

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.319 OF 2016

The Municipal Corporation of Greater }
Mumbai, Through General Manager, }
BEST, Office at Electric House, }
Colaba, Mumbai-400 005 } **...Appellant**

Versus

1. Smt.Bharati Sanjay Jethwa }
2. Master Om Sanjay Jethwa }
3. Mr.Valji Najubhai Jethwa }
4. Mrs.Shanta Valji Jethwa }
All R/at Poppy A-6, 2nd Floor, }
Ramnagar, Near Sai Baba Mandir, }
Borivali (W), Mumbai } **...Respondents**

Ms.Shraddha Chheda i/b Navdeep Vora & Associate, for the
Appellant.

Mr.Sainand V. Chaugule, for Respondent Nos.1 to 4.

CORAM : S.G. DIGE, J.

DATE : 7 FEBRUARY 2023

JUDGMENT :-

. Being aggrieved and dissatisfied with the judgment
and order passed by the Motor Accident Claims Tribunal,
Mumbai (for short 'MACT'). The Appellant-BEST undertaking
preferred this Appeal.

2. Brief facts of the case are as under:-

The deceased Sanjay was driving his motor bike on 16 October 2008. At about 19.55 hours on Navin Nagardas Road, Andheri (E), Mumbai. At relevant time a bus bearing No.MH-01-LA-6347 gave dash to the motorcycle of deceased from backside. Due to said dash he fell down and sustained injuries. He was taken to Cooper Hospital there he was declared dead. The FIR was registered against the bus driver. The Respondent Nos.1 to 4 (for short 'the Claimants') filed Claim Petition for getting compensation before the Tribunal, Mumbai. The Tribunal has awarded compensation against the said judgment and order, this Appeal.

3. The learned counsel for the Appellant submits that an accident was occurred due to sole negligence of the deceased as deceased was trying to overtake the offending bus. But this fact is not considered by the Tribunal. The learned counsel further submits that at the most there was contributory negligence of the deceased in the said accident. But it was not considered by the Tribunal. The Tribunal has considered the income of deceased on higher side i.e. Rs.2 Lakhs per year. Hence, requested to allow the Appeal.

4. It is contention of the learned counsel for the Claimants that an accident was occurred due to sole negligence of

the offending bus driver. There was no eye witness to the said accident. The deceased was going on left side of the road when offending bus dashed to the motorcycle of the deceased. The Tribunal has considered all facts properly. Hence, no interference is required in it.

5. The learned counsel further submit that future prospectus and consortium amount are not awarded by the Tribunal. He relied on *Magma General Insurance Co. Ltd. V/s. Nanu Ram*¹ and *National Insurance Co. Ltd. V/s. Pranay Sethi*²

6. I have heard both the learned counsel. Perused judgment and order passed by the Tribunal. Issues involved in this Appeal are negligence of deceased and income of deceased. In respect of issue of negligence the Tribunal has held that there was sole negligence of the offending bus driver. The Appellant has examined driver of the bus to prove the negligence of deceased. Ashok Ramrao Bhabad was driver of the offending bus, examined himself at Exhibit-40. He has stated that on the day when accident occurred the road was heavily crowded with vehicular traffic. One Tanaji Dhondur Pawar informed him about overtake by the deceased, the statement of Tanaji was recorded by the police, but Appellant has not examined Tanaji as a witness to prove that the deceased, was overtaking the bus. Moreover

¹ 2018 ACJ 2782 (SC)

² 2017 ACJ 2700 (SC)

Shri.Ashok has not witnessed the accident, in the FIR it is mentioned that accident was occurred due to sole negligence of bus driver it shows that the accident occurred due to sole negligence of the offending bus driver.

7. In respect of the issue of quantum the Tribunal has considered yearly income of deceased Rs.2 Lakhs per year. The Tribunal has observed that income for the Assessment Year 2008-2009 of the deceased was Rs.1,73,000/-. His income for the next year can be maximum Rs.2 Lakhs per year and not more than that. Hence, the Tribunal has considered the income of Rs.2 Lakhs per year. In my view, the Tribunal has erred while considering the income of deceased Rs.2 Lakhs per year. It was future income. The Tribunal should have considered income of deceased at the time of death. Hence, I am considering the income of Rs.1,73,000/-. The Tribunal has not awarded consortium amount. It is contention of learned counsel for the Appellant that in the Appeal filed by Appellant these aspects can't be considered in my view it is settled law that the Claimants are entitled for just compensation, hence I am considering amount. As per view of Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd. vs. Nanu Ram*³, each Claimant is entitled for Rs.40,000/- each as consortium.

3 2018 ACJ 2782 (SC)

8. Considering the above calculations the Claimants are entitled for following compensation.

Calculation		
Income		Rs.1,73,000/-
Personal Expenses	Rs.1,73,000- 1/4th	Rs.1,29,750/-
Multiplier	Rs.1,29,750 x 16	Rs.20,76,000/-
Loss of Estate		Rs.15,000/-
Funeral Expenses		Rs.15,000/-
Loss of Consortium		Rs.1,60,000/-
Total		----- Rs.22,85,000/- =====

9. The Tribunal has awarded compensation of Rs.24,58,875/- if this amount deducts from the amount considered by this Court it comes to Rs.24,58,875/- - Rs.22,85,000/- = Rs.1,73,875/-, this is excess amount.

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

ORDER

(i) The Appeal is partly allowed.

(ii) The Claimants are entitled for the amount of Rs.22,85,000/- along with interest as awarded by the Tribunal.

(iii) The Appellants are permitted to withdraw Rs.1,73,875/- along with accrued interest thereon.

(iv) Statutory amount be transmitted to the Tribunal. Parties at liberty to withdraw it.

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

(S.G. DIGE, J.)