, it is a fit case for enhancement of the compensation. He, therefore, urged for dismissal of the appeal.

6. Considered the submissions advanced. Perused the impugned judgment and the evidence relied on. The deceased was Electrician working with the appellant – M.S.R.T.C. His salary slip indicates his monthly salary of Rs.9,314/-. True, the Tribunal considered the entire figure of the salary for assessment of compensation. It simply deducted one third thereof towards personal and living expenses of the deceased. When the impugned judgment and award was passed, the judgment of the Apex Court in the cases of (i) **National Insurance Company Ltd. Vs. Pranay Sethi and ors., (2017)16 SCC 680**; and (ii) **Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and ors., (2018)18 SCC 130** were not in the field. Although the respondents/claimants have not preferred appeal or Cross-Objection for enhancement of

compensation, they are very much entitled to defend the amount under the impugned award by pointing out that the Tribunal ought to have granted compensation under other heads, in case the compensation granted by the Tribunal is likely to be reduced.

7. The evidence in the case, undoubtedly, indicate that it was the deceased who lodged report of the accident same day. It has been averred in the FIR that oncoming S.T. bus dashed his motorbike. The scene of accident panchnama would be of little consequence to show rashness or negligence on the part of the deceased since it was drawn two days after the accident when the vehicles involved therein were not at the site. The evidence of the S.T. bus driver that the motorbike ridden by the deceased dashed against the S.T. bus, is stated to be afterthought and self-serving. Even if we accept the contention made by learned counsel for the appellant-M.S.R.T.C. that it is the case of contributory negligence, it would have no consequence on the amount of compensation awarded under the impugned award because the Tribunal has

not granted anything towards future prospects. The deceased was in permanent employment. He was below 40 years of age. Fifty percent of his established income, therefore, ought to have been added towards future prospects. Only one third was deducted towards personal and living expenses. It should have been, at least, one forth, since the claimants were four in number. Moreover, each of the claimants should have been awarded Rs.40,000/- towards loss of love and affection. As such, the quantum of compensation under the impugned award warrants no interference.

8. In the result, the appeal fails. The same is dismissed.

9. The amount in deposit, if any, be immediately paid to the respondents-claimants along with interest accrued thereon. Civil Application stands disposed of.

[R.G. AVACHAT, J.]