

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

First Appeal No.841 of 2008

And

First Appeal No.955 of 2008

First Appeal No.841 of 2008

- *1. Digambar S/o Rajaram Wathurkar,
Aged about 44 years,
Occupation—Business.

(* Appellant No.1 is deleted as per
Court's Order dated 31-3-2021)

2. Sulochana W/o Digambar Wathurkar,
Aged about 38 years,
Occupation – Household Work.
3. Ku. Rekha D/o Digambar Wathurkar,
Aged about 25 years,
Student, Minor.

No.3 being minor is represented by
natural guardian father applicant No.1.

All R/o Khadan, Akola.

... Appellants

Versus

1. Dadarao S/o Kisanrao Chawat,
Aged Adult,
Occupation – Driver, B.No.28442,
Serving at Kalamnuri Depot,
Tq. Distt. Parbhani (M.S.).
2. Divisional Manager,
Maharashtra State Road Transport Corporation,
Amravati,
Tq. and Distt. Amravati.

... Respondents

And**First Appeal No.955 of 2008**

1. Devidas S/o Hanumantrao Wathurkar,
Aged about 41 years,
Occupation – Business.
2. Shobha W/o Devidas Wathurkar,
Aged about 35 years,
Occupation – Household Work.
3. Girish S/o Devidas Wathurkar,
Aged about 17 years,
Student, Minor.
4. Monali D/o Devidas Wathurkar,
Aged about 15 years,
Student, Minor.

Nos.3 and 4 being minor are
represented by natural guardian
father applicant No.1.

All R/o Khadan Akola.

... Appellants

Versus

1. Dadarao S/o Kisanrao Chawat,
Aged Adult,
Occupation – Driver, B.No.28442,
Serving at Kalamnuri Depot,
Tq. and Distt. Hingoli (M.S.).
2. Divisional Manager,
Maharashtra State Road Transport
Corporation, Amravati,
Tq. and Distt. Amravati.

... Respondents

In both the First Appeals : Shri S.D. Chopde, Advocate for Appellants.

CORAM : V.M. DESHPANDE, J.

DATE : 26th NOVEMBER, 2021

Oral Judgment (Common) :

1. These two appeals are heard simultaneously and they are decided by this common judgment, because both these appeals arise out of the very same judgment and award dated 27-4-2006 passed by the learned Chairman, Motor Accident Claims Tribunal, Akola.

2. In both these appeals, the appellants are represented by Advocate Shri S.D. Chopde. The learned counsel for respondent No.1 and respondent No.2 chose not to appear and participate in the final hearing proceedings. Even, there was no request from their side for adjournment also.

3. The facts giving rise to these appeals are in a very short compass and the same are detailed hereinunder :

(a) On 19-8-2003, a fatal accident took place, inasmuch as there was a head-on collision of two motor vehicles, one was a matador and another was a bus of the Maharashtra State Road Transport Corporation. The incident took place on Malegaon-Washim Road. The registration number of the bus was MH-20-D/5137 and the respondent No.1- Dadarao S/o Kisanrao Chawat at the relevant time was driving the said bus. Another vehicle that was involved in the accident was the

matador, having registration No.MH-30-A/9079, and the driver of the said vehicle was Dnyaneshwar S/o Devidas Wathurkar. At the time of accident, four persons were in the matador. All of them lost their precious life. Apart from the driver of the matador, bus cleaner Sachin Digambar Waturkar, one Manish Suresh Patil and one Amit Suresh Patil also lost their life.

(b) After the said fatal accident, at Police Station Malegaon of District Washim, a crime was registered against the driver of the S.T. Bus vide CR No.125 of 2003 for the offences punishable under Sections 279, 447 and 304(A) of the Indian Penal Code in view of the report lodged by one Sopan Wagh, Police Patil of Village Zodga. During the investigation, the Investigation Officer also visited the spot of occurrence and the spot panchanama was also drawn.

(c) The impact of the accident was so much that all persons travelling in matador died on the spot. Their bodies were sent for post mortem and the post mortem was also conducted at the Government Hospital.

(d) Four different claim petitions came to be filed before the Motor Accident Claims Tribunal, Akola, under Section 166 of the Motor Vehicles Act, 1988. The claim petition filed by the

parents and minor brother and sister of deceased Dnyaneshwar w/o Devidas Wathurkar was registered as M.A.C.P. No.323 of 2003, whereas the claim petition filed by the parents and minor sister of deceased Sachin S/o Digambar Wathurkar was registered as M.A.C.P. No.324 of 2003. The parents of deceased Manish S/o Suresh Patil filed the claim petition, bearing M.A.C.P. No.325 of 2003, whereas the claim petition, bearing M.A.C.P. No.326 of 2003 was filed by the parents of deceased Amit S/o Suresh Patil.

(e) All the four claim petitions were resisted by the driver of the S.T. Bus and the Maharashtra State Road Transport Corporation by filing their joint written statement. By filing the written statement, the factum of accident and death was admitted. However, according to the respondents, the accident occurred due to rash and negligent driving of the driver of the matador.

(f) In view of the rival pleadings, the issues were framed separately in all four claim petitions.

(g) In Claim Petition No.323 of 2003, Devidas S/o Hanumantrao Wathurkar, father of deceased Dnyaneshwar S/o Devidas Wathurkar, entered into the witness-box. He proved

F.I.R. (Exhibit 24), Spot Panchanama (Exhibit 25), Inquest Panchanama (Exhibit 26), Post Mortem Report of Dnyaneshwar (Exhibit 27), and Driving Licence of Dnyaneshwar (Exhibit 28). He was cross-examined by the learned counsel for the driver of the S.T. Bus and the Corporation.

(h) Similarly, in Claim Petition No.324 of 2003, the father of deceased Sachin S/o Digambar Wathurkar entered into the witness-box and he also proved the F.I.R, Spot Panchanama and Driving Licence of deceased Sachin (Exhibit 27).

(i) This Court is not making any reference in respect of the evidence adduced by the parents of the other two deceased persons, since their appeals are not placed before this Court.

(j) The learned Chairman of the Motor Accident Claims Tribunal, Akola, has partly allowed all four claim petitions by the common judgment and award dated 27-4-2006. In Claim Petition No.323 of 2003 filed on behalf of the parents and minor brother and sister of deceased Dnyaneshwar S/o Devidas Wathurkar, the total compensation of Rs.1,55,000/- along with the future interest at the rate of 7.5% was granted, whereas in Claim Petition No.324 of 2003 filed by the parents and minor sister of deceased Sachin S/o Digambar Wathurkar, the

Tribunal has granted the compensation of Rs.1,85,000/- along with the future interest at the rate of 7.5%. Since the claimants in both these claim petitions were dissatisfied with the quantum of compensation awarded, they have filed these two appeals.

4. It is the submission of Shri S.D. Chopde, learned counsel for the appellants, that in any case these two appeals are required to be allowed, if not fully but partly, inasmuch as, according to him, the learned Chairman of the Tribunal has committed a serious error in law in fixing the multiplier by considering the age of the parents and not the age of the deceased. Another limb of submission of the learned counsel, insofar as the case of the parents of deceased Dnyaneshwar is concerned, is that the monthly income of deceased Dnyaneshwar was assessed by the Tribunal on a very low side. The further submission of the learned counsel is that though the parents are entitled for consortium as per the law laid down by the Hon'ble Apex Court in *National Insurance Company Limited v. Pranay Sethi and others*, reported in *AIR 2017 SC 5157*, which is reiterated by the Hon'ble Apex Court in its subsequent judgment in *Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram*, reported in 2018 ALL SCR 2001, the same is not granted by the Tribunal. The learned counsel has also submitted that nothing was awarded on account of future prospect. He has, therefore, submitted that both these appeals are required to be

allowed.

5. The factum of accident was never in dispute. Though it was the case in the written statement filed by respondent Nos.1 and 2 that the accident occurred due to rash and negligent driving of the driver of the matador, the learned Chairman of the Tribunal in Paragraph No.21 of the impugned judgment has observed as under :

“21. ... Fact, however, remains that S.T. Bus while moving east west tilted from south to extreme north, jumped in road side trench and moved ahead and came to halt facing east which itself is pointer of the fact that it was driven rashly and negligently and no more evidence is necessitated to ascribe negligence on the part of bus driver, respondent no.1.”

Further in Paragraph No.24 of the impugned judgment, the learned Chairman of the Tribunal has recorded the finding as under :

“24. ... Thus, again at the costs of repetition, it is to be inferred here that accident was result of fault and negligence solitarly on the part of respondent no.1. ...”

6. Thus the learned Chairman of the Tribunal has clearly recorded a finding after scrutinizing the evidence and the documents placed on record that the driver of the bus owned by the Corporation was negligent solely. Thus, the learned Tribunal has firmly rejected the theory that the plea propounded by the Corporation and its driver that there was a contributory negligence on the part of the driver of the

matador. In spite of the said clear-cut finding recorded against the Corporation and the bus driver, both of them chose not to file appearance before this Court to challenge the said finding. Not only that, but also they did not file any cross-objection in present appeals. In view of the finding recorded by the learned Chairman of the Tribunal that the driver of the bus owned by the Corporation alone was responsible for causing the accident, as he was rash and negligent in driving the bus, the only point that falls for my determination is as under :

(1) Whether the learned Chairman of the Motor Accident Claims Tribunal, Akola has granted proper and adequate compensation”

(2) What order ?

7. Firstly, it will have to be decided whether the learned Chairman of the Tribunal was right in applying the multiplier by considering the age of the parents.

8. The issue is no more *res integra*. In Paragraph No.9 of *Smt. Sarla Verma and others v. Delhi Transport Corporation and another*, reported in 2009(4) ALL MR 429, the Hon’ble Apex Court has ruled that the multiplier has to be applied with reference to the age of the **deceased**. If that be so, the submission of the learned counsel for the appellants that the learned Chairman of the Tribunal while deciding

the claim petitions has committed an error in fixing the multiplier by considering the age of the parents of the deceased was incorrect, needs to be rejected. Accordingly, the finding recorded by the learned Chairman of the Tribunal is set aside. (**Emphasis supplied**).

9. In Claim Petition No.323 of 2003, the multiplier applied was of 10, by considering the age of the parents of deceased Dnyaneshwar, whereas in Claim Petition No.324 of 2003, the multiplier of 15 was applied by considering the age of the parents of deceased Sachin.

10. In Claim Petition No.323 of 2003, the father of deceased Dnyaneshwar entered into the witness-box. He also filed on record the driving licence issued by the Regional Transport Authority, Akola, authorizing Dnyaneshwar (deceased) to drive the light motor vehicle. The original driving licence of deceased Dnyaneshwar is available on record at Exhibit 28. The said driving licence contains the date of birth of Dnyaneshwar and it is 18-8-1981. Nothing was brought on record in the cross-examination of the father of deceased Dnyaneshwar regarding this document to challenge the same. On the contrary, during his cross-examination, the date of birth of Dnyaneshwar is brought on record and it is 18-8-1981. Thus, the documentary evidence and the oral evidence of the father of the deceased Dnyaneshwar clearly establish that the date of birth of Dnyaneshwar was 18-8-1981. The date of accident is 19-8-2003. Resultantly, at the

time of occurrence of accident, the age of Dnyaneshwar was 22 years.

11. Similarly, the father of deceased Sachin, another claimant, entered into the witness-box. He also filed on record the driving licence issued in favour of Sachin by the Regional Transport Authority, Akola, authorizing Sachin (deceased) to drive the light motor vehicle. The original driving licence of deceased Sachin is available on record at Exhibit 27. The said driving licence contains the date of birth of Sachin and it is 9-5-1980. Nothing was brought on record in the cross-examination of the father of deceased Sachin regarding this document. On the contrary, during his cross-examination, the date of birth of Sachin is brought on record and it is 9-5-1980. Thus, the documentary evidence and the oral evidence of the father of deceased Sachin clearly establish that the date of birth of Sachin was 9-5-1980. The date of accident is 19-8-2003. Thus, at the time of occurrence of accident, the date of deceased Sachin was about 23 years.

12. We have a guiding lamp in the form of the law laid down by the Hon'ble Apex Court in *Sarla Verma's* case, cited supra, and in view of Paragraph No.21 of the said judgment of the Hon'ble Apex Court, it is clear that for both the deceased, the multiplier will be 18 and not 10 and 15, as determined by the learned Chairman of the Tribunal.

13. In Claim Petition No.323 of 2003, the parents of deceased Dnyaneshwar, the claim was that the deceased was getting salary of Rs.4,500/- per month, whereas in Claim Petition No.323 of 2003, the parents of deceased Sachin, the claim was that the deceased was getting Rs.2,000/- per month towards salary. The father of both the deceased entered into the witness-box and they stated about the monthly income of the deceased, as stated in the application under Section 166 of the Motor Vehicles Act, 1988. Though the suggestion was given to both the fathers that the deceased were receiving Rs.4,500/- and Rs.2,000/- per month respectively, they stoutly denied the said suggestion. It is to be mentioned here that in none of these two claim petitions, no officer from the Corporation entered into the witness-box.

14. The learned Chairman of the Tribunal has determined the monthly income of deceased Dnyaneshwar at Rs.2,500/-, whereas the learned Chairman has accepted the claim of the parents of deceased Sachin that his monthly salary was Rs.2,000/-.

15. Before me, the learned counsel for the appellants did not dispute that the monthly salary of deceased Sachin was Rs.2,000/-.

16. While determining the monthly salary of deceased Dnyaneshwar, the learned Chairman of the Tribunal was of the view

that in absence any documentary evidence on record, it would be very difficult to accept the case of the parents that Dnyaneshwar was drawing salary of Rs.4,500/-. In addition to that, one reason, i.e. put forth by the learned Chairman is that the employer of Dnyaneshwar was not examined.

17. True it is, that the employer of Dnyaneshwar was not examined. It is also true that no documentary evidence was filed on record. In the absence of any documentary evidence, it will be a clear guesswork to determine the monthly income. The learned counsel for the appellants has invited my attention to the judgment of the Hon'ble Apex Court in Civil Appeal No.6152 of 2021 (*Chandra @ Chanda @ Chandraram and another v. Mukesh Kumar Yadav and others*), which was delivered on 1-10-2021, wherein the Hon'ble Apex Court has determined the monthly income of the deceased, who was driver of the heavy vehicle, at Rs.7,467/-. It is to be noted that even in the case before the Hon'ble Apex Court, there was neither any documentary evidence nor the employer was examined. It is a matter of common knowledge that the driver of the heavy vehicle draws more salary than the driver of the light vehicle. In *Chandra's* case, cited supra, the accident took place on 27-2-2016, whereas in the present case, the accident took place on 19-8-2003. Considering all these aspects and also considering the guesswork to determine the monthly income of the deceased, in my view, the monthly income of deceased

Dnyaneshwar can be determined at Rs.3,500/- and not at Rs.2,500/-.

18. Perusal of the impugned judgment and award would show that nothing was awarded by the learned Chairman of the Tribunal on account of future prospect, which again cannot stand to the scrutiny of law in view of the law laid down by the Constitution Bench of the Hon'ble Apex Court in *Pranay Sethi's* case, cited supra, in which in Paragraph No.59.4, the Hon'ble Apex Court has ruled that 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. Therefore, in these two claim petitions, since the age of both the deceased was below 40 years, an addition of 40% of the established income will have to be given. Similarly, in view of the law laid down in *Pranay Sethi's* case, which was reiterated by the Hon'ble Apex Court in *Magma General Insurance Co. Ltd.'s* case, cited supra, the parents of both the deceased will be entitled for filial consortium for loss of income of their son, and as per the law laid down in *Pranay Sethi's* case, the father and the mother will be entitled to receive Rs.40,000/- each in their account. Further, they will also be entitled for loss of estate and funeral expenses.

19. Thus, the appellants are entitled to receive more compensation than that was awarded to them by the learned Chairman of the Motor Accident Claims Tribunal, Akola.

20. In my view, the appellants are entitled to receive the compensation as under :

In First Appeal No.955 of 2008
(Claim Petition No.323 of 2003)

(a) Yearly income of deceased Dnyaneshwar. (Rs.3,500/- per month x 12 months)	: Rs.42,000/-
Plus	
(b) 40% future prospect (On Rs.42,000/-)	: Rs.16,800/-

	Rs.58,800/-
(c) Annual loss of dependency, since the deceased was unmarried. (Half of the amount of Rs.58,800/-, i.e. Rs.29,400/-)	
(Rs.29,400/- x 18)	: Rs.5,29,200/-
(d) Loss of consortium	: Rs.80,000/-
(e) Loss of estate	: Rs.25,000/-
(f) Funeral expenses	: Rs.15,000/-

Minus	Rs.6,49,200/-
(g) The amount already awarded and received by the appellants	: Rs.1,55,000/-

The appellants are entitled to receive the amount of compensation (along with the interest at the rate of 7.5% per annum from the date of the claim petition)	: Rs.4,94,200/- =====

In First Appeal No.841 of 2008
(Claim Petition No.324 of 2003)

(a)	Yearly income of deceased Sachin (Rs.2,000/- per month x 12 months)	: Rs.24,000/-
	Plus	
(b)	40% future prospect (On Rs.24,000/-)	: Rs.9,600/-

		Rs.33,600/-
(c)	Annual loss of dependency, since the deceased was unmarried. (Half of the amount of Rs.33,600/-, i.e. Rs.16,800/-)	
	(Rs.16,800/- x 18)	: Rs.3,02,400/-
(d)	Loss of consortium	: Rs.80,000/-
(e)	Loss of estate	: Rs.25,000/-
(f)	Funeral expenses	: Rs.15,000/-

		Rs.4,22,400/-
	Minus	
(g)	The amount already awarded and received by the appellants	: Rs.1,85,000/-

	The appellants are entitled to receive the amount of compensation (along with the interest at the rate of 7.5% per annum from the date of the claim petition)	: Rs.2,37,400/- =====

21. Resultantly, I pass the following order :

(1) First Appeals No.841 and 955 of 2008 are partly allowed.

(2) The common judgment and award dated 27-4-2006, impugned in both these First Appeals, passed by the Motor

Accident Claims Tribunal, Akola, in Claim Petitions No.323 and 324 of 2003 is hereby set aside to the extent it is prejudicial to the interest of the appellants.

(3) The appellants in First Appeal No.955 of 2008 are entitled to receive an amount of compensation of Rs.4,94,200/-, in addition to the amount which is already awarded and received by them, together with future interest of 7.5% per annum from the date of the claim petition, i.e. 10-11-2003, till they receive the entire amount of compensation.

(4) The appellants in First Appeal No.841 of 2008 are entitled to receive an amount of compensation of Rs.2,37,400/-, in addition to the amount which is already awarded and received by them, together with future interest of 7.5% per annum from the date of the claim petition, i.e. 10-11-2003, till they receive the entire amount of compensation.

(5) The respondent Nos.1 and 2 are directed to deposit the enhanced amount along with interest within a period of three months from today before the Motor Accident Claims Tribunal, Akola.

(6) If the amount is not deposited within the stipulated period, it will be open for the appellants to execute this decree.

22. Both these appeals stand disposed of in above terms. No order as to costs. Decree be drawn accordingly.

JUDGE.

Lanjewar