

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1054 OF 1999

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| 1. Shri Rehmat Abdul Majid Elahi |) | |
| Age: 55 years, Occ: Retired Corporator |) | |
| 2. Mrs. Rabia Banu Shaikh Rehmat Elahi |) | |
| Age: 52 years, Occ. Household |) | |
| 3. Miss Nasim Banu Rehmat Elahi |) | |
| Age: 27 years. Occu.: Student |) | |
| 4. Miss Nilofar Banu Rehmat Elahi |) | |
| Age: 23 years, Occ: Student |) | |
| 5. Miss Sanobar Banu Rehmat Elahi |) | |
| Age: 21 years, Occ: Student |) | |
| All residing at Asgar Building |) | |
| Room No.3, Ground Floor, |) | |
| Opp. Aqsa Medical Stores, |) | |
| 1 st Rabodi, Thane – 400 601. |)....Appellants | |
| | (Original Applicants) | |

Versus

- | | | |
|---|---|--|
| 1. The Maharashtra State Road |) | |
| Transport Corporation, |) | |
| Having its office at opp. Vandana |) | |
| Talkies, Old Bombay Agra Road, |) | |
| Thane, through its Manager. |) | |
| 2. Shri Eknath Shivappa Katke |) | |
| Age: 38 years, Occ: Bus Driver, |) | |
| Residing at Indira Nagar, Rahiwasi Sangh, |) | |
| Opp. New Dharavi Police Station, |) | |

Dharavi, Bombay – 17.

)....Respondents
(Original Opponents)

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Mr. Akshay Kaudarkar i/by Rakesh S. Datar, for Appellant.
Mr. P. M. Bhansali i/by Mr. G. S. Hegde, for the Respondents.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 27th MARCH 2023.

JUDGMENT:

1. By way of this Appeal, Appellants/claimants are seeking enhancement of compensation.
2. It is contention of learned Counsel for the Appellants/claimants that the Tribunal has considered monthly income of deceased on lower side future prospects and consortium amount has not been awarded and wrong multiplier is applied while calculating the compensations. The learned Counsel further submits that the Tribunal has considered 50% contributory negligence of deceased which is not proper. Hence, requested to allow the Appeal.
3. It is contention of learned Counsel for Respondent No.1 that accident occurred due to sole negligence of deceased as he gave dash to the offending bus coming from opposite direction, but the

Tribunal has considered contributory negligence. Learned Counsel further submits that no evidence was produced on record to prove the income of the deceased. In spite of that the Tribunal has considered monthly income of deceased at Rs.2,400/- which is on higher side. Learned Counsel further submits that while awarding compensation the Tribunal has considered all the aspects and on that basis compensation is awarded. Learned Counsel relied on *Khenyei vs New India Assurance Company Ltd. & Ors.*¹

4. I have heard both learned Counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short 'the Tribunal').

5. It is the claimants case that on 28.10.1989, the deceased was riding on motor cycle with his friend from Thane towards Bhayander when they reached near chena bridge on Ghodbunder road, the bus bearing No.MTF 9192 came from opposite direction in rash and negligence manner and gave dash to the motor cycle of deceased, due to said dash deceased sustained injuries and died while taking treatment. While dealing with the issue of negligence, the Tribunal has observed that the F.I.R was lodged by the driver of

1. 2015 9 Supreme Court Cases 273.

the offending bus. There is no mention in the F.I.R that on the seeing motor cycle coming from opposite direction driver of the offending bus applied brakes and brought it to halt before the motor cycle approached and dashed against it. The spot panchnama further shows that there was drag mark on the road showing that the motor cycle was dragged 25 ft. with the bus.

6. The eye witnesses John and Anwar had not come forward before the police for giving evidence about the accident as well as driver of the offending bus has not been charge-sheeted for the committed offence. The Tribunal further observed that, it was a duty of the deceased motor cyclist to slow down on the descend road having a U turn when the bus ascending was visible and specially when there was a narrow passage left for motor cyclist and held that the bus driver and the deceased-motor cyclist are equally negligence in causing the accident and on that basis the Tribunal has fixed 50% contributing negligence on deceased-motor cyclist and the offending bus driver.

7. Considering the evidence on record, in my view, it has come on record that accident occurred when there was U turn and bus was going on ascending slop of the road. It shows that the bus

was not in high speed, whereas the deceased was coming from descending position of the road and the deceased had seen the bus coming in ascending position. In spite of that deceased had not slower down speed of his motor cycle and gave dash to the offending bus. The bus driver went himself to the police station and lodged complaint. The facts leading from the evidence on record and looking to the evidence of DW1 Eknath Katke who was driving the offending bus. It appears that the accident occurred due to contributory negligence of offending bus driver and deceased. Hence, I do not find any infirmity in the observations of the Tribunal.

8. The Tribunal has not awarded future prospects as per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi***² claimants are entitled for 40% future prospects. The Tribunal has awarded consortium amount of Rs.15,000/-, Rs.3,000/- awarded for the mental shock agony and Rs.3,000/- awarded for funeral expenses, as per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram***³ claimants are entitled for Rs. 40,000/- each with 10% increase and Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate.

2. 2017 ACJ 2700 (SC)

3. 2018 ACJ 278 (SC)

The claimant Nos.3 and 4 are elder brother and sister of the deceased, they are not entitled for consortium. The Tribunal has applied multiplier of ten (10). At the time of accident, the deceased was of 25 years old so multiplier should be eighteen (18), I am considering this multiplier. The claimants have not disputed about income of deceased at Rs.2,400/-.

9. Considering the above calculations the claimants are entitled for following compensation:

Particulars	Amount
Income	Rs. 2400.00
40% future prospects	Rs. 960.00
Deduction towards personal expenses 1/2nd of Rs.3,360.00 comes to Rs.1,680.00. Therefore, Rs.3,360-Rs.1,680.00 comes to	1,680.00
Yearly Income Rs.1,680.00 X12	Rs. 20,160.00
Rs. 20,160 X 18 (multiplier)	Rs. 3,62,880.00
Loss of consortium Rs.44,000/- x 3(family members – filial and parental)	Rs. 1,32,000.00
Loss of Estate	Rs. 16,500.00
Funeral Expenses	Rs. 16,500.00
Total Compensation	Rs. 5,27,880.00

Deduction of 50% contributory negligence Rs. 2,63,940.00

Total Compensation Payable Rs. 2,63,940.00

The claimants are entitled for Rs.2,63,940/-. While awarding compensation, the Tribunal has awarded interest on it from the year 1999. The claim Petition was filed in the year 1990 it is settled principle of law that the claimants are entitled for interest on compensation from date of filing claim Petition.

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

ORDER

- i. Appeal is allowed.
- ii. The claimants are entitled for the enhanced amount Rs.2,63,940/- at the rate of 7.5% from the date of filing claim Petition till realization of the amount, out of this amount Rs.1,32,000/- is consortium amount. On this amount claimants are entitled @ 7.5% from 1st November 2017 till realization of amount.
- iii. The Respondents are directed to deposit the enhanced amount along with accrued interest thereon within six

weeks on receipt of this order.

- iv. The claimants are entitled interest on award amount awarded by the Tribunal from the date of filing claim Petition till realization.
 - v. The Appellants are permitted to withdraw award amount and enhanced amount along with accrued interest thereon.
11. Pending applications, if any, also stand disposed of.

(SHIVKUMAR DIGE, J.)