

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

FIRST APPEAL NO.2170 OF 2009

Divisional Controller,
Maharashtra State Road Transport
Corporation, Dhule Division, Dhule

..Appellant

Vs.

1. Ujjwala w/o. Subhash Deopurkar
2. Poonam Subhash Deopurkar
3. Harjitsing Mahendrasingh
(appeal dismissed against resp.no.3
Vide order dated 20.12.2011)
4. Sukhvindersingh Chana Harbansingh
Chana
5. The National Insurance Co. Ltd.
6. Rangrao Vikaram Patil

..Respondents

**WITH
FIRST APPEAL NO.2737 OF 2009**

1. Ujjwala w/o. Subhash Deopurkar
2. Poonam d/o. Subhash Deopurkar

..Appellants

Vs

1. Harjitsingh Mahendrasingh
2. Sukhvindersing Chana Harbansingh Chana
3. National Insurance Company Ltd.
4. Rangrao s/o. Vikram Patil
5. Divisional Controller,
Maharashtra State Road Transport
Corporation

..Respondents

Mr. D.S.Bagul, Advocate for appellants in F.A.No.2170/2009 and for
respondent no.4 in F.A. No.2737 of 2009

Mr.R.S.Deshmukh, Senior Advocate a/w. Mr.Indraneel S. Godsay, Advocate for appellant in FA No.2737 of 2009 and for respondent nos.1 and 2 in FA No.2170 of 2009

Mr.S.V.Kulkarni, Advocate for respondent no.6 in FA No.2170 of 2009

Mr.A.B.Gatne, Advocate for respondent no.3 in FA No.2737 of 2009

CORAM : R.G. AVACHAT, J.
DATE : DECEMBER 07, 2021

JUDGMENT :-

Both these appeals are being decided by this common judgment since the challenge therein is to the award dated 29.01.2008 passed by Motor Accident Claims Tribunal, Dhule in Motor Accident Claim Petition No.246 of 2001. Vide the impugned judgment and award, a sum of Rs.9,40,000/- has been granted as compensation on account of death in vehicular accident.

2. The appeal (2170 of 2009) has been filed by the Maharashtra State Road Transport Corporation (M.S.R.T.C.), taking exception to the quantum of compensation, whereas, appeal (2737 of 2009) has been preferred by the original claimants for enhancement of compensation.

3. Heard learned counsel appearing for the parties to the appeals. Also read the evidence relied on.

4. The deceased – Subhash was traveling in S.T. bus from Dhule to Navapur on 11.01.2001. Near village Kusumba, a head on collision took place between the S.T. bus (MH-20-D-3312) and truck (MP-23-DA-1777). As a result thereof, Subhash suffered injuries and succumbed thereto. The widow and daughter of deceased – Subhash, therefore, preferred the petition for compensation. It was their case that the deceased was serving as Sectional Engineer with the appellant M.S.R.T.C. He was 46 years of age. His monthly pay was Rs.15,407/-.

5. The Tribunal, on appreciation of the evidence in the case, held it to be a case of composite negligence. The drivers of both S.T. bus and truck have been held to be equally responsible. Their owners and insurance companies have been, therefore, held to be liable to pay the compensation in equal proportion. The Tribunal considered the take-home salary of the deceased of Rs.8,744/- and worked out the compensation.

6. Learned counsel for the appellant – M.S.R.T.C. would submit that there was no fault on the part of S.T. bus driver. It was a case of exclusive rash/negligence on the part of the truck driver. He, therefore, urged for exoneration of the appellant – M.S.R.T.C. from the liability.

7. Learned counsel for the respondent-insurance company took this Court to the relevant observations in the impugned judgment to ultimately submit it to be a case of composite negligence. The Tribunal observed as under :-

“..... Both the parties have not examined any eye witness to the accident. However, copies of the complaint Exh.62 and spot panchnama Exh.63 show that a head on collision had taken place between the ST bus bearing No.MH/20/D/3312 and the truck bearing No.MP/23/DA/1777. Moreover, it seems that both the vehicles were in high speed at the relevant time of the accident. Therefore, in the absence of any rebuttal evidence I have no hesitation to come to the conclusion that the impugned accident took place due to the composite negligence of 50% each by the ST bus bearing No.MH/23/D/3312 and the truck bearing No.MP/23/DA/1777 by their respective drivers. Hence, I answer the issue No.1 accordingly.”

8. On perusal of the evidence in the case, this Court finds no reason to interfere with the finding record by the Tribunal that it is a case of composite negligence in equal proportion.

QUANTUM :-

9. The pay slip of the deceased (Exh.74) indicates that the gross salary of the deceased was Rs.15,407/-. Although the total deductions are shown of Rs.6,663/-, payment towards Profession

Tax and Income Tax (Rs.200 + Rs.2100) could only be considered, since rest of the deductions were beneficial to the deceased. Learned counsel, however, came around to consider it to be Rs.13,000/- per month. Thus, the annual income of the deceased would come to Rs.1,56,000/- (Rs.13,000 x 12). Since the deceased was in permanent service and died at the age of 46/47, the amount of 25% of his established income needs to be added towards future prospects. Thus, the amount comes to Rs.1,95,000/- (Rs.1,56,000/- + 25%). Since the claimants are two in number, one third amount is to be deducted towards personal and living expenses of the deceased. Thus, the loss of annual dependency would come to Rs.1,30,000/- (Rs.1,95,000 – Rs.65,000). Considering the age of the deceased to be 46 plus, multiplier of 13 is applied. As such the total amount of compensation on account of loss of dependency comes to Rs.16,90,000/- (Rs.1,30,000 x 13).

10. The respondents/claimants (appellants in F.A. No.2737 of 2009) are granted Rs.40,000/- each towards loss of consortium and love and affection plus Rs.30,000/- towards funeral expenses. No interest *pendente lite* is, however, awarded on this amount. As such, the total amount of compensation payable to the appellants/claimants would come to Rs.18,00,000/-.

11. In the result, the appeals stand disposed of in terms of the following order :-

- (i) First Appeal No.2170 of 2009 filed by M.S.R.T.C. is dismissed.
- (ii) First Appeal No.2737 of 2009 filed by the claimants is allowed.
- (iii) The amount of compensation is enhanced from Rs.9,40,000/- to Rs.18,00,000/-.
- (iv) The amount of compensation of Rs.1,10,000/- shall not carry interest *pendente lite* (i.e. from the date of claim petition to the date of this order).
- (v) Rest of the terms of the impugned award to stand unaltered.
- (vi) The amount in deposit, if any, with this Court or the Tribunal, be paid to the claimants with interest accrued thereon.

[R.G. AVACHAT, J.]

KBP