

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

FIRST APPEAL NO. 121 OF 2006

Ambadas S/o Vishwanath Pawar
Age: 65 years, Occu. : Agriculture,
R/o. Wadi Godri, Tq. Ambad,
District : Jalna.

.... Appellant

Versus

1. Smt. Seema Wd/o. Vilas Pawar
Age : 26 years, Occu. : Household,
R/o. Bashir Gunj, Beed,
Tq. & Dist. Beed.
2. Ku. Nikita D/o. Vilas Pawar,
Age : 7 years,
3. Vaibhav S/o. Vilas Pawar,
Age : 4 years,
Nos. 2 & 3 minor, U/G of their mother
Smt. Seema W/o. Vilas Pawar, Claimant No.1
4. Smt. Rukhminibai W/o. Jandeo Pawar
Age: 64 years, Occu.: Household,
R/o. As above.
5. Vikram Baliram Adinge,
Age: Major, Occu.: Agri.,
R/o. Antarwali, (Sarate),
Tq. Ambad, Dist. Jalna.
6. Ranu S/o Genuba Koratkar,
Age: 45 years, Occu.: Driver,
R/o. Wadigodri, Tq. Ambad,
Dist. Jalna.
7. The State of Maharashtra
Through : District Collector,
Beed, Dist. Beed.

... Respondents.

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Mr. R.G. Hange, Advocate for the Appellant

Mr. Akshay S. Jagtap, Advocate h/f Mr. A.N. Nagargoje, Advocate for Respondent nos. 1 to 4.

Mr. V.S. Janephalkar, Advocate for Respondent Nos. 5 and 6 (absent)
Respondent Nos.2, 3 and 7 though duly served, remained absent.

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CORAM : SHRIKANT D. KULKARNI, J.

Reserved on : 15.02.2022

Pronounced on : 08.04.2022

JUDGMENT :-

1. This appeal is directed against the impugned judgment and award passed in M.A.C.P No. 38 of 2001 by the Member, M.A.C.T. at Beed.

2. The facts giving rise to this appeal in brief are as under:

2(a) Vilas Pawar (since deceased) was serving as a peon in Collector office at Beed. On 15.05.2000, he had been to Aurangabad to bring some stationary of his department from the Government Printing Press. He was on the way back to Beed by sitting in the Government jeep bearing registration No. MH-23/B-1881. The jeep reached near Dongaon on Aurangabad-Beed highway about 10.30 p.m. to 11.30 p.m. when a tractor coming from opposite direction gave dash to the jeep. The jeep turtled. Vilas Pawar sustained serious injuries and succumbed to death. The claimants have filed their claim before the Tribunal under Section

166 of the Motor Vehicles Act, 1988 and sought compensation of Rs.9,00,000/-

2(b) The claim was resisted by the owner and the driver of the tractor. They denied that the accident was occurred because of rash and negligent driving of the tractor driving.

2(c) The Tribunal after considering the rival pleadings of the parties, evidence on record and argument advanced on behalf of both the sides was pleased to decree the claim partly to the extent of Rs.4,28,000/- (inclusive of N.F.L. amount) with interest @ 9% per annum from the date of petition till realization of entire amount.

3. Feeling aggrieved by the impugned judgment and award passed by the Tribunal, the owner of the tractor has preferred this appeal.

4. Heard Mr. R.G. Hange, learned counsel for the appellant and Mr. Akshay Jagtap holding for Mr. A.N. Nagargoje, learned counsel for respondent Nos. 1 to 4 / claimants. Mr. V.S. Janephalkar, learned counsel for respondent Nos.5 and 6, remained absent. Respondent Nos. 2, 3 and 7 though duly served, remained absent.

5. Mr. R.G. Hange, learned counsel for the appellant vehemently submitted that the evidence recorded by the Tribunal is perverse. The Tribunal has not properly appreciated the evidence on record. The Tribunal has also not considered the defence raised by the appellant. He submitted that the Tribunal has awarded exorbitant compensation by ignoring the evidence on record. He submitted that the defence of contributory negligence is even not considered by the Tribunal. He, therefore, urged to allow the appeal.

6. Mr. Akshay Jagtap holding for Mr. Nagargoje, learned counsel for respondent nos. 1 to 4 supported the impugned judgment and award passed by the Tribunal. He submitted that the Tribunal has appreciated the evidence on record in a proper way. The Tribunal has also considered the defence raised on behalf of the tractor owner and driver. The Tribunal has turned down the defence raised by the appellant by recording cogent reasons. The Tribunal has awarded adequate compensation by looking to the income of the deceased. He, therefore, urged that the appeal may be dismissed.

7. I have considered the submissions of Mr. Hange, learned counsel for the appellant and Mr. Jagtap, learned counsel for respondent nos. 1 to 4. Perused the impugned judgment and award passed in M.A.C.P. No. 38 of 2001 dated 01.08.2005 and relevant evidence.

8. On careful study of the impugned judgment and award, more particularly para no.6, it is noticed that the Tribunal has considered the evidence produced by both the sides in the light of defence raised on behalf of the tractor owner and driver. The Tribunal has recorded finding that the accident was caused due to to rash and negligent driving of the tractor bearing No. MZY-3912 attached with trolley bearing registration No. MH-21/7318. It is on the basis of evidence. It is also observed by the Tribunal that the tractor attached with trolley came to the wrong side of the road and gave dash to the jeep coming from the opposite direction, wherein the deceased was travelling. Because of severe dash given by the tractor, the jeep turtled 2-3 occasions. The brake marks of the tractor were found on the middle of the road coupled with other evidence. The Tribunal has rightly recorded the finding against issue No.1 regarding rash and

negligent driving of the tractor driver. I do not see any error on the part of the Tribunal while recording the finding on the issue of rash and negligent driving of the tractor driver. The finding is based upon the evidence on record. The Tribunal has rightly appreciated the evidence on record and arrived at proper conclusion. No case of contributory negligence is made out by the tractor owner and driver.

9. Now coming to the quantum of compensation awarded by the Tribunal. It is evidence on record that the deceased Vilas Pawar was serving as a peon in Collector office at Beed. He was drawing salary of Rs.4,000/- per month. The Tribunal has taken into consideration the salary of the deceased, his age on the date of the accident and rightly applied the multiplier of 17. The Tribunal has also awarded compensation under various heads. The total compensation awarded by the Tribunal at Rs. 4,28,000/- appears to be very much reasonable. It cannot be said to be exorbitant having regard to the facts of the case, evidence on record and the income of the deceased.

10. Having regard to the above reasons and discussion, I do not find any merit in the appeal.

ORDER

- (i) The appeal stands dismissed.
- (ii) The impugned judgment and award passed in M.A.C.P No. 28 of 2001 by the Member, M.A.C.T, Beed is hereby confirmed.
- (iii) No order as to costs.
- (vii) The appeal is accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane