IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1341 OF 2022

. Babu Namdeo Chilme (died)
Through his L.Rs.

1. Shivaji s/o Babu Chilme
Age: 42 years, Occu: Agriculture,

2. Dhanaji s/o Babu Chilme
Age: 37 years, Occu: Agriculture,

3. Kashibai w/o Babu Chilme
Age: 49 years, Occu: Household

All R/o Pirupatelwadi
Tq. Nilanga Dist. Latur **... Appellants**
[Orig. Claimants]

Versus

1. Waman s/o Madhavrao Dhumal
Age Major, Occu: Bus Driver
Badge No. 5338, S.T. Bud Depot,
Nilanga under Divisional Controller,
Division Officer, M.S.R.T.C.
Latur District Latur
(Driver of S.T. Bus No.MH-24-D-6080
[Deleted as per order dated 21/03/2022]

2. The Divisional Controller,
Division Officer, M.S.R.T.C.,
Ambajogai Road, Latur,
District Latur **... Respondent**
[Original Respondents]

...

Mr. S. B. Gastgar, Advocate for the Appellants
Respondent No.1 served
Mr. A. D. Wange, Advocate for Respondent No.2

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 01.08.2023
PRONOUNCED ON : 08.08.2023

JUDGMENT :

1. The appellants / legal heirs of original claimant, being aggrieved by the judgment and award dated 02/01/2018, passed by the Motor Accident Claims Tribunal, Nilanga, in Motor Accident Claims Petition [MACP] No.19/2011 approached in this Court under Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act' for short].

2. The appellants/claimants had filed MACP No.19/2011 before the Tribunal, Nilanga, under Section 166 of the Act, raising the claim for compensation of Rs.2,00,000/- from the respondents i.e. owner and driver of ST bus bearing registration No.MH-24-D-6080. Hereinafter, parties are referred as per their original status before the Tribunal for the purpose of convenience and brevity.

3. The claimants contend that on 31/01/2010, Parubai Namdev Chilme met with an accidental death due to involvement of ST bus bearing registration No.MH-24-D-6080. The deceased was aged 60 years and she was earning Rs.1500/- per month by way of milk business and Rs.3,00,000/- form agricultural. The Tribunal accepted the case of the claimants and partly allowed the claim directing the respondents to pay compensation of Rs.15000/- along with interest @ 6% per

annum. Therefore, the aggrieved claimants approached this Court seeking enhancement of compensation.

4. Mr. Gastgar, learned Advocate appearing for the appellants/claimants submits that the Tribunal has wrongly applied multiplier of '5' when the age of the deceased was in the range of 60 to 65 years. The multiplier of '7' ought to have been applied as prescribed by the Supreme Court in case of **National Insurance Company Limited Vs. Pranay Sethi and Ors.** reported in **(2017)16SC C 680.** He submits that the Tribunal ought to have granted the compensation towards non-pecuniary heads in terms of law settled in the case of **Sarla Verma and Ors. Vs. Delhi Transport Corporation and Ors.** reported in **[2009] 5 SCR 1098**. He would further submit that the compensation of Rs.1,00,000/- that was paid under the scheme of MSRTC for victim of the accident could not have been deducted while assessing the compensation under Section 166 of the Act.

5. Per contra, Mr. Wange, learned Advocate appearing for the respondent no.2 / MSRTC submits that the deceased was aged about 65 years, therefore, the multiplier of '5' rightly applied in this case. He would submit that the Tribunal has assessed the income of the deceased based on the pleading in the claim petition. According to him, the compensation paid by MSRTC under its scheme is always deductible

while assessing compensation under the scheme of compensation under the Act.

6. Having considered the submissions advanced and perusal of the record of proceedings is revealed that there is no dispute regarding the accidental death of Parubai Namdev Chilme. The MSRTC had already released the amount of Rs.100000/- to the claimants accepting accidental death of the deceased involving the MSRTC bus. The claimants have contended that the deceased was 60 years of age and she was earning Rs.1500/- per month from milk business and Rs.3,00,000/- per annum from Agriculture. However, the Tribunal relying upon the identity card of the deceased issued by election commission, concluded that the deceased was 65 years of age. The approach of the Tribunal to rely upon the election card to determine the age of the deceased cannot be justified. Even otherwise, in case of the victim in the age of group of 60 to 65 years, the multiplier of '7' is applicable. In absence of income proof, the Tribunal ought to have considered notional income if the deceased @ Rs. 3000/- per month with deduction of ½ amount by way of personal and living expenses of deceased. Apparently, the Tribunal misread pleading in claim petition and considered the income of Rs. 1500/- only from milk business while ignoring pleading regarding agricultural income. Further, the claimants would also be entitled for non-pecuniary losses of Rs.70000-/, which

includes the loss of consortium, loss of estate and funeral expenses. Since the claimant was only dependent of deceased, ½ of the income of deceased is deductible towards her personnel and living expenses.

7. The next contention of the claimants is that the compensation of Rs.1,00,000/- paid by the MSRTC under its scheme could not have been deducted and cannot be accepted for the reasons that the scheme under circular of MSRTC provides that the payment of ex-gratia compensation shall be subject to deduction in the case of award passed by the Competent Court. Pertinently, there cannot be double compensation for the same cause, if MSRTC has framed scheme for ex-gratia compensation to victims of accident with intention to provide immediate solace to the family members of the victim of accident and released compensation, such compensation will have to be considered for adjustment while passing the award under the provisions of the Act in claim filed under Sections 163-A or 166 of the Act.

8. Mr. Wange, learned Advocate appearing for MSRTC to buttress his contention relied upon the judgment in the case of **National Insurance Company Limited Vs. Birender and Ors.,** in **Civil Appeal No.242-243/2020** dated 13/01/2020, wherein the issue of adjustment financial assistance released under *Haryana Compassionate Assistance to dependents of Deceased Government Employees Rules of*

2006 to victim of accident has been considered. He relied upon observations in Paragraph No.22 of the judgment, which states as under:

> "If that application is allowed and the amount becomes payable towards financial assistance under the said Rules to the specified legal representatives of the deceased, commensurate amount will have to be deducted from the compensation amount along with interest component thereon. The respondent Nos.1 and 2, therefore, can be permitted to withdraw the compensation amount only upon filing of an affidavit-cum-declaration before the executing Court that they have not received nor would claim any amount towards financial assistance under the 2006 Rules and if already received or to be received in future on that account, the amount so received will be disclosed to the executing Court, which will have to be deducted from the compensation amount determined in terms of this order."

9. It appears from the aforesaid judgment that the issue as to the deduction of amount released under the Rules of 2006 framed by the State of Haryana towards compassionate assistance to the dependents of deceased Government employee was under consideration. The High Court had considered 50% deduction of the compensation amount received or receivable by the claimants under the Rules of 2006 while making assessment of compensation under the Act. The Supreme Court held that the financial benefit received or receivable towards death of employee under the special scheme of Government is deductible while assessing the compensation under the Act. Therefore, it is abundantly clear that the claimants would not entitled for double benefits towards accidental

death of the deceased from respondent - corporation. The amount of compensation received by the claimants under the scheme of MSRTC would be adjustable against the compensation assessed under the provisions of Section 166 of the Act.

10. In view of above, the compensation payable to the claimants can be worked out as per the table below:

Sr. No.	**Heads**	**Amount**
1.	Annual income of the deceased [3000x12]	36000/-
2.	½ deduction towards personal and living expenses [36000 – 18000 = 18000]	18000/-
4.	Multiplier 18000x7	126000/-
5.	Add Rs.70000/- towards non-pecuniary heads i.e. loss of consortium, loss of estate and funeral expenses	70000/-
6.	Deduct Rs.1,00,000/- paid under the special scheme	100000/-
	Total	**96000/-**

11. Resultantly, the appeal deserves to be partly allowed. Hence, this Court proceeds to pass the following order:

ORDER

(a) The appeal is partly allowed.

(b) The judgment and award dated 02/01/2018, passed by the Motor Accident Claims Tribunal, Nilanga, in Motor Accident Claims Petition [MACP] No.19/2011 is modified.

(c) The respondent nos.1 and 2 are directed to jointly and severally pay the compensation of **Rs.96000/- [Rupees Ninety Six Thousand Only]** to the claimants along with interest @ 6% per annum from the date of filing of the claim petition.

(d) The amount paid / deposited in pursuance of the award passed by the Tribunal shall be appropriated.

(e) The modified award be drawn up accordingly on payment of deficit court fees, if any.

(f) On deposit of compensation amount as per the modified award, the claimants shall be at liberty to withdraw the same.

(g) Appeal is disposed of accordingly.

[S. G. CHAPALGAONKAR, J.]

Sameer