



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2826 OF 2008

1. Smt. Shilpa w/o Atul Munot
Age: 34 years, Occu.: Household,
2. Nupur s/o Atul Munot,
Age: 12 years, Occu.: Education,
3. Ayushi d/o Atul Munot,
Age: 8 years, Occu.: Education,
4. Subhash s/o Pannalal Munot (deceased)
5. Smt. Vasanti w/o Subhash Munot
Age: 59 years, Occu.: Household.

All above R/o.A-47, Abhimanshri
Society, Pashan, Pune.

.. Appellants

VERSUS

Maharashtra State Road Transport
Corporation,
Address - Vahatuk Bhavan, Bombay
Central, Mumbai.

.. Respondent

...

WITH

FIRST APPEAL NO.1545 OF 2008

Maharashtra State Road Transport
Corporation, Through The
Divisional Controller,
MSRTC, Ahmednagar Division,
Ahmednagar

.. Appellant

VERSUS

1. Smt. Shilpa w/o Atul Munot
Age: 2 years, Occu.: Household,

2. Ku. Nupur S/o. Atul Munot
Age: 26 years, Occu.: Education,
3. Ku. Ayushi D/o Atul Munot
Age: 23 years, Occu.: Nothing,
4. Late Subhash s/o Pannalal Munot
Age: 56 years, Occu.: Service
(Died & Deleted as per
Lower Court order)
5. Smt. Wasanti wd/o. Subhash Munot
Age: 52 years, Occu.: Household,

All R/o. A-47, Abhimanshri
Society, Pashan, Pune.

.. Respondents

.....
Mr. S. S. Manale, Advocate h/f Mr. A. M. Gholap, Advocate for Appellants in First Appeal No.2826 of 2008 and for respondents in First Appeal No.1545 of 2008.

Mr. M. K. Goyanka, Advocate for Appellant in First Appeal No.1545 of 2008 and for respondent in First Appeal No.2826 of 2008.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : DECEMBER 05, 2023.

PRONOUNCED ON : DECEMBER 22, 2023.

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-

. Both the first appeals are arising out of the judgment and award passed by the learned Chairman, Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claim Petition No.991 of 2001 on 08.02.2008, whereby the petition under Section 166 of the Motor Vehicles Act filed by the original claimants to get compensation came to be partly

allowed. The First Appeal No.1545 of 2008 is filed by the original respondent to challenge the judgment and award on all counts, whereas First Appeal No.2826 of 2008 is filed by the original claimants for enhancement in the compensation and, therefore, both the appeals are proposed to be disposed of by this common judgment. Parties to the proceedings are addressed by their nomenclature before the Tribunal for the sake of brevity and clarification.

2. Original claimants are the legal representatives of deceased Atul Subhash Munot. Original claimant No.4 Subhash was the father of deceased, however, he also expired during the pendency of the petition. Deceased Atul was 30 years old serving with Sharad Mutha, Contractor, Promoter and Estate Developer, Ahmednagar. It was contended that the monthly income of deceased was Rs.1,25,000/- approximately. All the claimants were dependent on his income.

3. The claimants have further contended that Atul was proceeding from Pune towards Nagar on 22.03.2001 in connection with his job. He was driving Maruti Zen car bearing No.MH-12-YA-4503 owned by his uncle Ravindra Pannalal Munot. Deceased was having valid and effective driving license on the date of the accident. He was driving the vehicle from the left side of the road and by observing all traffic rules and regulations on 10.30 a.m. he was near Kamargaon shivar when S.T. Bus bearing MH-20-

D-3160 owned by the respondent came from the opposite side. It was proceeding from Beed towards Pune. The S.T. Bus driver was driving the said bus in rash and negligent manner and in high speed, who lost control over his vehicle and gave dash to the car driven by the deceased by going to the right side of the bus. The dash was so forceful that the car was got completely smashed and deceased after sustaining serious injuries succumbed to those injuries on the spot. The accident was reported to the police and offence vide Crime No.40 of 2001 came to be registered against the S.T. Bus driver for the offence punishable under Section 304-A, 279, 427 of Indian Penal Code and under Section 184 of the Motor Vehicles Act. As the accident has taken place due to the entire negligence of the S.T. Bus driver, the respondent is liable to pay compensation to the claimants. It has been further elaborated that deceased was a Mechanical Engineer from V.I.T. College, Pune. The family had an engineering unit. Deceased was serving with Sharad Mutha, who had undertaken contracts of development in Ahmednagar City as well as Solapur and Pune. Sharad is the father-in-law of deceased Atul. Atul was assigned with the job of project at Solapur and for that purpose, deceased was getting salary of Rs.75,000/-. It was also agreed that 5% of the gross profit of the Solapur project would be given to him after the completion of the project. The gross profit from Solapur project was estimated at Rs.10 Crores and, therefore, deceased might have received Rs.50,00,000/-. Unfortunately,

before the completion of the project, Atul expired in the said accident. Facilities like residence, telephone were also provided to him. By making calculation, the claimants have claimed compensation of Rs.2,35,00,000/-.

4. The original respondent filed written statement at Exhibit-11 and denied all the contents of the petition. Age, income and the other details given in the petition have been denied specifically. It is denied that the accident had taken place into the sole negligence on the part of S. T. Bus driver. It is stated that the police have acted *mala fide* and prepared false map just to help the deceased. In fact, the bus driver was driving his bus in moderate speed from his left side. There was a curve at the spot and nobody was passing from Nagar to Pune. The car driver was in high and excessive speed, driving the car in rash and negligent manner. The car driver had lost control over his vehicle in the process of taking the curve and, therefore, he had come to the wrong side. The respondent is not liable to pay compensation in view of the fact that the S. T. bus driver was not negligent.

5. Taking into consideration the rival contentions, issues came to be framed. Both sides have led oral evidence. The claimants have led documentary evidence also. Taking into consideration the evidence of record, the learned Tribunal partly allowed the claim petition after holding that the accident was caused due to the sole negligence on the part of bus

driver and therefore, the respondent is liable to pay amount of compensation to the claimants. Compensation of Rs.8,30,000/- inclusive of the amount under NFL with interest at the rate of 7.5% has been awarded from the date of the petition till its actual realization. This judgment and award is challenged by both sides.

6. It has been vehemently submitted on behalf of the original respondent that the learned Trial Judge has not appreciated the evidence properly. The claimants have not examined any of the eye witnesses to support their contention. C.W.1 Shilpa is the widow of the deceased and C.W.2 Sharad Mutha is the father-in-law as well as the employer of the deceased. They both have not witnessed the accident, whereas the original respondent examined its driver Bhaskar Garje, who has stated that as to how the accident took place. He being the eye witness, his testimony ought to have been considered by the learned Tribunal. The police have intentionally not shown the curve at the spot of the accident. If the said curve is taken into consideration, then definitely it would come on record that while driving the car at the curve, the deceased who was driving the said car, came to the wrong side and gave dash to the bus. The claim petition ought to have been dismissed on the said count. The learned Tribunal has also not taken into consideration the fact that learned Judicial Magistrate, Ahmednagar has acquitted the S.T. Bus driver.

7. Learned Advocate for the claimants supported the reasons given by the learned Tribunal in respect of issue No.1 i.e. on the point of negligence, wherein it has been held that accident took place due to the sole negligence on the part of the bus driver, however, the learned Advocate for the original claimants submitted that while assessing the amount of compensation, the learned Trial Judge appears to have got carried away. Merely because C.W.2 Sharad Mutha is the father-in-law of deceased, we cannot say that the documents which were produced from his custody were prepared later on. In fact, the agreement of construction, agreement of lease and other agreements have been produced on record, which are the registered documents, which show that they have been entered into by deceased. They were in respect of project at Solapur. C.W.2 Sharad Mutha was the proper person to explain as to how much salary he was giving to the deceased. C.W.1 Shilpa has also stated that at the time of marriage, deceased was getting salary of Rs.21,000/- per month in a company, later on he has joined the project of his father-in-law. Further, deceased used to come on every Saturday and Sunday to Pune and at that time, he was looking after the factory of his father. C.W.2 Sharad says that as per Exhibit-36, he was giving Rs.72,000/- per year plus perks i.e. rent free house, food, travelling car, telephone etc. as well as 5% in the profit as and when realised. As regards the amount from the profit is concerned, he says that he could not give the said amount as

before it could be given, deceased expired and the project lingered due to his demise. The potentiality to earn on the basis of said agreement ought to have been considered by the learned Tribunal. The learned Advocate for the claimants, therefore, canvassed for compensation as per the claim petition.

8. Learned Advocate for the original respondent submits that as regards quantum is concerned, in the alternative as answer to the appeal filed by the original claimants, it can be said that C.W.2 Sharad Mutha was the father-in-law of deceased. Though he has produced Exhibit-36, it does not bear any acknowledgment by the deceased. In the cross-examination, the father-in-law has admitted that deceased had not issued any written acceptance nor entered into any agreement to the effect that he is agreeing to the terms and conditions in Exhibit-36. He has not produced any document to show, who were the partners of Uma Construction Company and what was their shares in the profit. He says that about 15 to 20 proprietary and partnership firms belong to him and turn over of each firm is within Crores. He says that every firm has maintained its own books of account. Still, those accounts have not been produced. In his examination-in-chief itself he has stated that he has not given 5% from the profit to the deceased. Profit and loss account has not been produced on record to arrive at a conclusion that the said company had really gained profit. The calculation by the learned Tribunal in respect of compensation

is totally hypothetical, which cannot be supported under any provisions of law. There is no question of enhancement in the compensation.

9. Taking into consideration the rival claims, following points arise for determination. Findings and reasons for the same are as follows :-

POINTS

Sr. No.	Points	Findings
1.	Whether the claimants have proved that the death of Atul was caused in accident dated 22.03.2001 due to the sole negligence on the part of driver of S.T. Bus bearing No.MH-20-D-3160 ?	In the Affirmative.
2.	Whether the claimants are entitled to get compensation ? If yes, to what extent ?	In the Affirmative. As per the final order.

REASONS

Point No.1 :

10. This point relates to the negligence as alleged in the petition. It is contended that the entire negligence was that of S.T. bus driver, however, the claimants have not examined any witness, who had seen the accident. They are relying on the police papers. We certainly agree to a fact that in each and every case, examination of eye witness is not necessary. Even without examining such person, claimants can demonstrate that the negligence was not that of the deceased. We would also like to say that

when eye witness is not examined by the claimants and original respondent only examined driver, who is in a way an eye witness, then the testimony of such witness examined on behalf of the respondent is required to be received with caution. The offence was registered against R.W.1 Bhaskar and, therefore, possibility of he giving interested version cannot be ruled out.

11. It appears from the documents which have been produced on record that the certified copy of the FIR Exhibit-24 shows that the law was set into motion by Police Head Constable Akolkar attached to Nagar Police Station on 22.03.2001, wherein it can be seen that he has stated about executing spot panchanama with the help of two panchas and recording of statements including that of S.T. bus driver. Certainly, the informant Police Head Constable Akolkar is not an eye witness. The certified copy of the spot panchanama executed by the informant with the help of two panchas would show that width of the road was 22 feet. The road runs north south. The road had 5 feet side margin. The spot was shown by one Sanjay Sonar, whose statement under Section 161 of the Code of Criminal Procedure appears to have been recorded. The spot shown is at a distance of 7 feet from the western edge of the road. It has been correctly observed by the learned Tribunal that the correct side for Maruti car was from west side as he was proceeding from Pune to Nagar, whereas the correct side for the bus which was going from Nagar to Pune was the

eastern side. The spot of impact was at a distance of about 7 feet from eastern edge of the road towards east i.e. within the half of the car. Thus, when the S.T. bus driver had 11 feet tar road and 5 feet side margin, he could have definitely turn his vehicle from his left side or even partly from the side margin and partly from the tar road. It was absolutely not necessary for him to go towards eastern side, which was wrong side for him. The certified copy of the spot panchanama Exhibit-25 does not show that there was any curve to the road as contended by the S. T. bus driver. It was possible for the original respondent to examine any other eye witness, conductor or passenger from the bus, but the original respondent has not examined anyone of them. Under the said circumstance, the interested version of R.W.1 Bhaskar cannot be relied upon. The prosecution was against him though he appears to have been acquitted by the learned Judicial Magistrate First Class, Ahmednagar. The said decision was not binding on the Tribunal. The Tribunal was supposed to come to its own conclusion on the basis of evidence adduced before it. The situation stated in spot panchanama Exhibit-25 is sufficient to invoke the doctrine of *res ipsa loquitar* and, therefore, we hold that the Tribunal was justified in answering issue No.1 in the affirmative. We are also answering the point No.1 in the affirmative. As a consequence thereof, the original respondent being the employer of the S.T. bus driver, who caused the accident by rash and negligent act, is liable to pay compensation to the claimants.

Point No.2 :

12. The claimants appear to be not sure as to how much exactly deceased was earning. In column No.5 to the form, it is said that he was earning amount of Rs.1,25,000/- per month. In the body of the petition, at one stage it is said that Sharad Mutha was giving him salary of Rs.75,000/- per month and after calculating the proposed profit, deceased would have earned around 1,75,000/- per month. However, when it came to leading evidence, C.W.1 Shilpa i.e. widow of the deceased has stated that at the time of her marriage with deceased, deceased was getting salary of Rs.21,000/- per month, as he was serving with Quality Foundry and Engineering Company, Pune. Then she says that after training, deceased started serving in Micron Company. Then she comes with a case that as her father is Estate Developer, since 1997 deceased started working on the project of her father. She has not given as to how much was the salary of her husband. Then she has examined her father C.W.2 Sharad Mutha. He has stated that after discussion between him and deceased, deceased agreed to work with him and, therefore, he had given letter of appointment Exhibit-36 to deceased. As per the said letter, he was supposed to give him Rs.72,000/- per year plus perks i.e. rent free house, food, travelling car, telephone etc. as well as 5% in the profit as and when realised. Thus, the salary of Rs.1,75,000/- per month appears to have come down to Rs.72,000/- per year, as the evidence progressed. The major part on

which the claimants intend to rely is that C.W.2 Sharad Mutha had agreed to give 5% in the profit. He says that expected profit in the project, which was of Rs.600 Crores was Rs.100 Crores and 5% of that would have been paid to deceased, but then he comes with a rider that the said 5% was to be paid after declaration of the profit. He says that the project was expected to be completed within five years from 1997. Before he started the project at Solapur, he had a formed a partnership registered firm by name Uma Constructions and the agreements were executed with the said firm. He has produced the development agreement and other document at Exhibit-37/1 to Exhibit-37/8 and says that all those documents have been signed by deceased on behalf of Uma Constructions. He further says that the said firm was later on discontinued and it has changed its name as Sharad Mutha Proprietary Firm. Thus, we can see the somersaults by the claimants in their evidence itself. From Exhibit-36 on the letterhead of Sharad Mutha, it is not clear as to whether it was a proprietary firm or in the personal capacity of C.W.2 Sharad, which has been given. He has not produced on record the registration certificate of the partnership firm Uma Constructions, when that partnership firm got discontinued. In fact, when it is a registered firm, it cannot get discontinued, but it can die as per the provisions of the Partnership Act only. In his cross-examination, he has admitted that he has not given details or not brought details as to who were the partners of Uma Constructions Company. If we consider

Exhibit-37/1, then it is signed by deceased Atul Subhash Munot as partner of M/s. Uma Development and Construction Company. Same is the case as regards the other documents. Neither C.W.1 Shilpa nor C.W.2 Sharad, nor in their petition, they have claimed that deceased was the partner of the said firm. They could have easily produced on record the partnership deed when it is a registered partnership firm. That means, intentionally the documents have been withheld by the claimants. We cannot, therefore, take into consideration the statement that deceased might have received 5% of the net profit declared by the firm in future. The profit and loss account or balance sheet of the firm has not been produced on record that at any point of time even after death of Atul, the said project has earned profit.

13. The education qualification of deceased Atul has come on record and, therefore, the learned Tribunal has correctly stated that he had the capacity to earn atleast Rs.72,000/- per year. The claimants have not produced the Income Tax Returns filed by Atul, but still the figure that has been calculated for the basic salary or income by the learned Tribunal is appreciable. If we calculate that he had the capacity to earn at least Rs.72,000/- per year, taking into consideration his education, standard of living, then he would have atleast earn Rs.6,000/- per month. Since it is said that he was a salaried person, definitely he would have paid professional tax and, therefore, the learned Tribunal has deducted amount

of Rs.2,000/- per year towards professional tax and, therefore, it is justifiable. The basic figure that has been taken that deceased might have earned at least Rs.70,000/- per year appears to be correct. The future income has been added, but at this stage we would like to say that the decision has been rendered on 08.02.2008, but we will have to take into consideration the recent pronouncements by the Hon'ble Supreme Court and for future prospects, we are guided by the decision in **National Insurance Company Limited Vs. Pranay Sethi and Ors., [2017 SCC Online SC 1270]**. On the basis of this decision, the learned Advocate for the appellants had canvassed that 50% of the actual salary should be added, however, paragraph No.64(ii) of the **Pranay Sethi's** case (**Supra**) would be applicable where the deceased had a permanent job. Here, the evidence is coming on record that he was employed for a project, that too at one place, he was signing in the capacity as partner and then Exhibit-36 is coming on record. Therefore, we cannot categorize him under paragraph No.64(iii) as stated in **Pranay Sethi (Supra)**, but he would be under paragraph No.64(iv) of the decision in **Pranay Sethi (Supra)**. He could have been the self employed person later on or when it is not that his job is permanent, still he would be under paragraph No.64(iv) of **Pranay Sethi (Supra)** and, therefore, 40% is required to be added towards further prospects. That amount comes to Rs.28,000/- (40% of Rs.70,000/- per annum). Therefore, the income of deceased Atul for the

calculation purpose would be Rs.98,000/- per annum.

14. Further, in view of the decision in **Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, [(2009) 6 SCC 121]**, which has been then approved by the Hon'ble Constitution Bench of the Supreme Court in **Pranay Sethi (Supra)**, as deceased appears to be aged 31 years on the date of accident taking into consideration his birth certificate Exhibit-19, the multiplier would be 16. After applying the multiplier, the future loss of income would be Rs.15,68,000/- (Rs.98,000/- per annum x 16). As regards deduction is concerned, we will have to consider that on the date of death of Atul, there were five members in his family. We will have to include his father, who later on expired. In **Sarla Verma (Supra)**, itself Hon'ble Supreme Court has given guidelines in respect of deductions to be made. It is stated that where the number of dependent family members is 4 to 6, then the deduction towards personal expenditure would be 1/4th. Therefore, applying this formula, the deduction for the personal expenditure would be Rs.3,92,000/- (1/4th of 15,68,000/-). Therefore, after deducting the personal expenditure, the amount of loss of dependency for the claimants would be Rs.11,76,000/- (Rs.15,68,000/- - Rs.3,92,000/-).

15. Thereafter, amount of Rs.50,000/- each is awarded to claimant Nos.1, 2 and 3, who are the widow and children of the deceased towards

loss of consortium and love and affection respectively. That amount comes to Rs.1,50,000/-. Now, as regards granting amount under the head loss of consortium/filial, in view of **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram and others, [2018 (4) TAC 345]** is concerned, we will have to consider that on the date of grant of compensation i.e. while pronouncing the judgment and award, claimant No.4 was no more. Therefore, amount cannot be awarded under the said head. Only claimant No.5, the mother, can get amount of Rs.40,000/-.

16. Amount of Rs.15,000/- is awarded towards funeral expenditure and Rs.15,000/- for loss of estate. Thus, the claimants are entitled to get compensation of Rs.13,96,000/- (Rs.11,76,000/- + 1,50,000/- + 40,000/- + 15,000/- + 15,000/-). This amount would be inclusive of the amount awarded by the Tribunal, which itself was inclusive of amount of Rs.50,000/- towards NFL.

17. It appears that by order dated 04.02.2009 in Civil Application No.1447 of 2009, the original claimant Nos.1, 3 and 5 were allowed to withdraw certain amounts and certain amounts are kept in fixed deposit. We are also taking note of a fact that now the original claimant Nos.2 and 3 have attained majority. Therefore, we consider that the original claimants are entitled to receive the enhancement in the compensation and, therefore, the point No.2 is answered in the affirmative.

18. Claimant No.5 is definitely looked after by claimant No.1 and though claimant Nos.2 and 3 have become major, still we are of the view that when claimant No.1 is managing the affairs of the house, she alone is entitled to get entire enhanced amount. The rate of interest that was awarded was at the rate of 7.5% per annum, however, as regards the enhancement is concerned, we are granting interest at the rate of 6% per annum from the date of the petition.

19. In view of the findings to the points in the appeals, the appeal filed by the original respondent – Corporation deserves to be dismissed and the appeal filed by the original claimants deserves to be partly allowed.

20. For the aforesaid reasons, following order is passed :-

ORDER

(I) First Appeal No.1545 of 2008 stands dismissed.

(II) First Appeal No.2826 of 2008 stands partly allowed.

(III) The judgment and award passed in Motor Accident Claim Petition No.991 of 2001 by learned Chairman, Motor Accident Claims Tribunal, Ahmednagar to the extent of grant of compensation stands modified as follows :-

“ It is hereby held that the claimants are entitled to receive amount of Rs.13,96,000/- (inclusive of amount

of Rs.8,30,000/- awarded by the Tribunal, which itself was inclusive of amount of Rs.50,000/- towards NFL) together with interest at the rate of Rs.6% per annum on the enhanced amount from the date of petition i.e. 11.12.2001 till its realization.”

(IV) The amount which is already withdrawn by the claimants should be deducted from the amount now awarded.

(V) The amount which was invested as per the order passed by this Court in Civil Application No.1447 of 2009 dated 04.02.2009, is allowed to be withdrawn by the respective claimants, if already not allowed to be withdrawn.

(VI) The now enhanced amount together with interest be given to original claimant No.1 and out of which 50% amount be credited to her account in Nationalized bank and 50% amount be kept in the Fixed Deposit Receipt for a period of three years in the same Nationalized bank.

(VII) No order as to costs.

(VIII) Award be drawn accordingly.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm