

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

FIRST APPEAL NO. 526 OF 2013

Bombay Electricity Supply and
Transport Undertaking

.... Appellant

v/s.

Smt. Sunita Bharat Parmar and ors.

.... Respondents

Mr. Hemal i/b. Navdeep Vora and Associates for the Appellant.

Mr. Prosper D'Souza for Respondent Nos.1 to 3.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 22nd SEPTEMBER, 2022.

P. C. :-

1. This is an Appeal under section 173 of Motor Vehicles Act filed by the Appellant – Corporation challenging the judgment and award dated 11/10/2011 in Claim Application No.553/2005. By the impugned judgment and award, the Claims Tribunal, Mumbai partly allowed the Application under section 166 of Motor Vehicles Act filed by the aforesaid Respondents and awarded compensation of Rs.7,78,000/- with interest @ 7.5% p.a. from the date of the application till final realization.

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

3. It is the case of the Respondents (hereinafter referred to as 'the claimants') that on 24/12/2004 at Bharat Tea House, Sewree Naka, BEST bus bearing no.MMK-6336 which was proceeding towards Worli dashed against the motorcycle driven by the deceased – Bharat Parmar. Said Bharat Parmar expired as a result of the injuries sustained in the said accident. The claimants alleged that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle owned by the Appellant. The claimants alleged that the deceased was 33 years of age and he was running business in the name of 'Mamata Chicken Shop' and earning Rs.10,000/- per month. The claimant no.1 who is the widow and claimant nos.2 and 3, the minor children of the deceased were totally dependent on the income of the deceased. The claimants therefore filed an Application seeking compensation of Rs.10,00,000/- from the Appellant on account of death of the deceased in a motor vehicular accident.

4. The Appellant denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The defence raised by the Appellant was that the accident was caused due to negligence of the deceased who was trying to overtake the bus. It is stated that the deceased lost control and came in contact with the bus.

The Appellant also disputed the age and income of the deceased.

5. The Tribunal framed the issues and upon considering the evidence adduced by the claimants, held that the accident was caused due to rash and negligent driving by the driver of the bus. The Tribunal further held that the claimants had not proved the actual income of the deceased and computed the loss of dependency on the basis of notional income of Rs.6,000/- per month. Considering the age of the deceased, the Tribunal applied multiplier of 16 and upon deducting 1/3rd towards personal expenses, assessed loss of dependency at Rs.7,68,000/-. The Tribunal also awarded compensation of Rs.2,500/- towards loss of estate, Rs.2,500/- towards funeral charges and Rs.5,000/- towards loss of consortium and thus awarded total compensation of Rs.7,78,000/-. Being aggrieved by this judgment, the Appellant has preferred this Appeal.

6. Mr. Hemal, learned counsel for the Appellant submits that the claimants have failed to prove that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. He submits that the scene of accident of panchanama as well as the evidence of the driver probalizes the defence of the Appellant that the deceased was

trying to overtake the bus from the rear side. Learned counsel for the Appellant further submits that the Appellant had failed to prove the income of the deceased and considering the fact that the accident had occurred in the year 2004, the Tribunal was not justified in assessing the loss of dependency on the basis of the notional income of Rs.6,000/- per month. He submits that the amount awarded by the Tribunal is otherwise exorbitant.

7. Per contra, Mr. Prosper D'Souza, learned counsel for the claimants submits that the issue of negligence in claim petitions under section 166 of Motor Vehicles Act is to be decided on the touchstone of preponderance of probability and not on the basis of proof beyond reasonable doubt. He submits that the evidence on record proves that the driver of the offending vehicle had driven the vehicle in a rash and negligent manner. He submits that the evidence of the driver who is otherwise an interested witness cannot be relied upon to negate the plea of negligence. Learned counsel for the claimants further submits that the deceased was 33 years of age and he was self employed and was maintaining his family. Under the circumstances, the notional income considered by the Claims Tribunal cannot be considered as exorbitant. He submits that the compensation awarded on the

conventional heads is meager and justifies enhancement.

8. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

9. The question for consideration is whether the accident was caused due to rash and negligent driving by the driver of the BEST bus and whether the compensation awarded by the Tribunal is just and reasonable.

10. It is well settled that the standard of proof in claim petitions under section 166 of Motor Vehicles Act is of preponderance of probability and not proof beyond reasonable doubt. In the instant case, it is not in dispute that the offending bus was proceeding from Sewri towards Worli. There was collision between the bus and the motorcycle near Bharat Tea Center on Acharya Donde Marg. It is not in dispute that Crime No.232/2004 was registered against the driver of the offending bus and he was prosecuted for offences punishable under sections 279, 304-A of the Indian Penal Code. The evidence in the form of police investigation is sufficient to reach to the conclusion that the driver of the offending vehicle was negligent.

11. It is also in evidence that the Departmental Inquiry was conducted against the driver of the offending bus in respect of the said accident. He has not been given a clean chit but as stated by learned counsel for the Appellant, he has been given benefit of doubt. Considering the above facts and circumstances, in my considered view, the Tribunal has not committed any error in holding that the accident was caused due to rash and negligent driver by the driver of the bus.

12. It is not in dispute that the deceased was 33 years of age. The claimant no.1 has deposed that the deceased was self employed and that the deceased was running business of sale of chicken under the name 'Mamata Chicken Shop' situated at Bharat Tea house, Sewree Naka, B.D.D. Chawl No.13, N.M. Joshi Marg and that he was earning Rs.10,000/- per month. The Claims Tribunal has observed that the claimants had not produced any evidence to prove that the deceased was self employed and that he was running business under the name 'Mamata Chicken Shop'. In the absence of such proof, the Claims Tribunal has computed compensation on the basis of the notional income of Rs.6,000/- per month. Considering the fact that the accident had occurred in the year 2004 and in the absence of evidence on proof of income that the deceased was actually conducting the business, in

my considered view, the Tribunal was not justified in considering the notional income of the deceased as Rs.6,000/- per month and the same can be scaled down to Rs.5,000/- per month i.e., Rs.60,000/- per annum. Upon adding 40% towards loss of future prospects, the total income of the deceased works out to Rs.84,000/- per annum.

13. The deceased was 33 years of age and multiplier applicable is 16. Considering that there were 3 dependents in the family and upon deducting 1/3rd and applying multiplier of 16, loss of dependency works out to Rs.8,96,000/-. The claimant no.1 is the widow and claimant nos.2 and 3 were within the age group of 1 to 4 years as on the date of the accident. In view of the law laid down by the Apex Court in *National Insurance Company Limited v/s. Pranay Sethi and Others (2017 16 SCC 680)* and *Magma General Insurance Co. Ltd. v/s. Nanu Ram alias Chuhru Ram and ors.2018 SCC Online SC 1546*, the claimant no.1 is entitled for compensation of Rs.40,000/- towards loss of spousal consortium and claimant nos.2 and 3 are entitled for compensation of Rs.40,000/- each towards loss of parental consortium. In addition, the claimants are also entitled for compensation of Rs.30,000/- towards funeral expenses and loss of estate.

14. The claimants are entitled for total compensation of Rs.10,46,000/- which is more than the compensation awarded by the Tribunal. The fact that the claimants have not filed cross appeal or cross objection, is no ground to deprive the claimants from just compensation. In this regard reliance is placed on the judgment of the Division Bench of this Court in ***National Insurance Co. Ltd. v/s. Vaishali Harish Devare and ors. in First Appeal No.1068 of 2012***, and in ***A.P.S.R.T.C. Rep. by its General Manager and anr. V/s. M. Ramadevi and ors. 2008(1) T.A.C. 714 (S.C.)***. Hence, the following order is passed :-

(a) The Appeal is dismissed.

(b) The Appellant is directed to pay an amount of Rs.2,68,000/- to the claimants with interest @ 7% p.a. from the date of the petition till final realization, within a period of six weeks from the date of uploading of the order.

(c) Upon deposit of the said amount, 50% of compensation to be paid to the claimant no.1 and the balance amount be paid to the claimant nos.2 and 3 in

equal proportion.

15. Appeal stands disposed of in above terms. Pending applications, if any, stands disposed of.

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JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)