

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

FIRST APPEAL NO. 1482 OF 2004

- 1) Sindhu w/o Pralhad Dhole,
Age : 25 yrs, Occ. Household,
- 2) Ganesh s/o Pralhad Dhole,
Age : 5 yrs, Occu. Nil
U/g of appellant No. 1
- 3) Prayagbai w/o Kishanrao Dhole,
Age : 54 yrs, Occu. Household,
All R/o Jaipur, Tal. Sengaom,
Dist. Hingoli. ...Appellants

VERSUS

Maharashtra State Road Transport
Corporation through its Divisional
Controller, Gangakhed Road,
Parbhani. ...Respondent

...

Mr. Sachin Deshmukh, Advocate for Applicants
Mr. Anand Wange, Advocate for Respondent

...

CORAM : SHRIKANT D. KULKARNI, J.
DATE : 25-11-2021

ORAL JUDGMENT :

01. This appeal is directed against the impugned judgment and award passed in M.A.C.P. No. 256/2001 by the Member, M.A.C.T., Hingoli at the hands of original claimants.

02. It was a claim petition filed by the appellants / original claimants under Section 163-A of the Motor Vehicles Act, 1988.

03. The accident took place on 14.6.2001 near village Hivra. Pralhad Dhole (since deceased) was traveling in ST bus bearing No. MH-20-D-3867. The bus reached near one bridge in the vicinity of village Hivra when ST bus driver noticed that one truck was coming from opposite direction. The ST bus driver applied urgent breaks, due to which bus was toppled down by the side of the road and resulted into accident. Pralhad Dhole, who happened to be husband of petitioner No. 1 sustained serious injuries in the accident and died on the spot. The deceased was serving as a Gramsevak at the time of accident and drawing the salary of Rs. 6,617/- per month. He was 32 years of age when he met with an accident. The widow, minor son and mother of the deceased sought compensation assessed at Rs. 9,50,000/- with interest @ 18% per annum till realization of the amount.

04. The learned Member, M.A.C.T., Hingoli after appreciating the facts, evidence on record and considering the argument advanced on behalf of both the sides, was

pleased to allow the claim partly and directed to the respondent / MSRTC to pay an amount of Rs. 4,27,000/- as a compensation with interest thereon @ 6% per annum from the date of filing of the petition within 4 weeks from the date of order to the claimants / petitioners.

05. Feeling aggrieved by the impugned judgment and award passed by the M.A.C.T., Hingoli, original claimants have preferred this appeal by taking aid of Section 173 of the Motor Vehicles Act, 1988.

06. Heard Mr. Sachin Deshmukh, learned counsel for the appellants / original claimants and Mr. Anand Wange, learned counsel for the respondent / MSRTC.

07. Mr. Sachin Deshmukh, learned counsel for the appellant assailed the impugned judgment and award mainly on two grounds. (i) 50% deduction of compensation on account of contributory negligence of the bus driver and (ii) improper application of multiplier. He invited my attention to the impugned judgment, more particularly para No. 6 and 7 pointed out that it is not in dispute that the deceased was traveling in a bus as a passenger when met with an accident. The accident is not disputed as well as

death of husband of claimant No. 1 in said motor vehicular accident. He submitted that the deceased was traveling in the bus as a passenger, and as such, it would be incorrect to deduct 50% of the amount of compensation out of total compensation assessed by the Tribunal on the point that ST bus driver was at fault and contributed 50% negligence. He submitted that the approach of the Member, M.A.C.T., Hingoli is improper and incorrect. The Member, M.A.C.T. has not considered the provisions of The Motor Vehicles Act, 1988 in a proper perspective and erroneously deducted the 50% of the compensation.

08. Mr. Deshmukh, learned counsel for the appellants / claimants further submitted that the Tribunal has committed an error in applying multiplier of 16 and multiplier of 17 needs to be applied in view of the second schedule given under Section 163-A of the Motor Vehicles Act, 1988.

09. Mr. Deshmukh, learned counsel for the appellants further submitted that in view of recent citation in case of **National insurance company limited V/s Pranay Sethi and others, (2017 SCC 680)** and in case of **Magma General Insurance Company Limited and others, (2018 (18) SCC 130)**

the applicants / claimants are entitled to get enhancement under the head of loss of future income, loss of love and affection and loss of filial consortium. Mr. Deshmukh, learned counsel for the appellants also relied upon **United Insurance company Ltd. V/s Satinder Kaur @ Satwinder Kaur and Ors. (Supreme Court) Decided on 30.6.2020** and argued that in view of legal position made clear in the above said cases, the applicants / claimants are entitled to get compensation under the various heads.

10. He submitted that impugned judgment and award passed by the Tribunal needs to be modified. The appellants / claimants are entitled to get compensation according to their prayer without 50% deduction since the Tribunal has committed an error in deducting 50% compensation.

11. Mr. Wange, learned counsel for respondent / MSRTC not completely supported the impugned judgment and award passed by the M.A.C.T., Hingoli. He submitted that the accident in question took place near the bridge of village Hivra. The ST bus driver after noticing that the truck was coming from opposite side applied urgent breaks as a result of which and due to heavy rains, the ST bus

turned turtled. There was no fault of the ST bus driver. The ST bus driver took proper care and caution. He can not be said to be negligent while driving the bus. The Tribunal has committed an error in holding that ST bus driver drove his bus in a rash and negligent manner to the extent of 50% and caused death of Pralhad Dhole.

12. Mr. Wange, learned counsel for the respondent / MSRTC further submitted that the Tribunal has considered the evidence on record as well as legal points and awarded appropriate compensation to the claimants. The Tribunal has rightly applied the multiplier of 16 having regard to the position in case of **Sarla Verma V/s Delhi Transport Corporation, (2009) 6 SCC 121**. He submitted that the claimants / appellants are not entitled to get enhanced compensation under different heads by taking aid of recent citation of Honourable Supreme Court in case of **Magma General Insurance Company Ltd. and Pranay Sethi**, referred by Mr. Deshmukh learned counsel for the appellants.

13. Mr. Wange, learned counsel for the respondent submitted that the Tribunal has awarded just compensation to the claimants and there is no need to interfere in the award passed by the Tribunal. Mr. Wange, learned counsel

for respondent submitted that the claim is bad for non-joinder of necessary parties. Claimants have not added truck driver, owner and its insurance company as a party and as such, claim is defective in the eye of law. The appeal needs to be dismissed.

14. Having regard to the argument advanced by the learned counsel appearing for the respective sides, I have gone through the judgment and award passed by the Member, M.A.C.T., Hingoli.

15. Perused the evidence on record.

16. Most of the facts of the accident dated 14.6.2001 near village Hivra are not in dispute. The question is about driving of bus. Whether the ST bus driver drove his bus in a rash and negligent manner and caused the accident resulting in death of husband of claimant No. 1. On going through the impugned judgment para No. 6, it is evident that the Tribunal has considered the oral evidence of the claimant No. 1 Sindhu coupled with documentary evidence and arrived at a conclusion that the accident took place due to rash and negligent driving of the bus driver. The Tribunal has also held responsible

the truck driver and as such, ST bus driver held to be negligent to the extent of 50%.

17. The oral evidence is well supported by documentary evidence in the nature of Police papers like F.I.R., spot panchnama etc. It is observed by the M.A.C.T. that the spot panchnama on record indicates the direction of the bridge is of North-South and approximately road is 100 to 125 feet in length. The width of road is about 25 feet. The bus was proceeding from North to South. It is further observed by the Member, M.A.C.T. as to how the accident has occurred by noticing factual scenario noticed in the spot panchnama. It is observed that the bus driver failed to take necessary precaution while driving the bus probably while crossing, the bridge and met with an accident. It is held by the Tribunal that the accident was caused due to rash and negligent driving of the bus driver and truck driver resulting death of husband of claimant No. 1. The finding recorded by the Tribunal appears to be erroneous. It is material to note that the truck driver, truck owner and insurance company of the truck if any were not parties to the claim before the Tribunal. In short, the Tribunal seems to have recorded finding, holding that the truck

driver was at fault, rash and negligent to the extent of 50%. As such, finding recorded by the Tribunal as a case of contributory negligence is defective in the eye of law. There was no head on collision between the truck and the bus. On the basis of evidence produced before the Tribunal, it is a clear case of rash and negligent driving of the ST bus driver.

18. The husband of claimant No. 1 sustained serious injuries in the said accident and seem to have died on the spot.

19. The moot question is about deducting 50% of the compensation out of total compensation assessed by the Tribunal on the ground that the ST bus driver was at fault, rash and negligent to the extent of 50%. Husband of the claimant No. 1 was traveling in the bus of M.A.C.T. / respondent as a passenger. The said bus met with an accident because of rash and negligent driving of the bus driver. He was not at fault. Why for the compensation of 50% should be deducted out of total compensation. The view taken by the Tribunal by deducting 50% of the compensation out of the total compensation on account of 50%, rash and negligent driving of the bus driver is

certainly erroneous and incorrect in the eye of law. The Tribunal has completely over looked the terminology of contributory negligence. The Honourable Supreme Court has explained the term contributory negligence and composite negligence in the case of **Swaran Singh reported in (2004) 3 SCC 297**. How the passenger can be held responsible who is third party to the accident. The approach of the Member, M.A.C.T. is completely erroneous. I found merit in the submissions of the learned counsel Mr. Deshmukh for the appellants / original claimants. The Tribunal seems to have committed grave error in deducting 50% amount of compensation, about the rash and negligent manner of driving of the bus driver and that error needs to be corrected.

20. Now coming to the selection of multiplier. According to second schedule provided under Section 163A of Motor Vehicles Act, 1988 for the age group of 31 to 35 multiplier of 17 is provided. In the present case, the Tribunal seems to have applied multiplier of 16. According to Mr. Wange, learned counsel for the respondent / MSRTC as per the decision of Honourable Supreme Court in case of **Sarla Verma V/s Delhi Transport Corporation**, reported in **2009 (6) SCC 121** for the age group of 32

multiplier of 16 needs to be applied. According to Mr. Wange, learned counsel for respondent, the Tribunal has rightly applied the multiplier.

21. It is important to note that the claim petition is filed by the original claimants before the Tribunal under Section 163-A of the Motor Vehicles Act. It was not a claim under Section 166 of the Motor Vehicles Act. Had the claim been filed under Section 166 of the Motor Vehicles Act, certainly I would have accepted the submissions of Mr. Wange, learned counsel by relying upon the citation in case of **Sarla Verma** (Supra). However, the claim petition is governed by Section 163-A of the Motor Vehicles Act and as such, the multiplier given in the second schedule under Section 163-A of the Motor Vehicles Act needs to be applied. The age of deceased is not much disputed. As such, there is no difficulty to accept the age of the deceased as 35 years. According to the second schedule under Section 163A of the Motor Vehicles Act, for the age group of 31 to 35 multiplier of 17 needs to be applied in this case. The Tribunal has however, committed an error in applying multiplier of 16, in this case, while making calculation and assessment of the compensation on account of death of husband of claimant No. 1 in a motor

vehicular accident. That legal error needs to be corrected at the hands of the Appellate Court.

22. Mr. Wange, learned counsel for the respondent / MSRTC vehemently argued that the claim petition is bad for non-joinder of necessary parties since truck driver, truck owner and insurance company of the truck are not made parties to the claim. I do not see any merit in the submissions of Mr. Wange. It is a third party claim and it is the choice of the third party against whom claim is to be instituted.

23. According to the decision of the Honourable Supreme Court in case of **Pranay Sethi and Magma** (Supra), the claimants are entitled to get compensation under various heads. The Tribunal has not awarded any compensation even under the conventional heads. That legal error needs to be corrected in the appeal in view of the decision in **Pranay Sethi and Magma** (Supra).

24. Having regard to the legal position made clear by the Honourable Supreme Court in case of **Pranay Sethi and Magma General Insurance Company Ltd.** (Supra), the appellants / applicants are entitled to get compensation

under various heads. Accordingly, the compensation needs to be re-assessed in the back ground of guidelines laid down by the Honourable Supreme Court in above citations. The deceased was 35 years old at the time of accident and working as a Gramsevak with Panchayat Samiti, Kinvat and had permanent service. As such, in view of guidelines laid down in case of **Pranay Sethi** an addition of 50% of actual salary to the income of the deceased towards future prospects where the deceased had permanent job and below the age of 40 years should be made. The claimants / appellants are entitled to get compensation under the head of funeral expenses, loss of estate, loss of consortium.

25. The compensation to be awarded to the appellants / original claimants by way of modification under various heads is as under :

Head	Compensation awarded
i. Income	Rs. 6,600/- pm.
ii. Future prospects (50% of income)	Rs. 3,300/- p.m.
iii. Deduction towards personal expenses (Rs. 6,600/- + Rs. 3,300/- = Rs. 9,900/- of 1/3)	Rs. 3,300/- p.m.
iv. Net Income	Rs. 6,600/- p.m.
v. Multiplier	17
vi. Loss of income (Rs. 6600 X 12 Rs. 79,200 X 17)	Rs. 13,46,400/-

vii. Loss of estate	Rs. 15,000/-
Viii. Funeral expenses	Rs. 15,000/-
ix. Loss of consortium (claimant Nos. 1 to 3) (Rs. 40,000/- each)	Rs. 1,20,000/-
Total compensation awarded	Rs. 15,16,200/-

26. The claimants / appellants are entitled to get abovesaid modified amount of compensation with interest @ 6% per annum on enhanced compensation if not paid within two months from today.

27. Having regard to the above reasons and discussion, I am of the view that the findings recorded by the Member, M.A.C.T., Hingoli, need to be corrected by making interference, in this appeal. The impugned judgment and award stand modified, accordingly.

28. For the reasons stated above, the appeal needs to be allowed as under :

ORDER

(i) The appeal stands allowed.

(ii) The respondent / MSRTC shall be liable to pay compensation of Rs. 15,16,200/- (Rs. Fifteen Lakhs Sixteen Thousand and Two Hundred) to the

appellants / original claimants. The payment made earlier by the MSRTC / respondent with interest if any be deducted from the said amount. After deducting that amount, enhanced amount of compensation be paid to the appellants / claimants within two months from today.

(iii) If the respondent / MSRTC failed to pay enhanced amount of compensation within two months, applicants / claimants are entitled to get interest thereon @ 6% per annum till its realization.

(iv) The award be drawn up accordingly.

(v) In view of the above, appeal stands disposed of.

[SHRIKANT D. KULKARNI]

JUDGE

Dahibhate/-