

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

FIRST APPEAL NO. 946 OF 2010

Maharashtra State Road Transport
Corporation, Ahmadnagar
Through its the Divisional Manager,
Sarjepura, Dist. Ahmadnagar

.. APPELLANT
[Original defendant]

VERSUS

1] Murlidhar s/o. Khushaba Mengal,
Age 42 years, Occu-Agri.

2] Suman w/o. Murlidhar Mengal,
Age-37 years, Occu-Household

Both R/o. Deothan, Tq. Akole,
Dist. Ahmednagar.

.. RESPONDENTS
[Original Claimants]

...

Mr.Manoj D. Shinde, Advocate holding for
Mr.M.K.Goyanka, Advocate for the appellant.
Mr.R.K.Temkar, Advocate for respondent nos.1 and 2.

...

CORAM : S.G.DIGE, J.
DATE : 21.09.2022

ORAL JUDGMENT :

1] This appeal is preferred by the appellant –
original respondent on the ground of income of the
deceased considered by the Motor Accident Claims

Tribunal, Sangamner [for short 'the Tribunal'] and contributory negligence of the deceased.

2] It is the contention of the learned counsel for the appellant that the accident was happened between S.T. bus and motorcycle on which deceased Arjun was traveling as a pillion rider. The said accident was occurred on curve of the road. There was contributory negligence of the rider of the motorcycle but it was not considered by the Tribunal. The learned counsel further submits that the deceased was 21 years old, he was not doing any job. But the Tribunal has considered his monthly income of Rs.3,500/- per month without any evidence. In claim petition, the income of the deceased is mentioned as Rs.2500/- per month but the Tribunal has considered Rs.3,500/- per month as income of the deceased, which is on higher side. The learned counsel further submits that the Tribunal has deducted 1/3rd amount as personal expenses. The deceased was bachelor, it should be 1/2 expenses of total income, hence, requested to allow the appeal.

3] It is the contention of learned counsel for the respondents that the appellant has not examined any witness to prove that there was contributory negligence of the rider of the motorcycle. The first information report is lodged against the driver of the S.T. bus, which shows that there was sole negligence of the driver of the S.T. bus. The deceased was doing agricultural labour work and he was getting amount of Rs.100 to Rs.150/- per day so the income considered by Tribunal of Rs.3,500/- is proper. The Tribunal has not awarded future prospects and compensation under non pecuniary head.

4] I have heard both learned counsel. Perused the judgment and order. The issues involved in this appeal are of contributory negligence of deceased and income of the deceased.

5] To prove contributory negligence, the appellant has not examined any witness. In First Information Report, it is mentioned that on 2nd January, 2007 at about 11.15 a.m. near Veergaon Phata the deceased Arjun was traveling

as a pillion rider on the motorcycle with Laxman Shahane, at that time S.T. bus bearing registration No. MH-12-9442 had taken right turn all of sudden and given dash to the motor cycle due to which the deceased Arjun suffered grievous injuries and subsequently died on 09.01.2007. It appears from the first information report that the S.T. bus driver suddenly took right turn due to which accident was occurred. So no question of contributory negligence arises. Moreover, the appellant has not examined driver of the S.T. bus to prove that there was contributory negligence of the rider of the motorcycle, hence, I do not find any merit in the theory of contributory negligence raised by the learned counsel for the appellant.

6] In respect of issue of income : The income of the deceased is considered by the Tribunal at Rs.3,500/- per month. It appears from the record that in claim petition, the income of the deceased is shown as Rs.2,500/- per month, whereas in the judgment the Tribunal has mentioned Rs.3,000/- per month and while considering monthly

income of the deceased, the Tribunal has considered Rs.3,500/- per month. PW-1 Murlidhar Mengal at Exhibit-18 has stated that deceased was his son. He was working in the field of Ram Sahane as agricultural labourer. He would get Rs.3000/- per month. To strengthen the evidence of PW-1, the petitioners have examined PW-2 Ram Sahane Exh.33. He has stated that deceased Arjun was working in his agricultural field as labourer. This witness used to give him Rs.3500/- per month. Considering evidence of these two witnesses and the deceased was 21 years old boy, hence, I am considering Rs.3000/- as monthly income of deceased. The Tribunal has deducted $\frac{1}{3}$ amount for personal expenses of deceased. It has come on record that the deceased was bachelor then $\frac{1}{2}$ amount from income should be deducted for personal expenses.

7] The Tribunal has applied multiplier of 17. At the time of accident, the deceased was 21 years old. As per the view of the Hon'ble Apex Court in the case of **Sarla Verma & others Vs. Delhi Transport Corporation & another**

reported in [2009] 6 SCC 121, proper multiplier is 18. No amount is granted under non pecuniary heads. As per the view of the Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram** reported in 2018 SCC OnLine SC 1546, the respondents are entitled for parental consortium of Rs.40,000/- each and Rs.15,000/- for funeral expenses and Rs.15,000/- for estate, hence, I am considering Rs.1,10,000/- under non pecuniary heads. Considering these calculations, the respondents are entitled for the following compensation:-

Monthly income	Rs.3000/- per month
Annual income Rs.2500 x 12 = Rs.30,000/-	Rs.36,000/-
Multiplier 18 Rs.36,000 x 18 = Rs.6,48,000/-	Rs.6,48,000/-
Total Amount	Rs.6,48,000/-
50% deduction as deceased was Bachelor + Non pecuniary head	Rs.3,24,000/- Rs.1,10,000/-
Total amount	Rs.4,34,000/-

8] The Tribunal has awarded Rs.5,46,300/- [inclusive of N.F.L. amount of Rs.50,000/-]. The appellant has deposited the amount of Rs.3,18,000/- before this Court, which is withdrawn by respondent nos.1 and 2. The respondents are entitled for remaining amount of Rs.1,16,000/- along with interest @ 7.5% p.a.

9] In view of above, I pass the following order :-

ORDER

i] The appeal is allowed.

ii] Respondent nos.1 and 2 are entitled for the compensation of Rs.4,34,000/- along with interest @ 7.5% per annum, in stead of Rs.5,46,300/-.

iii] The appellant shall deposit the remaining amount of Rs.1,16,000/- within eight weeks along with interest thereon.

iv] Respondent nos.1 and 2 are permitted to withdraw deposited amount.

v] Appeal is disposed of accordingly.

vi] In view of disposal of appeal, pending Civil Application does not survive and same stand disposed of.

[S.G.DIGE]
JUDGE

DDC