IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.1033 OF 2018

The Divisional Controller,
Maharashtra State Road Transport,
Corporation/MSRTC,
Division – Ahmednagar, District - Ahmednagar ..Appellant
(Orig. Respondent in MACP No.247/2012)

Versus

1. Smt. Pramila Dnyandeo Wandhekar,
Age: 39 years, Occu.: Household.

2. Miss. Pratidnya Dnyandeo Wandhekar,
Age: 18 years, Occu.: Education.

3. Miss. Pratiksha Dnyandeo Wandhekar,
Age: 17 years, Occu.: Education.

4. Jeevan Dnyandeo Wandhekar,
Age: 13 years, Occu.: Education.
Applicant Nos.3 and 4 being minor through guardian mother Applicant No.1 Smt. Pramila Dnyandeo Wandhekar.

5. Eknath Kanhu Wandhekar,
Age: 65 years, Occu.: Nil

Above all R/o. Mohoj Khurd,
Tq. Pathardi, Dist. Ahmednagar. ..Respondents
(Orig. Claimants)

…

Mr. B. S. Deshmukh, Advocate for the Appellant.
Mr. U. U. Wagh, Advocate for Respondent Nos.1 to 5.

…

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 09th AUGUST, 2023.
PRONOUNCED ON : 18th AUGUST, 2023.

<u>JUDGMENT:-</u>

1. The appellant/original respondent-MSRTC impugns the judgment and award dated 25.10.2017 passed by the Motor Accident

Claims Tribunal, Ahmednagar in Motor Accident Claim Petition No.247/2012 in the present appeal filed under Section 173 of the Motor Vehicle Act. (Hereinafter, parties are referred as per their original status before the Tribunal for the purpose of convenience and brevity).

2. The claimants had approached the Tribunal raising claim for compensation of Rs.60,00,000/- from the respondent-MSRTC towards accidental death of Dnyandeo Eknath Wandhekar. The claimants contend that the deceased was proceeding on his motorcycle on Akole – Rajur road. The bus of respondent came from opposite direction and gave forceful dash to the motorcycle of Dnyandeo. He suffered injuries in the said accident. On 22.01.2012 he took his last breath. The deceased Dnyandeo was educated and holding qualification of M.Sc., B.Ed. At the time of accident, he was serving as primary teacher with Government aided Boarding School and earning Rs.29,704/- per month. He was aged about 39 years and maintaining claimants. He was also holding agriculture land and generating income.

3. The respondent contested the claim on the ground that the deceased himself was responsible for the accident. He was riding his motorcycle in excessive speed and at the curve lost his control on motorcycle and wrong side thereby dasheded against MSRTC bus moving from its correct side. Rest of the contentions of the claimants were denied.

4. The claimants in their endeavour to establish the case relied upon FIR, spot panchanama regarding accident so also oral evidence of claimant no.1 Pramila and the salary certificate at Exhibit-29. The respondent-MSRTC examined Rajkumar Mundhe driver of the bus and closed the evidence. The Tribunal after considering the contentions of the respective parties, allowed the claim petition and passed award for

Rs.64,54,160/- alongwith interest at the rate of 8% per annum from the date of petition.

5. Mr. Deshmukh, learned Advocate appearing for the Appellant / MSRTC submits that the Tribunal has wrongly decided the issue of negligence. He invites attention of this Court to the evidence of bus driver Rajkumar Mundhe to contend that the deceased himself was responsible for the accident and the circumstances leading to the accident are well explained by their witnesses. According to him, there is no reason to discard the testimony of the bus driver. He would further invite attention of this Court to the spot panchanama to contend that the accident occurred on curvy road. The motorcycle rider could not maintain his left side and dashed against the bus. According to him, the Tribunal ought to have accepted the defence of the respondent recording negligence of deceased or at least considered alternative submission to apply principles of contributory negligence and deduct proportionate amount towards contributory negligence of deceased. He would also submit that the Tribunal failed to make deductions of statutory payments towards professional taxes and income tax as applicable to the income of the deceased. He would further submit that the compensation towards non-pecuniary heads is exponential and requires modification.

6. Per contra, Mr. Wagh, learned Advocate appearing for the claimants would submit that the deceased was salaried person maintaining family of five dependents. There is no dispute as regards to his employment and earning. He would further submit that the contents of the spot panchanama clearly show that the bus driver has crossed his line and gave forceful dash to the motorcycle of the deceased. Hence, there is no reason to record the finding of contributory negligence. He would justify the award passed by the Tribunal.

7. Having considered the submissions advanced, apparently contentious issue regarding the finding on the point of negligence and assessment of compensation has been posed into service in this appeal.

8. Admittedly, the deceased was proceedings on the motorcycle at the time of accident and there was collision with bus owned by the respondent. Both the parties have relied upon the contents of the spot panchanama which is admitted in the evidence. Pertinently, no dispute is raised regarding the contents of the spot panchanama on behalf of the respondent. The map regarding the spot of accident and position of the vehicle clearly reveals that the bus driver could not maintain the left side and enterd into the opposite line. The map shows the blood spots on 16 feet wide road with margin of 10 feet each on each side. Therefore, there was ample space for the bus to pass on without entering into right side margin of the road. The contents of the spot panchanama clearly gave the picture that the bus driver was at fault. True that the bus driver has stepped into the witness box and attempted to explain the circumstances leading to the accident. However, his evidence is inconsistent with the contents of the spot panchanama. Naturally, bus driver would try to save himself. It is difficult to expect true version of the accident from him particularly, when he is facing prosecution for rash and negligent driving. In such a situation, the reliance of the Tribunal on the contents of the spot panchanama so as to decide the issue of negligence cannot be faulted. The finding recorded by the Tribunal are plausible hence need not be disturbed in appellate jurisdiction. Pertinently, after the due investigation charge-sheet is filed against the bus driver. There is absolutely nothing on record by which contributory negligence can be attributed to the deceased. In that view of the matter,

the first contention raised on behalf of the respondent cannot be accepted.

9. Next contention raised on behalf of the respondent is that the Tribunal failed to deduct amount towards income tax and other statutory payments. Pertinently, no dispute is raised as regards to the salary certificate placed on record of the Tribunal. The salary of the deceased is shown as Rs.29,704/- per month. There is deduction of Rs.200/- towards professional tax that can be considered for deduction. However, nothing is brought on record to show that the income of the deceased was taxable or he would have incurred liability towards payment of tax. The salary certificate does not depict the deduction towards income tax. In that view of the matter, second contention of the respondent cannot be accepted.

10. The third contention raised on behalf of the respondent is that the Tribunal granted excessive compensation towards non-pecuniary heads. Perusal of the assessment shown in paragraph no.23 of the judgment of the Tribunal indicates that the compensation towards loss of consortium, loss of love and affection and loss of estate has been awarded to the tune of Rs.1,00,000/- each. It is trite that the claimants would be entitled for compensation towards loss of consortium to the tune of Rs.40,000/- each, however, once such compensation is awarded, separate compensation towards loss of love and affection would not be admissible. Even award of Rs.1,00,000/- towards loss of estate cannot be justified in view of the principles of assessment laid down by the Supreme Court of India in the matter of ***National Insurance Company Limited Vs. Pranay Sethi & Ors.***[1]. The reasoning given by the Tribunal and so also the evidence recorded by the claimant is silent about the medical expenses, however, Tribunal has granted

1 **(2017) 16 SCC 680.**

Rs.1,00,000/- on that count. The bills are part of record hence no interference required on that count.

11. In view of the aforesaid observations, the assessment of compensation requires marginal modification, which is as under: -

Sr. No.	Heads	Amount (Rs.)
1	Monthly salary of the deceased	Rs.29,700/-
2	Annual loss of earning Rs.29,700 (Monthly Salary) – Rs.200 (Profession Tax) = Rs.29,500 x 12 =	Rs.3,54,000/-
3	Addition of 50% towards future prospects (Rs.3,54,000 + Rs.1,77,000/-)	Rs.5,31,000/-
4	1/4th deduction towards personal and living expenses. Rs.5,31,000 / 4 = Rs.1,32,750/- 5,31,000 – 1,32,750	Rs.3,98,250/-
5	Applying multiplier of '15' (Rs.3,98,250 x 15)	**Rs.59,73,750/-**
6	Rs.40,000/- each towards loss of consortium (Rs.40,000 x 5)	**Rs.2,00,000/-**
7	Medical Bills and Ambulance charges	**Rs.1,15,000/-**
8	Funeral Expenses and loss of estate	**Rs.30,000/-**
	TOTAL	**Rs.63,18,750/-**

12. In that view of the matter, the appeal needs to be partly allowed and the award passed by the Tribunal needs to be partly modified. Hence, following order: -

ORDER

i. The Appeal is partly allowed.

ii. The respondent shall pay compensation of Rs.63,18,750/- (Rs. Sixty Three Lakh Eighteen Thousand Seven Hundred Fifty only) to the claimants inclusive of amount of 'NFL' along with the interest @ 6% p.a. from the date of filing of the claim petition.

iii. The proportionate of compensation made under the order of the Tribunal shall remain undisturbed.

iv. Award be drawn up on payment of deficit court fees.

v. Compensation amount deposited by the appellant/original respondent be disbursed to the claimants.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2023