

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

FIRST APPEAL NO. 207 OF 2009

Smt. Sunanda Maruti Awati and Ors. ...Appellants

Versus

1. Maharashtra State Road Transport ...Respondents
Corporation and Anr.

WITH

FIRST APPEAL NO. 2284 OF 2008

1. Maharashtra State Road Transport ...Appellants
Corporation and Anr.

Versus

Smt. Sunanda Maruti Awati and Ors. ...Respondents

....

Mr. Bhushan Walimbe i/b. Mrs. Preeti B. Walimbe, Advocate for Appellant in FA/207/2009 and for the Respondents in FA/2284/2008.
Mr. Amit Gharte, Advocate for the Respondent in FA/207/2009 and for the Appellant in FA/2284/2008.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 8th JULY, 2022.

PC:-

1. These Appeals are filed against Judgment and order dated 26th February 2008 whereby the claims Tribunal, Sangli, partly allowed Claim Petition No. 201 of 2005 filed under Section 166 of Motor Vehicles Act and awarded compensation of Rs. 23,00,000/- (Twenty

Three Laks) inclusive of amount paid under no fault liability, with interest @ of 10% per annum from the date of Petition till realisation.

2. The claimants being widow, children and father of the deceased Maruti Avati had filed a Petition under Section 166 of Motor Vehicles Act alleging that said Maruti Avati had expired in a motor vehicle accident involving MSRTC bus bearing Registration No. MH12UA 9422. The Claimants alleged that the deceased was 45 years of age and he was employed as Professor in Padmabhushan Vasant Dada Patil Institute of Technology. He was earning monthly salary of Rs. 27,759/-. His bright future was cut short due to the accident which was cause solely due to rash and negligent driving by the driver of the offending vehicle. The Claimants were totally dependent on the income of the deceased and claimed compensation of Rs. 74,60,000/-.

3. The Respondent Corporation contested the proceedings on the ground that the accident was caused due to the negligence of the deceased. The Corporation also denied the income of the deceased and alleged that the claim was exorbitant.

4. The trial Court after considering the evidence on record held that the accident was caused due to rash and negligent driving by

the driver of the offending vehicle. The Tribunal held that the deceased was drawing monthly salary of Rs. 27,759/- and upon deducting 1/ 3rd towards personal expenses considered the income of the deceased at Rs.18,400/- per month. The Tribunal also considered the agricultural income at Rs.7,000/- per annum and thus considered the total income of the deceased at Rs.19,000/- per month i.e. Rs.2,28,000/- per annum and applying multiplier of 10 computed loss of dependency at Rs.22,28,000/-. The Tribunal awarded compensation of Rs. 5,000/- towards funeral expenses, Rs.10,000/- towards loss of consortium, love & affection and Rs.5,000/- towards medical expenses. The Tribunal thus awarded total compensation of Rs. 23,00,000/-. Being aggrieved by this Judgment the claimants and the Corporation have filed these Appeals under Section 173 of the Motor Vehicles Act.

5. Shri Bhushan Walimbe, learned Counsel for the Claimants submits that considering the age of the deceased, as per the decision of the Hon'ble Apex Court in *Sarla Verma V/s Delhi Transport Corporation reported in 2009 6 SCC pg. 121* as well as *National Insurance Company V/s Pranay Sethi (2017) 16 SCC pg. 680* the Tribunal ought to have applied multiplier of 14. He submits that since there were four dependents, the Tribunal was required to deduct 1/4 towards personal

expenses of the deceased. He submits that the tribunal has not awarded any compensation towards future prospects and that the compensation awarded on other conventional heads is also very meager. He therefore submits that the compensation awarded by the claims Tribunal is not just and reasonable.

6. Per contra, Mr. Amit Gharte, learned Counsel for the Respondent-Corporation submits that the accident was caused due to rash and negligent driving by the deceased himself. He submits that the Tribunal has erred in discarding evidence of the driver of the offending vehicle. Learned Counsel for the Corporation further submits that the compensation needs to be computed only on the basic salary. He submits that the compensation awarded by the Claims Tribunal is exorbitant.

7. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties. The questions for consideration are (i) whether the accident was caused due to rash and negligent driving by the driver of the offending vehicle and (ii) whether the compensation awarded by the Tribunal is just and reasonable.

8. It is not in dispute that there was collision between the offending vehicle and a two wheeler driven by the deceased. The claimants had not witnessed the accident. Nevertheless, they have relied upon Spot Panchanama, which reveals that the accident was caused at Shivshambhu Square, Sangli-Karnal by-pass. Spot Panchanama further reveals that the scooter had come under the front left tyre of the bus. The evidence on record reveals that the case was investigated and charge sheet was filed against the driver of the offending vehicle for driving the bus in rash and negligent manner and causing death of Maruti Awati and thereby committing offences under Section 279 and 304A of Indian Penal Code. In ***Vimladevi and Ors. vs. National Insurance Company, 2019 2 SCC 186***, the Hon'ble Supreme Court has held that it may not be possible for the Claimants to adduce strict of accident, by a particular vehicle or in a particular manner. The Claimants are merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt cannot be applied. In the instant case filing of the charge sheet against the driver of the offending vehicle prima facie points towards his complicity in driving the vehicle in a rash and negligent manner. Hence, the findings of the Tribunal on the issue of negligence do not warrants interference.

9. As regards the quantum of compensation, it is in evidence that the deceased was post graduate in Engineering (M.E.). He was working as a professor in Padmabhushan Vasantdada Patil Institute of Technology, Budhgaon, Miraj, District-Sangli and was a visiting lecturer in Wilingdon College, Sangli. He was drawing salary of Rs.27,759/- per month. The claimants have placed on record the driving license and other documents which indicate that the date of birth of the deceased was 12th March, 1960. The accident was caused on 11.07.2005. Hence, as on the date of the accident the deceased was 45 years of age. Considering the age of the deceased and that he was in permanent service, in terms of the judgment of the Apex Court in ***Pranay Sethi*** (supra) the Tribunal was required to add 30% of the actual salary towards future prospects. Furthermore, considering the age of the deceased, and the dictum of the Apex Court in ***Sarla Verma*** (supra), multiplier applicable is fourteen. The claimants, being widow, minor children and aged father of the deceased were totally dependent on the income of the deceased. Since there were four dependents, the Tribunal was required to deduct 1/4th of the income towards personal expenses of the deceased. The compensation awarded on other conventional heads is also not in consonance with the dictum of the

Apex Court in case of *Pranay Sethi* (supra) and hence, the compensation awarded by the Claims Tribunal cannot be considered to be just and reasonable.

10. In my considered view the Claimants are entitled for compensation as under:-

Head		Compensation awarded
1.	Annual income of the deceased	Rs. 3,33,108/-(Rs. 27,759/- x12)
2.	Addition of 30% towards future prospects	Rs.4,33,040/- (Rs.3,33,108/- +99,932/-)
3	Deduction towards personal expenses	Rs.4,33,040-108260=3,24,780/-
4.	Loss of dependency on applying multiplier of 14	Rs.3,24,780 x14= Rs. 45,46,920/-
5.	Loss of spousal, parental and filial consortium	Rs.1,76,000/-
6.	Loss of estate and funeral Expenses	Rs. 16,500/-
7	Medical Expenses	Rs. 5000/-
8.	Total compensation	Rs.47,44,420/-

11. Under the circumstances and in view of discussion supra, the First Appeal No.207 of 2009 filed by the Claimants is allowed. The

First Appeal No.2284 of 2008 filed by the Maharashtra State Road Transport Corporation is dismissed. The Corporation is directed to deposit the enhanced compensation, after adjusting the compensation already deposited as per the impugned judgment, with interest @ of 7% per annum from the date of the petition till final realization. The said amount shall be deposited before the Claims Tribunal within six weeks from the date the order is uploaded. Statutory deposit be transferred to the Claims Tribunal, Sangli, if not already transferred. The Claims Tribunal shall pay 50% of the compensation with proportionate interest accrued thereon to Claimant No.1 and 25% each with proportionate interest to Claimant Nos. 2 and 3.

12. Pending application (s), if any, stand (s), disposed of.

(SMT. ANUJA PRABHUDESSAI,J.)