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

FIRST APPEAL NO.121 OF 2021

APPELANT: On R.A.

Maharashtra State Road Transport Corporation, Akola through its Divisional Controller, R/o Kaulkhed, Akola, Tq. & Dist. Akola.

… Versus ...

RESPONDENTS: On R.A.

1. Sumanbai W/o Tukaram Dakhore
   Aged 66 years, Occ. : Household.

2. Tukaram S/o Ramji Dakhore
   Aged 71 years, Occ. : Agriculture.

3. Vishnu S/o Tukaram Dakhore
   Aged 26 years, Occ. : Agriculture.

4. Vijay S/o Tukaram Dakhore
   Aged 24 years, Occ. : Student.

   All R/o At Jambharun,
   Tq. Barshitakli, District Akola.

5. Srikrushna S/o Amrutrao Kakpure
   Age Adult Occupation Driver St Bus
   Bearing registration No. MH-07-C7727
   R/o C/o Chimur Depot, Chimur
   District Chandrapur (Maharashtra)

Shri Yohan Chougule, Advocate h/f Shri Rohan Chhabra, Advocate for the Appellant.
Shri S.D. Chopde, Advocate for Respondent Nos.1 to 4.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE OF JUDGMENT : 4th MARCH, 2021

ORAL JUDGMENT:-

With consent, heard finally at the stage of admission.

02] The Appellant herein has challenged the judgment and award dated 28/09/2017 passed by the Motor Accident Claims Tribunal (in short "Tribunal"), Akola in M.A.C.P. No.85/2016. By the impugned judgment and award, the Tribunal has awarded compensation of Rs.1,01,72,744/- with interest at the rate of 6% per annum from the date of petition till final realisation.

03] The Respondent Nos.1 to 4, were the Claimants in the claim petition and shall be hereinafter referred to as the Claimants. They had filed a claim petition under Section 166 of the Motor Vehicles Act, (in short "M.V. Act") in view of accidental death of Santosh Dakhore involving MSRTC bus bearing Registration No.MH-07/C-7727. It was the case of the Claimants that the deceased – Santosh Dakhore was travelling by the said S.T. bus, which was proceeding from Bramhapuri towards Chimur. There was collision between the said S.T. bus and a motor cycle bearing Registration No.MH-34/S-4361 at Shankarpur Chimur road in Shankarpur Beat. As a result, the S.T. bus turned turtle and said Santosh Dakhore received fatal injuries in the said accident. The Claimants claimed that the accident was caused due to rash and negligent driving by the driver of S.T. bus. They claimed that said

Santosh Dakhore was a doctor working as a Medical Officer in Zilla Parishad, Chandrapur and was drawing salary of Rs.70,000/- per month. They claimed that he was the only earning member in the family and hence, claimed total compensation of Rs.1,50,00,000/- towards loss of dependency and on other conventional heads.

04] The driver of the said S.T. bus denied that the accident was caused due to his rash and negligent driving and attributed negligence to the rider of the motor cycle.

05] The Tribunal after consider the evidence adduced by the respective parties held that the accident was caused due to rash and negligent driving by the driver of S.T. bus. The Tribunal considered the age of the deceased as 33 years and his annual income of Rs.6,09,237/-. After deducting the tax paid by the deceased, the Tribunal computed loss of dependency on the basis of net salary as Rs.5,60,985/-. The Tribunal held that there were four dependents and hence, deducted 1/4th towards personal expenses of the deceased. The Tribunal further added 50% towards future prospects and on applying the multiplier of 16, assessed loss of dependency at Rs.1,00,97,744/-. The Tribunal also awarded compensation of Rs.50,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. The Tribunal thus awarded total compensation of Rs.1,01,72,744/-. This judgment and award is under challenge in this appeal filed under Section 173 of the M.V. Act.

06] Learned Counsel for the Appellant submits that the accident was caused due to rash and negligent driving by the rider of the motor cycle. He further claims that MSRTC and the driver of the S.T. bus are not liable to pay any compensation. He further submits that the deceased was a bachelor and in terms of the judgment of the Apex Court in ***Sarla Verma & Others Vs. Delhi Transport Corporation & Another*** reported in ***(2009) 6 SCC 121***, the Tribunal was required to deduct 50% towards personal expenses of the deceased. He also submits that the deceased was on probation and not being in permanent employment, the Tribunal was not justified in adding 50% of actual salary towards future prospects. He submits that the compensation awarded by the Tribunal is exorbitant and the same cannot be considered as 'just compensation'.

07] *Per contra* learned Counsel for the Claimants submits that the evidence on record amply proves that the accident was caused due to rash and negligent driving by the driver of the S.T. bus. He submits that the charge-sheet was filed against the driver of the S.T. bus. Moreover, disciplinary proceedings were also initiated against him for driving the vehicle in rash and negligent manner.

08] As regards the quantum of compensation, learned Counsel for the Claimants submits that the parents as well as the other members of the family were entirely dependent on the income of the deceased for their sustenance. He, therefore, justifies deduction 1/4th towards personal expenses of the deceased. Learned Counsel for the Claimants further submits that the service book of the deceased clearly shows that he was appointed on a permanent post. He, therefore, contends that the Tribunal was justified in awarding 50% towards future prospect.

09] I have perused the records and considered the submission advanced by learned Counsel for the respective parties. The points falling for consideration are: (1) whether the accident was caused due to rash and negligent driving by the driver of the said S.T. bus, (2) whether the compensation awarded by the Tribunal is 'just compensation'.

10] It is not in dispute that the deceased Santosh Dakhore was a passenger in the S.T. bus, which was proceeding from Bramhapuri towards Chimur. The said bus had turned turtle and said Santosh Dakhore had sustained fatal injuries in the said accident. It is in the evidence that the First Information Report was lodged against the driver of the S.T. bus for driving the vehicle in a rash and negligent manner. The driver of the bus had also admitted in his cross-examination that the charge-sheet has also been filed against him for driving the vehicle in rash and negligent manner and causing death of said Santosh Dakhore due to his negligence. The aforestated material sufficiently proves that the accident was caused due to rash and negligent driving by the driver of the said S.T. bus. It may be mentioned that even if it is held to be a case of composite negligence, it is well settled that the legal representatives of the deceased can proceed against anyone of the tortfeasors. The Tribunal has, therefore, not committed any error in fastening the liability against the respondent.

11] As regards the quantum of compensation, it is not in dispute that the deceased was born on 01/04/1983 and as on the date of accident, he was 33 years of age. It is also not in dispute that he was a doctor by profession and was working as Health Officer at Gadchiroli. The Claimants have produced the service book (Exh.37) as well as the copy of the income tax return at Exh.28. A perusal of which shows that the annual income of the deceased was Rs.6,09,237/-. The tax payable on the said income was Rs.48,252/-. Thus, the net salary drawn by the deceased was Rs.5,60,985/- per annum.

12] The Claimants had also examined Subhash Chikte that the deceased was appointed on a permanent post. He stated that the deceased was on probation, which was for a period of two years from the date of the appointment. The deceased would have completed his probation period on 27/04/2016, except for extension of probationary period or discontinue of service. Nothing has been elucidated in the cross-examination of the witness to indicate that there was any reason to extend the probation period or to discontinue the service of the deceased. Under the circumstances, the Tribunal has not committed any error in considering the deceased as a permanent employee and adding 50% towards future prospect.

13] It is to be noted that the Tribunal has deducted 1/4th towards personal expenses of the deceased. It is not in dispute that the deceased was a bachelor. In ***Sarla Verma*** (supra), the Apex Court has held as under:

> *"31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to*

the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third".

14] In the instant case, the Claimant No.1, who is the mother of the deceased, has claimed that they were entirely dependent on the income of the deceased. It is to be noted that the claim petition itself indicates that the Claimant No.2 is an agriculturist. The Claimant Nos.3 and 4 are the brothers (major) and in the absence of evidence, they cannot be considered as dependents. Considering the above facts, it is not possible to hold that the parents as well as the siblings of the deceased were solely dependent on the income of the deceased. Hence, the Tribunal was not justified in deducting 1/4th towards personal expenses of the deceased. As per the dictum of the Apex Court in ***Sarla Verma*** (supra), deductions ought to have been 50%.

15] It is also pertinent to note that the Tribunal has awarded compensation of Rs.50,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. The amount awarded on the conventional heads is not in consonance with the guidelines of the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi & Others*** reported in ***(2017) 16 SCC 680.***

16] Under the circumstances, the compensation needs to be re-calculated as under:-

I.	Loss of dependency—	
i.	Annual income	Rs.6,09,237/-
ii.	Tax paid	Rs.48,252/-
iii.	Net salary	Rs.5,60,985/- per annum
iv.	Addition of 50% towards future prospect	Rs.2,80,492/-
v.	Total income	Rs.8,41,477/-
vi.	50% deduction towards personal expenses	Rs.4,20,738/-
vii.	Total income after deducting personal expenses	Rs.4,20,738/-
viii.	Loss of dependency on applying multiplier of 16	Rs.67,31,808,/- (4,20,738×16)
II.	Compensation payable on other conventional heads	
i.	Filial consortium	Rs.80,000/-
ii.	Funeral expenses and loss of estate	Rs.30,000/-
Total compensation payable—		Rs.68,41,808/-

17] Thus, it is held that the Claimants are entitled for total compensation of Rs.68,41,808/-, which shall carry interest at the rate of 6% per annum from the date of petition till final realisation. The compensation of Rs.68,41,808/- along with proportionate interest accrued thereon shall be paid to the Claimant Nos.1 and 2 in equal proportion or may be transferred to their respective bank accounts on furnishing bank details. The balance amount shall be refunded to the Appellant.

18] The award stands modified accordingly.

19] The appeal stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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