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

FIRST APPEAL NO. 2279 OF 2009

Maharashtra State Road Transport Corporation
Through its Divisional Controller,
S. T. Aurangabad … **Appellant**
(Orig. Respondent No.1)

Versus

1. Nirmalabai w/o Sarjerao Mane
Age: 36 years,
R/o Chimnapur, Tq. Kannad,
Dist. Aurangabad, At present an 11, H-14/7.
Navnath Nagar, Hudco, Aurangabad

2. Vaibhav Sarjerao Mane
age-16 years, Occu-Student,
U/g of claimant No.1 his mother,
r/o as above.

3. Saurabh Sarjerao Mane
age-12 yrs., Occu – Student,
U/g of Claimant no.1, his mother,
r/o as above

4. Raghunath Kaduba Mane
age-70 yrs., occu-Nil,
r/o as above (Original claimants no. 1 to 4)

5. Balasaheb Bhimrao Shinde
age-Major, occu-Driver in M.S.R.T.C.
r/o Ward no.9, Bhokardan (Orig.R.No.2)
Dist. Jalna … **Respondents**

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Smt. Ranjana D. Reddy, Advocate for appellant
Mr. A. S. Bajaj, Advocate for respondent Nos. 1 to 4

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CORAM : R. G. AVACHAT, J.
DATED : 10th DECEMBER, 2021

ORAL ORDER :-

. This is Maharashtra State Road Transport Corporation's appeal, taking exception to the judgment and award dated 02.05.2009, passed by the Member, Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No. 502 of 2008, granting compensation of Rs. 10,65,937/- on account of death in vehicular accident. The challenge is on the ground of contributory negligence and quantum as well.

2. Heard.

Learned Advocate for the appellant M.S.R.T.C. would submit that the deceased was riding motorcycle bike in rash and negligent manner. His widow, who is examined as witness, was not with the deceased and therefore, her evidence is hear-say. According to her, it was head on collision between the two vehicles. On the question of quantum of compensation learned Advocate would submit that the salary slip Exh.27 would indicate deductions amounting to Rs. 1985/-. The Tribunal considered the deduction of Rs.175/- only, which was towards professional tax. Learned

Advocate therefore urged for reducing the quantum of compensation considering take home salary of the deceased.

3. The learned Advocate for the respondents-claimants urged for enhancement of compensation, since according to him, nothing has been awarded towards future prospects, loss of consortium and love and affection etc.

4. Considered the submissions advanced. Perused the evidence relied on. Gone through the impugned judgment and award.

The appellant M.S.R.T.C. claims it to be a case of contributory negligence. Rider of the motor bike died in the accident. As such, it was for the bus driver to depose as to how the accident took place. He did not enter the witness box. On due investigation, it was found that the bus driver was responsible for the accident. On going through the evidence on record and appreciating the reasons given by the Tribunal, this Court finds no reason to interfere with the findings holding the bus driver to be exclusively responsible for the accident.

5. QUANTUM:

The deceased was in Government service. He was little over 45 years of age. His salary certificate Exh.27 indicate his gross salary was Rs.9,711/-. Although there was deductions of Rs.1,985/-, the Tribunal has rightly considered the deduction on account of professional tax amounting to Rs.175/-. All other deductions were beneficial for the deceased. The said deductions were towards group insurance, festival advance etc. Even otherwise, the Tribunal has not granted compensation on account of future prospects. Inadequate compensation has been granted under other heads. The respondent – claimants have not preferred appeal or cross objection for enhancement of compensation. The learned Advocate for the respondents – claimants relying on Order 41 Rule 33 of the Code of Civil Procedure, urged for enhancement of compensation. The submissions cannot be accepted. The Apex Court in the case of ***Ranjana Prakash & Ors vs. Divisional Manager & Anr. - 2012 AIR SCW 848,*** has observed thus:

> *"....... It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objection."*

6. For the reasons given herein above, no interference is warranted with the impugned award. The appeal, therefore, fails. The same is dismissed.

7. In view of dismissal of the first appeal, pending civil application No.8908 of 2009 is disposed of.

8. The amount in deposit with this Court be immediately paid to the respondents – claimants with interest accrued thereon.

9. It is informed that only 75% amount under the impugned award has been deposited. The appellant – M.S.R.T.C. shall deposit the balance amount with this Court within three months.

10. On deposit of the amount, the same be paid to the respondent/claimants, immediately.

[R. G. AVACHAT, J.]

SMS