

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1469 OF 2010
WITH
CIVIL APPLICATION NO.11241 OF 2018

1. Dadarao s/o Vitthalrao Khatake,
age 52 yrs, Occ. Agril.
2. Sow. Jijabai w/o Dadarao Khatake,
age 47 yrs, Occ. Agri and Household.

Both R/o Ambulga (BK), Tq. Nilanga,
Dist. Latur.

..Appellants..
(orig claimants)

VERSUS

1. Depot Manager,
Maharashtra State Road Transport
Corporation, Latur.
2. Divisional Controller,
Maharashtra State Road Transport
Corporation, Latur Division,
Latur.
3. Kailas s/o Vilas Ghadge,
age 34 yrs, Occ. Service/driver,
R/o Satephal, Tq. Kaij, Dist. Beed.

.. Respondents..
(orig respondents)

...

Mr. H.V. Patil, Advocate for appellants.
Mrs. Ranjana D. Reddy, advocate for respondents.

...

CORAM : S.G. CHAPALGAONKAR, J.

...

RESERVED ON : 27th JULY, 2023.
PRONOUNCED ON : 18th AUGUST, 2023.

...

JUDGMENT :-

1. The appellants/original claimants aggrieved by the judgment and award dated 15.10.2009 passed by the Motor Accident Claims

Tribunal, Latur in MACP No.138 of 2008 have approached this Court under section 173 of the Motor Vehicles Act seeking enhancement of the compensation.

2. The appellants had approached the Tribunal under section 166 of the Motor Vehicles Act seeking compensation towards accidental death of Hanumant, who died in motor vehicular accident dated 23.3.2008. According to the claimants, at the time of the accident, Hanmant was riding motorcycle bearing registration No.MH-24/Q-4216 in consonance with the traffic rules. He had valid authorization for driving the motorcycle, however, the S.T. Bus bearing registration No.MH-20/D-7404 driven in rash and negligent manner dashed against the motorcycle of the deceased, causing multiple injuries causing his death. Police station MIDC, Latur had registered the FIR against the bus driver vide crime no.19 of 2008. According to the claimants, the deceased was aged about 25 years, pursuing his final year in veterinary science. He had already completed diploma in BAD in Pharmacy and he was also practicing to earn Rs.5,000/- p.m. According to the claimants, deceased was also helping them in cultivation of the agricultural land. Claim was raised to Rs.36,00,180/- attributing negligence against the bus driver.

3. Respondent-M.S.R.T.C. contested the claim petition alleging negligence of the deceased in the cause of the accident. Rest of the contentions regarding age, occupation and income of the deceased were denied and it was urged to dismiss the claim.

4. The Tribunal, after recording evidence and hearing the parties, allowed the claim petition and directed payment of compensation of Rs.55,000/- to the claimants alongwith interest @ Rs.7% p.a.

5. Mr. Patil, learned advocate appearing for the appellants submitted that the deceased was aged about 25 years and he was about

to complete his graduation in veterinary medicine. He was holding diploma in veterinary medicine. The claimants were dependent on his income. the Tribunal erroneously considered the notional earning of the deceased to the tune of Rs.3,000/- p.m. and passed meager award. He would further submit that the Tribunal failed to apply settled principles of assessment of the compensation. Nothing has been granted towards future prospects. Multiplier is wrongly applied. Paltry sum is awarded towards non-pecuniary losses. He would further submit that the Tribunal has erroneously considered contributory negligence of the deceased to the extent of 50%. Such finding is contrary to the material on record. Hence, award is liable to be modified.

6. Mrs. Reddy, learned advocate appearing for the respondent nos.1 to 3 however supports the award contending that in absence of income proof, the Tribunal has rightly estimated notional income @ Rs.3,000/- p.m. She would submit that the spot panchnama clearly depicts that the accident occurred in the center of the road. The deceased while riding the motorcycle lost his control and dashed on the bus which was passing from the correct side. According to her finding on the point of negligence cannot be assailed.

7. Having considered the submissions advanced and perusal of the record and proceedings, accidental death of deceased Hanmant is not disputed. Restricted challenge in this appeal is on the point of finding as regards negligence and assessment of the compensation. Admittedly, the deceased was riding his motorcycle. The claimants have relied upon the copy of the FIR and spot panchnama at Exhibit 26 and 27 to bring home their case of negligence against S. T. Bus driver. The spot panchnama depicts that width of the road was 40' divided by the street marks. The spot of the accident appears adjacent yellow strip on southern side. Road passes from East to West direction. True that spot of the accident is

fairly on middle of the road, however, the bus driver shall be having greater responsibility to maintain his side. Apparently, width of the road is 40 feet. There was no difficulty for the bus driver to be within his strip of the road. Apparently, the S.T. Bus driver failed to take reasonable care, adverse inference is deducible against the S.T. Driver in such circumstances. In that view of the matter, it would not be permissible to hold that the deceased as well as driver of S.T. Bus were equally responsible for the accident. In facts of the case responsibility of S.T. driver can be considered to the extent of 75% and contributory negligence of the deceased can be considered to the extent of 25% by applying the principle *Res-Ipsa-Loquitur*. In that view of the matter, findings recorded by the Tribunal on the point of negligence needs to be modified.

8. So far as income of the deceased is concerned, it is contended that deceased Hanmant was taking education and working as a veterinary consultant. The claimants contend that deceased had completed BAD Pharmacy. The supporting material i.e. document of his ongoing education is placed on record with application at exhibit 24. Considering the aforesaid material, notional income can be assessed by guesswork. The Tribunal took Rs.3,000/- p.m. as notional income of the deceased. However, even considering the minimum wages in the year 2008 for technically skilled worker, it would be appropriate to estimate the notional income of the deceased to the tune of Rs.6,000/- p.m. The deceased was aged about 25 years. Hence, multiplier of "18" would be applicable. The amount towards future prospects @ 40% needs to be added. The deceased was a bachelor son of the claimants. Therefore, 1/2 of his assessed income will have to be deducted towards personal and living expenses. The amount of Rs.40,000/- each needs to be awarded towards loss of consortium to parents. Composite Amount of Rs.30,000/- can be added towards loss of estate and funeral expenses.

In that view of the matter, the claimants are therefore entitled for the compensation as indicated in tabular form below:-

Sr. No.	Heads	Amount
1.	Monthly income of the deceased Rs.6,000 x 12 =	Rs.72,000/-
2.	Addition of 40% towards future prospects	Rs.72,000 + 28,800 = 1,00,800/-
3.	Deduction of 1/2 towards personal and living expenses.	Rs.1,00,800/- / 1/2 = 50,400/-
4.	Multiplier of '18' (Rs.50,400 x 18)	Rs.9,07,200/-
5.	Towards loss of consortium Rs.40,000/- x 2	Rs.80,000/-
6.	funeral expenses, loss of estate and transportation	Rs.30,000/-
	Total : -	Rs.10,17,200/-

9. In view of the above, the claimants are entitled for total compensation of Rs.10,17,200/- (Rs. Ten Lakh seventeen thousand two hundred only), the appeal needs to be partly allowed. Hence, the following order.

ORDER

- i. The appeal is partly allowed.
- ii. The judgment and award passed by the Motor Accident Claims Tribunal, Latur, dated 15.10.2009 in MACP No.138 of 2008 is modified.
- iii. The respondent nos.1 to 3 shall jointly and severally pay a sum of Rs.10,17,200/- (Rs. Ten Lakh seventeen thousand two hundred only) to the claimants towards compensation (inclusive of NFL) together with interest @ 6% p.a. from the date of filing of the claim petition.

- iv. The amount paid/deposited in terms of the award passed by the Tribunal shall be appropriated.
- v. On deposit of the compensation amount as per the modified award, the claimants shall be at liberty to withdraw the same subject to payment of deficit court fees, if any.
- vi. Modified Award be drawn up accordingly.
- vii. First appeal is disposed off. Pending civil application, if any, also stands disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

aaa/-

...