

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1333 OF 2022

**The Maharashtra State Road Transport }
Corporation, Thr. Its Divisional }
Controller, Solapur Division, Solapur }** **...Appellant**

Versus

**1. Smt.Chhaya Balu Masal }
2. Kum.Tanushri Bala Masal }
3. Vithu Raygonda Masal }
4. Sou.Nandabai Vithu Masal }
R/o at & Post Shirnandi, Tal. }
Mangalwedha, District-Solapur }**
**5. Mohan Shivaji Narayankar }
R/at At & Post Mardi, Taluka-North }
Solapur, District-Solapur. }** **...Respondents**

Mr.Nitesh V. Bhutekar a/w Mr.Aniket Nangare, Ms.Gargi Warunjikar, for the Appellant.
Mr.Ramdas A. Shelke a/w Mr.Namdeo Metakari, for the Respondents.

CORAM : S.G. DIGE, J.

DATE : 3 MARCH 2023

JUDGMENT :-

. The issue involved in this Appeal is that accident was occurred due to sole negligence of the deceased and income of deceased considered on higher side.

2. It is contention of learned counsel for the Appellant that the accident was occurred due to sole negligence of the deceased. The driver of offending bus was driving bus in slow and moderate speed. At that time deceased who was driving the motorcycle in high speed gave dash to the offending bus while trying to overtake other vehicle, but this fact is not considered by the Tribunal.

3. The learned counsel further submit's that the deceased was on probation in Government service, he was getting salary of Rs.19,229/-. But the Tribunal has considered salary of Rs.30,000/- per month, which is on higher side, which is not proper, hence, requested to allow the Appeal.

4. It is contention of the learned counsel for the Respondent-Claimants that the accident was occurred due to sole negligence of the offending bus driver. The offence was registered against the bus driver. The spot panchnamma at Exhibit-19 shows that there was sole negligence of the offending bus driver. The Tribunal has considered this fact and has come to the conclusion that the accident was occurred due to sole negligence of the bus driver, which is proper.

5. The learned counsel for the Respondent/Claimant further submit's that deceased was Government employee, he was

not temporary employee. When he died, at that time, he was getting per month salary at Rs.19,000/- Thereafter, seventh pay Commission was made applicable to all government employees retrospectively from 1 January 2016 and accident was occurred on 6 September 2017. So as per seventh pay Commission deceased was entitled for salary at Rs.35,000/- per month and after deduction the Tribunal has considered salary at Rs.30,000/- per month which is proper. Hence, requested to dismiss the Appeal.

6. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Solapur (for short 'the Tribunal').

7. In respect of the issue of negligence of deceased. It appears from record that the accident was occurred on 6 September 2017 at 8.00 .a.m. when deceased Balu Masal was going to Solapur for his duty on his Hero Honda Motorcycle No.MH-13/BB-4913. He was proceeding from Mangalwedha to Solapur by Mangalwedha Solapur road. Near Kamati Village, at the corner and near the house of Deepak Mali, S.T. Bus No.MH-14/BT-3793, suddenly came from Solapur going towards Mangalwedha, in high and excessive speed and gave forceful dash to the motorcycle of the deceased by coming from wrong side. Due to said heavy dash, leg of Balu Masal was cut and separated

from his body. The deceased died while taking treatment. The offence was registered against the driver of the offending bus. To prove the negligence of the deceased the Appellant examined driver of S.T. bus at Exhibit-52. He has stated that on the day of accident he was driving the bus on Solapur Watvate road. There was speed breaker and bus stop. At the relevant time there was ascending road, hence, he was driving bus in slow and moderate speed. At that time, the motorcycle which the deceased was riding came from opposite direction in high and excessive speed and while trying to overtake other vehicle, deceased gave dash to his bus.

8. In cross-examination this witness admitted that the motorcycle rider did not gave dash from front side of the bus whereas the dash was given to the driver side wheel. This witness further admitted that there was speed breaker and ST bus stop was there. The spot panchnamma Exhibit-19 shows that bus was on the wrong side of the road where as the motorcycle was proceeding on rightside of the road. This fact is also mentioned in the FIR at Exhibit-18, that by going wrong side bus has given dash to the deceased. The spot panchnamma falsifies the evidence given by the bus driver that while trying to overtake, the deceased had given dash to his bus. The sketch of spot of incident shows that the spot of incident is curve road. It is contention of driver of offending bus that said road was

ascending as well as there is no speed breaker or ST stop as mentioned by the driver of offending bus. It appears that driver has given evidence after thought to avoid the liability. Hence, I do not find infirmity in the observation of the Tribunal that the accident was occurred due to sole negligence of the deceased.

9. In respect of the income of deceased, Claimant No.1 examined herself. She has stated that the deceased was her husband and he was highly qualified and serving as a Tax Assistant in Joint Commissioner Office, Sales Tax Department, Solapur, his appointment and selection was made through MPSC. On the day of appointment his salary was fixed, including all benefits to the tune of Rs.28,618/-. He was also getting additional government benefits. To support evidence of this witness the Claimants have examined Witness Shri.Suraj Ransingh, from the department of deceased. He has stated that Chirag Vijay Ubale who was friend of deceased was also appointed on the same post like deceased and Chirag was still working. He has further stated that seventh pay Commission was declared and made applicable from 1 January 2016 to Chirag who is working on the same post upon which deceased was working. The seventh pay Commission is made applicable to all government employees from 1 January 2016, hence deceased would have got the gross salary of Rs.39,357/- as Chirag received in September 2019 to November 2019. On the basis of evidence

of this witness the Tribunal has considered the salary of deceased after deduction at Rs.30,000/- per month.

10. In my view, the deceased was Government employee. The seventh pay Commission was made applicable to all government employees from 1 January 2016. The date of accident is 6 September 2017. The deceased was entitled for salary as per seventh pay Commission from 1st January 2016. Hence, the salary considered by the Tribunal is proper and I do not find any infirmity in it.

11. It is contention of the learned counsel for the Claimant that the Tribunal has awarded Rs.40,000/- as consortium amount to the widow of deceased and has not awarded consortium amount to the other Claimants.

12. The learned counsel for the Appellant submits that in the Appeal filed by the Appellant, the Claimants are not entitled for consortium amount, funeral expenses and loss of estate. The learned counsel further submits that the Claimants have not preferred any Appeal for enhancement of the compensation, hence, they are not entitle for any amount.

13. In my view Section 168 of the Motor Vehicle Act, 1988 (for short 'M.V. Act.') states about just compensation. It is

settled principle of law that the Claimants are entitled for just compensation without filing Appeal. Hence, Claimants are entitled for consortium amount. As per view of the Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*¹, each Claimant is entitled for Rs.40,000/- as consortium amount. There are four Claimants. They are entitled for Rs.1,60,000/- consortium amount and Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate, total comes to Rs.1,90,000/-. The Tribunal has awarded amount of Rs.15,000/- for funeral expenses Rs.15,000/- and for loss estate and Rs.40,000/- for consortium. If this amount deducts from the amount considered by this Court it comes to Rs.1,20,000/- The Claimants are entitled for Rs.1,20,000/-

14. In view of above, I pass following order.

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The Claimants are entitled additional amount of Rs.1,20,000/- @ 7.5% interest per annum from the date of 1 October 2017 till realization of the amount.
- (iii) The Appellant is directed to deposit additional amount within four weeks along with accrued interest thereon, after receipt of this order.

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(iv) The Claimants are permitted to withdraw awarded amount and additional amount along with accrued interest thereon.

(v) The statutory amount be transmitted to the Tribunal. Parties are at liberty to withdraw it, as per rule.

(vi) All pending Civil Applications, if any, are disposed of.

(S.G. DIGE, J.)