

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1185 OF 2008

Maharashtra State Road Transport Corporation ..Appellant.

v/s.

Shobha Naresh Patel & Anr. ..Respondents

Ms.P.M.Bhansali i/b. G.S.Hegde & Associates for the Appellant.
Mr. T.J.Mendon for the Respondent.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 7th SEPTEMBER, 2022.**

ORAL JUDGMENT.

1. This is an appeal under Section 173 of the Motor Vehicles Act assailing the Judgment and Award dated 12.09.2007 in Claims Petition No. 413 of 2001. By the impugned judgment, the Claims Tribunal, Mumbai allowed Claim Application No.413 of 2001 filed by the Respondents-Claimants and awarded compensation of Rs.13,61,240/- with interest at the rate of 7.5% per anum from the date of application till realization.

2. The brief facts necessary to decide this appeal are as under:

The Respondent No.1 is the widow and Respondent No.2 is the son of the deceased Naresh Patel, who expired in a motor vehicular accident on 05.05.2000 at Talegaon Phata, Trimbakeshwar. These

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Respondents who shall be hereinafter referred to as the Claimants, filed a Claim Petition under Section 166 of the Motor Vehicles Act alleging that the accident was caused solely due to the rash and negligent driving by the driver of the Offending Vehicle-ST Bus No. MH 12 FA 1632 , owned by the Appellant Corporation. On the relevant date, the deceased Naresh Patel and the Claimant No.1 were proceeding from Trimbakeshwar to Nashik by Car No. MH 04 AT 5224, which was driven by deceased Naresh Patel. The cause of accident, according to the Claimant was that the S.T. Bus overtook the Santro Car at Talegaon and abruptly stopped in front of the car without giving any signal, as a result, the Santro Car dashed against the rear portion of the bus. Naresh Patel, died on the spot and the Claimant No.1 sustained injuries in the said accident.

3. The deceased Naresh Patel was 55 years of age. He had completed the course of B.S. Mechanic in Engineering in USA. He was in service of J. E. Jacob's H & G. Engineer and Construction, Worli, Mumbai, and drawing salary of Rs.27095/- per month. The Claimants stated that they were totally dependent on the income of the deceased, and filed a Claim Petition under Section 166 of the Motor Vehicles Act claiming total compensation of Rs.23,93,860/-.

4. The Appellant Corporation denied that the accident was caused due to rash and negligent driving by the driver of the S.T. bus, and

contended that the bus was driven on the correct side of the road, at a moderate speed and the Santro car had dashed against the S.T. Bus which was stopped at Talegaon Phata bus stop, and attributed negligence to the deceased- the driver of the car.

5. Upon considering the oral and documentary evidence adduced by the respective parties, the Tribunal returned a finding that the accident was caused due to rash and negligent driving of the driver of the bus. The Tribunal held that the deceased was drawing salary of Rs.21,035/- per month, and further upon deducting 1/3rd towards personal expenses, and applying multiplier of 8, assessed loss of dependency at Rs.13,46,240/-. The Tribunal also awarded Rs.10,000/- towards loss of love and affection, Rs.2500/- towards funeral expenses and Rs.2500/- towards loss of estate and thus awarded total compensation of Rs.13,61,230/-. Being aggrieved by the quantum of compensation awarded by the Tribunal, the Appellant Corporation has filed this appeal.

6. Ms. Bhansali, learned Counsel for the Appellant submits that the evidence on record clearly indicates that the car driven by the deceased had dashed against the stationary bus, which had stopped at the bus stop at Talegaon Phata. She further states that the police records also indicate that the accident was caused due to rash and negligent driving by the driver of Santro car. She therefore submits that the Tribunal was not

justified in recording a finding that the accident was caused due to rash and negligent driving by the driver of the bus.

7. Per Contra, Mr. Mendon, learned Counsel for the Claimants submits that the evidence of the Claimant No.1 amply proves that the bus had overtaken the Santro car and had abruptly stopped in front of the Santro Car without any signal. As a result thereof, the Santro Car dashed against the rear side of the bus. He submits that the deceased was not negligent and the accident had occurred solely due to the rash and negligent driving of the driver of the S.T. Bus. He further submits that the deceased was 55 years old, and as per the judgment of the Apex Court in ***Sarla Verma & Ors vs Delhi Transport Corp. & Anr (2009) 6 SCC 121***, the multiplier applicable was 11. He therefore contends that the Tribunal has erred in applying multiplier of 8. He submits that the Tribunal has not considered future prospects and the compensation awarded under other conventional heads is very meager and not in accordance with the principles laid down by the Apex Court in ***National Insurance Company Limited vs. Pranay Sethi and Ors. (2017) 16 SCC 680***. Learned Counsel for the Claimants submits that the compensation awarded by the Tribunal is not just and reasonable and needs to be enhanced.

8. I have perused the records and considered the submissions

advanced by the learned Counsel for the respective parties. The question for consideration is whether the accident was caused due to rash and negligent driving by the driver of the bus, and secondly whether the compensation awarded by the Tribunal is just and reasonable.

9. It is not in dispute that on the date of the accident, AW1 Shobha Patel and her husband, were proceeding from Trimbakeshwar to Nashik by Santro Car No. MH 04 AT 5224, driven by the deceased Naresh Patel. AW1 Shobha Patel has deposed that the Santro Car was at moderate speed. She has attributed total negligence to the driver of the bus. She has deposed that the S.T. bus which was driven at excessive speed overtook the Santro car, and suddenly stopped in the middle of the road without any signal, and as a result the Santro Car dashed against the bus.

10. The evidence of this witness clearly indicates that the accident had occurred when the bus had stopped at the Talegaon Phata bus stop. AW1 has accused the driver for stopping the bus in the middle of the road. In this regard, though there is nothing on record to indicate that the bus had halted in the middle of the road, the scene of offence panchanama at Exhibit 13 reveals that the road at the place of the accident was 18 feet wide with kaccha road of 5 meters on either side of the tar road. DW1 Bhagwandas Bairagi had placed on record photographs taken by him immediately after the accident. A perusal of the photographs also

indicates that the bus had not halted on the edge of the road or on the kaccha road which was one of the factors which had resulted in the accident.

11. The evidence of DW1 Bhagwandas, the driver of the ST bus, indicates that the Santro car had dashed when the passengers were alighting from the bus at the bus stop at Talegaon Phata. The fact that the deceased had not kept safe distance between the vehicle was one of the factors which had contributed to the said accident. It is further to be noted that the police had conducted investigation in the said accident case and had concluded that the deceased was responsible for the said accident.

12. The evidence of AW1 Shobha Patel and DW1 Bhagwandas Bairagi clearly establishes that the ST Bus which had overtaken the Santro Car had abruptly stopped at Talegaon Phata bus stop without giving any signal. As a result, the Santro car had dashed against the rear portion of the stationary bus. Driving the bus at an excessive speed, overtaking the car and abruptly halting on the road without any signal had resulted in the accident. On approaching the bus stop, the bus driver was duty bound to pull the vehicle at extreme left side of the road to avoid the possibility of any impact. The driver failed to exercise reasonable care, and omission to take such care was certainly an act of

negligence.

13. The Santro car had dashed against the stationery bus. The accident occurred while the passengers were alighting from the bus. It appears that the Santro car was also at excessive speed. The accident could have been had the deceased slowed down and kept safe distance from the bus when approaching the bus stop. Under the circumstances, the Tribunal was not justified in holding that the accident was caused solely due to rash and negligent driving by the driver of the bus. Having regard to the facts and circumstances of the case, in my considered view it was a case of contributory negligence.

14. As regards the quantum of compensation, it is not in dispute that the deceased was in service of J.E. Jacob's H & G, Engineer and Construction, Worli. He was drawing gross salary of Rs.27,095/- per month. After deducting professional tax and Income Tax he was getting net salary of Rs.21,035/- per month. The deceased was 55 years of age and as per the decision of the Honourable Supreme Court in Sarla Verma (supra), multiplier applicable is 11. The Tribunal has erred in applying the multiplier of 8. Considering the age of the deceased and the nature of employment, the Tribunal was required to add 15% of the actual salary towards loss of future prospect. The amount awarded by the Tribunal on other conventional heads is also very meager. Hence

the compensation awarded by the Tribunal cannot be construed as just and reasonable.

15. The monthly net income of the deceased was Rs.21,035/- i.e. Rs.2,52,420/- per annum. Upon adding 15% towards future prospects and deducting 1/3rd towards personal expenses of the deceased, and on applying multiplier of 11, the loss of dependency works out to Rs.21,28,742/-. The Claimant No.1 is the widow and the Claimant No.2 being the son of the deceased are entitled for compensation of Rs.44,000/- each towards loss of spousal and parental consortium. In addition, the Claimants are also entitled for Rs.33,000/- towards loss of estate and funeral expenses. The Claimants are thus entitled for compensation of Rs.22,49,742/-. After deducting 25% towards contributory negligence, the Claimants are entitled for compensation of Rs.16,87,306/-.

16. It is true that the Claimants have not filed any cross objection. It is well settled that the Tribunal as well as the Court is under an obligation to award just and reasonable compensation and that the Claimants cannot be deprived of just and reasonable compensation for not filing cross appeal or cross objection. Reliance is placed on the decisions of the Apex Court in ***A.P.S.R.T.C. Rep. by its General Manager and Anr. vs. M. Ramadevi and Ors. 2008(1) T.A.C.714 (S.C.)***

***and Surekha Rajendra Nakhate vs. Santosh Namdeo Jadhav and Ors.
in SLP (C) No.8439 of 2019,***

17. Considering the above facts and circumstances, the Appeal is dismissed. The Corporation is directed to deposit before the Claims Tribunal, Mumbai, the balance amount of Rs.3,36,066/- with interest at the rate of 7.5% from the date of the application till realization, within 8 weeks from the date of uploading of this order.

18. Statutory deposit with interest accrued thereon be transferred to MACT, Mumbai. It is stated that till date the Claimants have not received any amount awarded by the Claims Tribunal. Compensation with accrued interest be paid to the Claimants in equal proportion. The records and proceedings be transferred to the Claims Tribunal, Mumbai.

19. Learned Counsel for the Appellant seeks stay of the order. Considering the reasons stated hereinabove, no case is made out for stay. Hence the request is rejected.

(ANUJA PRABHUDESSAI, J.)