

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

FIRST APPEAL NO.229 OF 2003

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| 1. | Sow. Chandrakala w/o. Manmathappa
Halkude | |
| 2. | Manmathappa s/o. Irappa Halkude | ..Appellants |
| | Vs. | |
| 1. | Divisional Controller,
Maharashtra State Road
Transport Corporation, Latur | |
| 2. | Keshav s/o. Bhimrao Jadhav | |
| 3. | Baswaraj s/o. Vishwanath Yengunde
<i>-(appeal dismissed against resp.no.3
as per Registrar's order dt.07.12.2021)</i> | |
| 4. | United India Insurance Company Ltd.
Branch Bidar, Through its Br. Manager,
United India Insurance Co.
Near Panchavati Hotel, Latur | ..Respondents |

Mr.H.B.Nandgavale, Advocate h/f. Mr.V.G.Sakolkar, Advocate for appellants

Mrs.R.D.Reddy, Advocate for respondent no.1

Mr.S.V.Kulkarni, Advocate for respondent no.4

**CORAM : R.G. AVACHAT, J.
DATE : NOVEMBER 21, 2022**

JUDGMENT :-

This is an appeal for enhancement of compensation. The appellants are parents of the deceased – Siddheshwar, who died in an

accident involving motor vehicles. The appellants, therefore, preferred a claim petition for compensation under Section 166 of the Motor Vehicles Act, 1988. The Tribunal, on appreciation of the evidence on record, held it to be a case of contributory negligence in equal proportion.

2. The entire amount of compensation was assessed at Rs.1,80,000/-. The appellants were held to be entitled to receive 50% thereof, since the deceased was held to be contributory negligent in equal proportion. Hence, the present appeal.

3. Heard learned counsel for the parties.

4. Admittedly, the accident involving S.T. Bus (MH-20-A-4618) and motorcycle (KA-38-243) took place by 02.00 p.m. on 10.09.1998. The deceased was 20 years of age. He had studied upto 12th standard and was taking computer classes. He died bachelor. The appellants, parents of the deceased, restricted their claim to Rs.2,50,000/-, though, according to them, they were entitled to Rs.3,05,000/- as compensation.

5. The claim petition was allowed only against respondent – M.S.R.T.C. It was dismissed against the insurance company of the motorcycle involved in the accident.

6. Mrs.Reddy, learned counsel for respondent no.1 – M.S.R.T.C., would submit that the deceased was taking education. He died bachelor. Fifty percent of the notional income of the deceased, therefore, ought to have been reduced on account of his personal expenses. According to her, although M.S.R.T.C. has not taken exception to the impugned award, the scene of offence panchnama and the evidence of the S.T. bus driver would suggest that the deceased had gone to the wrong side of the road and dashed against the S.T. bus. According to learned counsel, there is no reason to interfere with the impugned award.

7. The bus driver has given details as to how the accident took place. The scene of accident panchnama (Exh.24) indicates that the deceased went to the wrong side of the road. The accident was stated to have taken place, while the deceased was attempting to overtake the S.T. bus proceeding ahead of him. The mother of the deceased examined herself as witness. She had not seen the accident. The Tribunal, on appreciation of the evidence before it, concluded it to be a case of contributory negligence in equal proportion. When the evidence suggests that the deceased went to the wrong side of the road before his motorcycle dashed against the

S.T. bus, this Court has no reason to take a different view and hold the S.T. bus driver to have been exclusively responsible for the accident.

QUANTUM OF COMPENSATION:-

8. The deceased was 20 years of age. He had passed 12th standard examination. Although there is no concrete evidence about he being engaged in taking computer classes, for grant of just compensation, it has to be assumed that the deceased would earn a sum of Rs.2,500/- per month. This way, his annual income would come to Rs.30,000/-. Forty percent thereof has to be added towards future prospects. The amount, as such, would come to Rs.42,000/- (Rs.30,000 + Rs.12,000). Since the deceased died bachelor, 50% thereof are required to be subtracted therefrom towards his personal expenses. Thus, the loss of dependency would come to Rs.21,000/-. As it was a case of contributory negligence in equal proportion, after subtracting 50% amount therefrom, the loss of dependency would come to Rs.10,500/-. The Tribunal appears to have applied multiplier of 15 considering the average age of the appellants (parents of the deceased). Multiplier has to be applied on the basis of the age of the deceased and not the age of the claimants.

Therefore, multiplier of 18 has to be applied. Applying multiplier of 18, the amount of compensation on account of loss of dependency would come to Rs.1,89,000/- (Rs.10,500 x 18).

9. On account of loss of love and affection, each of the claimants would be entitled to Rs.40,000/- plus Rs.15,000/- on account of funeral expenses. The total thereof would come to Rs.95,000/-. In view of it being a case of contributory negligence, 50% thereof would come to Rs.47,500/-. This way, the total amount to which the appellants/claimants are entitled, would come to Rs.2,36,500/- (Rs.1,89,000 + Rs.47,500).

10. In view of the above, the appeal is allowed in terms of the following order:-

- (i) It is held that the appellants are entitled to Rs.2,36,500/-, as compensation.
- (ii) They have already received a sum of Rs.90,000/-. Respondent no.1 – M.S.R.T.C. shall pay the appellants an amount of Rs.1,46,500/- (i.e. Rs.2,36,500 – Rs.90,000/-) with interest at the rate of 6% per annum, from the date of the claim petition, till realisation of the amount.

- (iii) The amount deposited with this Court, if any, be paid to the appellants immediately.

[R.G. AVACHAT, J.]

KBP