

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

FIRST APPEAL NO. 490 OF 2021

Pune Municipal Corporation } Through the Commissioner } (Notice be served on Commissioner PMC) } Shivajinagar, Pune - 411005 }	... Appellant (Org. Respondent No.1)
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Vs.

- | | | |
|----|--|--|
| 1. | Mr. Surmilan Singh Soibam }
Age – 37 years, Ocup – Service, } | |
| 2. | Master Aryan Soibam }
Age – 03 years, Occup – Nil, }
Being Minor through his }
Natural Guardian his father }
i.e. Respondent No.1 } | |

Both R/o. At 608B, Runwal Segal	}	
Handewadi Road Hadapsar	}	
Pune - 411 028.	}	

Both Respondent No.1 and 2	}	
through their POA	}	
Chingtham Suresh Kumar	}	
Age :-36 years, Occ-Service	}	
R/at-502, Ashok Nagar,	}	
Handewadi Road,	}	
Hadapsar, Pune – 411028.	}	

Pakasanthounajam Dob } Age :-52 years, Occ. Service, } R/at S.N280, Sath Vasto Dhanori, } Lohagaon Road Pune – 41 }	
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.....(Respondent No.1 & 2 Orig. Claimants)

3. **Balkrushna Gopalrao Sable,** }
Age :-58 years, Occ- Service (Driver) }
R/at. Bahul, Tal-Khed District Pune. }
....(Respondent No.2 Orig. Respondent No2.)

Mr. Vishwanath Patil, Advocate for Appellant.

Ms. Yogita Deshmukh Chitnis, Advocate for Respondent Nos.1 and 2.

CORAM : ABHAY AHUJA J.

DATE : 21st JULY, 2023

JUDGMENT :

1. This Appeal has been preferred by the Pune Municipal Corporation being aggrieved and dissatisfied by the judgment and award dated 18th September, 2019 passed by the Motor Accidents Claim Tribunal, Pune in Claim Petition No.581 of 2014.

2. Mr. Vishwanath Patil, learned counsel for the Pune Municipal Corporation would submit that the primary challenge is on the issue of contributory negligence. He would submit that the Tribunal has gone ahead and awarded compensation after deducting only 25% towards contributory negligence of the deceased whereas the deceased was fully negligent in causing the accident, which is vehemently resisted by the learned counsel for the Respondent claimants.

3. The brief facts are that on 21st March, 2014 at about 09:15 am, Mrs. Tampha Devi Ngangom was going on her scooty from Hadapsar for her job, when at Chintamani Nagar, Bhaji Mandai, a water tanker bearing No.MH12 Q2159 of the Appellant coming from Handewadi side and was also going towards Ramtekdi overtook the scooty and suddenly applied brakes due to which the scooty rammed into the left rear wheel of the tanker, Mrs.Ngangom fell down and sustained injuries in the stomach region and was thereafter taken to Yash hospital and admitted in the ICU ward by the driver of the offending vehicle Mr. Balkrishna Sable. However, the injured Tampha Devi Ngangom died due to the serious injuries. A claim petition was filed by her husband and minor son on the above facts claiming that the tanker was being driven rashly and negligently and that an offence had also been registered and that since the deceased was working as an IT Professional with Zensar Technologies Ltd. at Kharadi, MIDC, Pune and getting a salary of Rs.73,159/- per month, had a bright future, the Appellant was liable to pay a compensation of Rs.1 crore to the claimants.

4. The Appellant Corporation filed a written statement, firstly submitting that the deceased was not holding a valid driving licence at the relevant time and secondly that the accident was caused because of

the negligence of the deceased herself which fact was borne out from the police papers. That the water tanker was being driven cautiously and it was the deceased who came and rammed into the water tanker on the rear side resulting in her death and therefore the entire negligence was of the deceased which caused the accident. It was submitted that therefore the claim of the claimants be rejected.

5. The Tribunal after considering the evidence affidavit of the husband of the deceased i.e. the claimant as well as his additional affidavit, after examining the representative of the employer of the deceased, as well as the FIR, report, inquest panchnama, spot panchnama as well as the evidence affidavit of the Appellant Corporation held that the deceased contributed to the accident to the extent of 25%. The Tribunal observed that the police papers clearly showed that the offence was registered against the driver of the Appellant Corporation and although the negligence of the driver of the water tanker was writ large but since the scooty ridden by the deceased hit the tanker on its rear side, it could not be said that there was no contributory negligence on the part of the deceased.

6. On the basis of the correspondence of the employer of the deceased, the pay slips of the deceased as well as the examination of the employer of the deceased, the Tribunal observed that the net salary

of the deceased was Rs.48,992/- per month. The multiplier considering the age of the deceased as 31 years was taken to be 16, 1/3rd amount was deducted on account of personal expenses of the deceased and after adding 50% amount towards future prospects, the amount arrived at was Rs.94,06,464/-. In addition the Tribunal held that the claimants would be entitled to Rs.15,000/- for loss of estate, another Rs.15,000/- for funeral expenses and Rs.40,000/- for loss of consortium. Computing the compensation as above, the Tribunal arrived at a total figure of Rs.94,76,464/-. In view of the finding that there was 25% contributory negligence of the deceased, the Tribunal deducted 25% of the total amount and arrived at a total compensation payable to the claimants as Rs.71,07,348/- with interest in the manner provided in the order.

7. It is to be noted that the claimants i.e. the Respondents in the Appeal have not filed any Appeal or Cross Objection in the matter.

8. However, the Appellant Corporation as mentioned above is aggrieved on two counts, one is that the deceased was not holding a driving licence at the time of accident and the second is that despite finding that the scooty which was being ridden by the deceased from behind hit the tanker's rear wheel finding the deceased contributory to

the negligence resulting in the accident but only to the extent of 25%, whereas it should have been 100%.

9. Relying upon the written statement filed by on behalf of the Appellant-Corporation, at the outset, Mr.Patil, learned counsel, would submit that the deceased was not holding a valid driving licence at the time of the accident and therefore no claim can be entertained, as the deceased was herself fully negligent not being qualified to ride the scooty.

10. Mr. Patil, learned counsel for the Appellant Corporation would then submit that there is no eye witness account to the incident. Learned counsel draws the attention of this Court to the evidence affidavit filed by the husband of the deceased being the claimant, to submit that when the Applicant says that on the date of the accident, when his wife was travelling by her scooty from Jain Township Hadapsar and was going for her job and that a water tanker bearing No.MH12 Q 2159 was coming from Handewadi side and was going towards Hadapsar at very high speed and overtook his wife's scooty and suddenly applied brakes due to which the scooty rammed into the left rear wheel of the tanker and due to which the deceased fell down and sustained serious injuries and then died, is an account or a version only on the basis of police papers and not an eye witness account and

cannot be believed. In support learned counsel takes the Court to the *firyadi jabab* dated 22nd March, 2014 and submits that the said information given by the driver of the water tanker clearly demonstrates how the accident involving the scooty of the deceased and the water tanker driven by the driver took place due to the fault of the deceased and as to how the driver Shri. Balkrishna Sable of the offending water tanker himself took the deceased to Yash Hospital. Learned Counsel would submit that this clearly shows that the deceased was fully negligent and looking to the conduct of the driver, he could not be held to be negligent for the accident or the death of the deceased.

11. Learned counsel also draws the attention of this Court to the examination in chief in the form of an affidavit of the driver of the said water tanker driver and refers to paragraph 4 thereof to submit that the accident has taken place due to the sole and exclusive negligence on the part of the deceased herself. Learned counsel would submit that the said affidavit records that the deceased lost her balance on the scooty and dashed to the left side of the rear wheel of the tanker and caused the accident herself and therefore the accident was caused due to sole and exclusive negligence of the deceased. Learned counsel would submit that there was no negligence on the part of the driver of the

water tanker who was proceeding towards Ramtekdi from Uruli Devachi via Handewadi Road at a very slow and moderate speed of 20 to 25 km per hour observing all the traffic rules and regulations. Learned counsel also refers to the cross-examination of the driver and refers to paragraph 3 thereof to submit that in the cross-examination, the driver has clearly stated that in the rear view mirror he saw that the deceased lost balance and therefore the accident was not caused due to his negligence.

12. Mr. Patil would further submit that the deceased had the last opportunity to avoid the accident as she was behind the offending tanker and based on this principle also, she was fully negligent. In support, learned counsel refers to and relies upon the decision of the Hon'ble Supreme Court in the case of ***Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Anr***, reported in **(2003) 8 SCC 731**. Learned counsel would submit that negligence is failure to observe for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand whereby such other person suffers injury. He would submit that the idea of negligence and duty are strictly co-relative. Negligence means either subjectively a careless state of mind or objectively careless conduct. Learned counsel would submit that in the facts of the

case it was the duty of the deceased who was riding the scooty from behind water tanker to mind and observe that there was truck in front of her and to avoid the said accident which she has failed to do as a duty to others. Learned counsel would submit that omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and *per se* constitute negligence on the part of such person. Learned counsel would submit that where the accident is due to the negligence of both parties substantially there would be contributory negligence and both would be blamed. He would submit that in case of contributory negligence the crucial question on which liability depends would be whether either party could by exercise of reasonable care have avoided the consequence of others negligence. Learned counsel would submit that whichever party could have avoided the consequence of other's negligence would be liable for the accident. Learned Counsel would, therefore, submit that the deceased could have exercised reasonable care to avoid the consequence of the tanker driver's negligence, and therefore, the deceased is fully negligent and no part of the negligence can be attributed to the Appellant corporation. He would submit that it is deceased's own negligence or omission that was proximate and immediate cause of her death and therefore, she herself is responsible for the same and the Appellant Corporation cannot be held liable.

Learned counsel also refers to the doctrine of last opportunity cited in the said judgment and would submit that it was the deceased who had the last opportunity to avoid the accident which she failed to do. Even if both parties were held to be careless, the party which had the last opportunity to avoid the result of the others carelessness is alone liable and therefore, learned counsel would submit that it was the deceased and deceased alone who was to be held liable and not the Appellant Corporation.

13. Mr. Patil, would therefore submit that the judgment and award dated 18th September, 2019 deserves to be set aside and the appeal be allowed.

14. On the other hand Ms. Yogita Deshmukh, learned counsel for the Respondent-claimants would firstly submit that the law of evidence clearly requires that either the evidence be completely rejected or be completely accepted; it cannot be that part of the document is relied upon and the other part rejected. Learned counsel would submit that the learned Counsel for the Appellant has not only incorrectly read part of the *firyadi jabab* but conveniently ignored the last paragraph and submits that the *Firyadi Jabab* dated 22nd March, 2014 also partly relied upon by the learned Counsel for the Appellant clearly records in the last paragraph that on 21st March, 2014 at around 10:00 a.m., the

driver of the offending tanker owned by the Pune Municipal Corporation was driving the water tanker and proceeding towards Ramtekdi from Uruli Devachi via Handewadi Road in speed when near Jain Township Hadapsar the water tanker suddenly applied brakes and the Scooty behind the tanker rammed into the left rear wheel of the tanker due to which the deceased fell down and sustained serious injuries and died as a result of the inattentiveness and carelessness of the driver to keep a proper watch or lookout and driving without observing traffic rules. Learned Counsel would reiterate that Mr.Patil has not only incorrectly read first part of the said *firyadi jabab* but conveniently omitted the aforesaid portion appearing at the end of the said document.

15. Learned counsel would submit that the aforesaid clearly demonstrates that the driver of the offending vehicle was negligent while driving the said vehicle which led to the accident and ultimately the death of the deceased.

16. Learned counsel also draws the attention of this Court to the crime details form in support of her contention that the offending vehicle driven by the said driver was coming from Handewadi side and was going towards Hadapsar at a very high speed when he suddenly applied brakes and due to which the vehicle of the deceased rammed

on to the left rear wheel of the tanker and deceased fell down causing serious injuries to her leading to her death.

17. Learned counsel would submit that in fact the police papers clearly suggest that the driver Mr. Balkrishna Sable, who was also the informant of the accident to the police was fully negligent causing the accident resulting in the death of the deceased. She would submit that it is settled law that when there is no eyewitness, reliance has to be placed on the police papers.

18. Learned Counsel rebuts the reliance placed by the learned Counsel for the Appellant on the decision of the Hon'ble Supreme Court in the case of ***Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Anr.***¹ submitting that the said decision is in fact in favour of the Respondent claimants. Learned counsel refers to the paragraph cited by the learned Counsel for the Appellant and submits that the doctrine of last opportunity is no longer applied and the sample test is what was the cause or what were the causes of the damage and that the act or omission amounting to want of ordinary care or in defiance of duty or obligation on the part of the complaining party which conjointly with the other party's negligence was the proximate

¹ (2003) 8 SCC 731

cause of the accident renders it one to be the result of contributory negligence, would in fact go against the Appellant in as much as it is because of the sudden braking of the offending vehicle moving at high speed that the scooter which was being ridden by the deceased dashed into the left side rear wheel of the offending vehicle resulting in her falling down and sustaining serious injuries leading to her death.

19. With respect to the contention of the learned Counsel for the Appellant – Corporation that the deceased was not holding a valid driving license at the time of the accident, and therefore, the claim ought not be entertained, Ms. Deshmukh, learned Counsel for the Respondents – claimants, draws the attention of this Court to page 16 of the compilation which contains a photocopy of the driving license of the deceased and submits that the driving license was issued on 27th January 2014 and the date of the accident is 21st March 2014 which is subsequent to the date of issuance of the driving license and the same has not been disputed. She would, therefore, submit that, there is no substance in the said argument made on behalf of the Appellant – Corporation and deserves to be rejected *in limine*.

20. Learned counsel submits that therefore it is the driver of the offending vehicle who was fully negligent for causing the accident.

And though the claimants have not challenged the decision of the Tribunal in deducting compensation on the ground of 25% contributory negligence that has been saddled on the deceased, this Court may not only dismiss the appeal but pass appropriate orders.

21. Learned counsel for the claimants also draws the attention of this Court to an inadvertent error in the rate of interest on the compensation that would be payable to the Respondents. Learned counsel submits that in paragraph No.12 of the impugned judgment and award, although the Tribunal has clearly held that the Respondents would be liable to pay the compensation amount along with interest @7.5% per annum from the date of petition till realization of the amount, however, in the operative part of the order in clause (b) the figure for interest has been mentioned as 6% instead of 7.5% and that if the Court was inclined to dismiss the appeal the said error also be corrected.

22. Learned counsel for the Respondent claimants also submits that the entire decretal amount also be directed to be deposited in the event this Court dismisses the Appeal, in case the same has not already been deposited.

23. I have heard Mr.Vishwanath Patil, learned counsel for the Appellant Corporation as well as Ms.Yogita Deshmukh Chitnis, for the Respondent claimants and with their able assistance I have perused the papers and proceedings and considered the rival contentions.

24. It is not in dispute that the death of Tampha Devi Ngangom occurred due to the motor vehicle accident caused on 21st March 2014 at Chintamani Nagar, Bhaji Mandai, Hadapsar, Pune.

25. Coming firstly to the contention on behalf of the Appellant that the deceased was not holding a valid driving license at the time of the accident, from a perusal of a photocopy of the driving license of the deceased on page 16 of the compilation, I am fully in agreement with the submission of Ms.Deshmukh that the driving license which was issued to the deceased on 27th January 2014 cannot be said to be invalid or not in existence as the accident took place on 21st March 2014 and which document has not been disputed by the learned Counsel for the Appellant-Corporation. Rightly so, such argument deserves to be rejected in limine and is hereby rejected.

26. However, the principal issue raised on behalf of the Appellant – Corporation is that the accident was caused due to the negligence of the deceased and not due to the negligence of the driver of the water tanker bearing Registration No.MH-12-Q-2159. The Appellant-Corporation is, therefore, aggrieved that the Tribunal has held the deceased negligent only to the extent of 25% whereas the same should have been 100%. Learned Counsel for the Respondents has opposed the same and submits that it should have been the other way round and it is the Appellant Corporation who should be held to be 100% negligent as can be seen from the evidence on record.

27. True, that there is no eye witness to the accident. Both the learned Counsel have referred to *firyadi jabab* dated 22nd March 2014. Learned Counsel for the Appellant-Corporation has quoted the first paragraph to submit that the information given by the driver of the water tanker demonstrates how the accident involving the scooty of the deceased and water tanker driven by the driver took place due to fault of the deceased, which caused injury on the stomach of the deceased and as to how the driver himself took the deceased to the hospital to submit that the deceased was fully negligent and how the driver was behaving responsibly. I am afraid that the same is not correct. Infact, a perusal of paragraph 1 of the *firyadi jabab* at pages no.28 and 29 of the

compilation, relied upon by Counsel for the Appellant – Corporation records that, the deceased viz. Tampha Devi Ngangom was passing through Chintamani Nagar market at 9.50 a.m. on her scooty when the tanker driven by Balkrishna Sable hit her scooty which resulted in causing injury to her stomach. No doubt, the *firyadi jabab* also records that the driver of the said water tanker himself took the deceased to Yash Hospital at 10.00 a.m. and the deceased was admitted to the ICU Ward. Further, paragraph 2 of the *firyadi jabab* at page no.29 clearly indicates that the driver of the said water tanker applied sudden brakes due to which the scooty of the deceased which was behind the said water tanker dashed into the water tanker.

28. Not only that, what the learned Counsel for the Appellant also appears to have missed is that the *firyadi jabab* clearly records that on 21st March 2014, at around 10.00 a.m., the driver of the offending water tanker owned by the Appellant, was driving the water tanker and proceeding towards Ramtekdi from Uruli Devachi via Handewadi road in speed, when near Jain Township, Hadapsar, the water tanker suddenly applied brakes and the scooty behind the tanker rammed into the left rear wheel of the tanker due to which the deceased fell down, sustaining serious injuries resulting in her death due to inattentiveness and carelessness of the driver to keep a proper watch or look out.

29. Mr.Patil has also referred to the examination-in-chief of the driver of the water tanker to submit that the accident has taken place due to the sole and exclusive negligence on the part of the deceased herself and the learned Counsel has pointed out to that part of the affidavit which records that the deceased lost her balance on the vehicle and dashed to the left side of the rear wheel of the tanker causing the accident herself. Learned Counsel submitted that the driver has stated that he was at a very slow and moderate speed of 20 to 25 kms per hour and drove the said vehicle observing all the traffic rules and regulations and had also referred to the cross-examination of the driver to submit that the driver saw that the deceased lost her balance in the rear view mirror. A perusal of the affidavit of the driver dated 18th July 2019 which is five years after the date of the accident is clearly not reliable in as much as except confirming that the accident between the water tanker driven by him and the scooty ridden by the deceased, none of the facts find place in the police papers and the same cannot be considered to be credible. The further examination as well as cross-examination of the driver referred to by Mr.Patil clearly records that the affidavit was prepared by his Advocate and the same was read over and explained to him. Be that as it may, the cross-examination clearly records that the driver could not say, which police record showed the negligence of the deceased. All that he said therein is that it was not

true that the accident was caused because of his negligence and that he saw in the rear mirror that the deceased lost balance. The *firyadi jabab* as discussed above and even the crime details form relied upon by the learned Counsel for the Respondents, clearly indicate that the offending vehicle driven by the driver was coming from Handewadi side and going towards Hadapsar at a very high speed and mindlessly and suddenly applied brakes, due to which the vehicle of the deceased coming from behind the tanker dashed into the left rear wheel of the water tanker due to which the deceased fell down causing serious injuries leading to her death.

30. Therefore, although the first claimant is not an eye witness, however, his account of the accident based on the police papers including the First Information Report (FIR), Report, Inquest panchnama, Spot panchnama will need to be considered. Merely stating in the evidence that he saw in the rear view mirror that the deceased had lost her balance is not sufficient to prove that the deceased was negligent.

31. Clearly the record and the evidence suggest that the water tanker was being driven at a high speed and suddenly applied brakes. The deceased was riding her scooty from Jain township, Hadapsar and

going towards MIDC Kharadi for her job and dashed into the rear left wheel of the water tanker. When a vehicle such as the water tanker, as in this case, suddenly applies brakes, then it is imminent for a two wheeler behind the water tanker to dash into the same, following which the rider of the two wheeler would naturally lose balance and fall down. It is this losing of balance after the impact of the two wheeler with the water tanker that was seen by the driver of the offending vehicle in his rear view mirror and not that the two wheeler rammed into the water tanker after losing balance. The preponderance of probabilities clearly suggests this. Further, the Tribunal has also, in paragraph 7 of the impugned order, found that the negligence of the Respondent no.2 i.e. the driver of the offending vehicle is writ large and that the police papers clearly showed that the offence was registered against the driver for the said accident. The evidence clearly suggests that the driver of the water tanker was fully negligent in causing the accident resulting in the death of Tampha Devi Ngangom. No material or evidence has been brought to my notice to show that the deceased was negligent. However, surprisingly, even without bringing out the evidence with respect to any negligence on the part of the deceased, the Tribunal has unhesitatingly held that the deceased was negligent to the extent of 25% and despite observing that the evidence with respect to the examination of the driver cannot be of any greater

use to the Appellant-Corporation. In my view, on a perusal of the police papers and the evidence on record, no negligence can be attributed to the deceased. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of injuries sustained, the victim could not have been held guilty of contributory negligence.

32. As far as the reliance of the Counsel for the Appellant, on the decision of the Honourable Supreme Court in the case of ***Municipal Corporation of Greater Mumbai and Shri Laxman Iyer and Anr. (supra)*** is concerned, no doubt the principle that whichever party could have avoided the consequences of other's negligence would be liable for the accident and if the person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident, all other circumstances, by which the injury was caused, would not afford a defence to the other, however, in my view, the said principle would apply only in a case where there is a factual finding that the deceased has failed to observe, for the protection of the interest of the other person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. In the facts of the case at hand, clearly the driver of the water

tanker driven in speed, suddenly applied brakes due to which the scooty ridden by the deceased dashed to the rear left wheel of the water tanker making the deceased fall down and get seriously injured leading to her death, cannot be said to be a person who failed to observe a degree of care or precaution or vigilance. There is no evidence to suggest that. Moreover, these principles would apply provided the other person suffered any injury. Neither the pleadings nor the submissions of the learned Counsel for the Appellant Corporation suggest that the water tanker or the driver of the water tanker suffered any damage or injury due to the dashing of the scooty with the water tanker. Infact, as rightly submitted by the learned Counsel for the Respondents, the said decision would support the case of the Respondent claimants. The *firyadi jabab* clearly records that the driver of the offending vehicle was driving the said vehicle in speed and without proper watch or look out and suddenly applied brakes which caused the accident of the scooty with the water tanker leading to the death of the deceased. The injury resulting in death, has, infact, been suffered by the deceased. Learned Counsel for the Appellant has also relied upon this decision to submit that the deceased had the last opportunity to avoid the accident, and therefore, she was negligent. Firstly, as recorded in the said decision, the said doctrine is no longer applied. Secondly, even if the doctrine was applicable, considering that

the driver of the water tanker was admittedly driving ahead of the scooty, it was his duty or obligation to avoid the accident, as he had the last opportunity to avoid the accident. Therefore, reliance by the Appellant on this judgment is completely misplaced. It was for the driver of the offending vehicle to observe the degree of care, precaution and vigilance which the circumstances had demanded i.e. before suddenly applying the brakes to be mindful of the vehicle behind, which the driver in the facts of the case, proved by a preponderance of probabilities, had failed to observe, thereby being fully negligent in avoiding the accident. In the circumstances, I find that Tampha Devi Ngangom died in the motor vehicle accident caused on 21st March 2014 by rash and negligent driving of the driver of the water tanker bearing Registration No.MH-12-Q-2159.

33. I am, therefore, of the view that, the finding of the Tribunal with respect to the attribution of contributory negligence of accident to the extent of 25% upon the deceased, deserves to be set aside and is hereby set aside. Although this is an Appeal preferred by Corporation and neither any Appeal nor any Cross Objection has been filed by the Respondents-claimants, however, being mindful of the beneficial nature of the Motor Vehicle Legislation to award just compensation under Section 166 of the M.V. Act, I deem it appropriate to pass such an order.

34. My conscience is guided by the decisions of the Hon'ble Supreme Court in the cases of ***A.P.S.R.T.C Vs. M. Ramadevi and Ors.***², ***Sanobanu Nazirbhai Mirza & Ors. Vs. Ahmedabad Municipal Transport Service***³ as well as the decision of the Hon'ble Supreme Court in the case of ***Nagappa vs. Gurdial Singh and Ors.***⁴ relied upon in the above decisions. In the case of *A.P.S.R.T.C Vs. M. Ramadevi and Ors. (supra)*, the Hon'ble Supreme Court while deciding an Appeal filed by the Appellant Corporation against an order of the High Court enhancing the compensation awarded by the Tribunal, and where it was submitted on behalf of the said Corporation that when there was no Appeal by the claimants in the Appeal filed by the Appellant Corporation, the High Court should not have enhanced the amount, the Hon'ble Supreme Court relying upon the decision in the case of *Nagappa vs. Gurdial Singh and Ors. (supra)* held that under the M. V. Act, there is no restriction that the Tribunal / Court cannot award compensation amount exceeding the claim amount. The function of the Tribunal / Court is to award just compensation which is reasonable on the basis of evidence produced on record. The Hon'ble Supreme Court allowed the Appeal observing in paragraphs 7, 8 and 9 as under :

2 2008 (3) SCC 379

3 2013 ACJ 2733

4 2003 ACJ 12 (SC)

“7. Firstly, under the provisions of the Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act) there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is - it should be “just” compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. The other important part of the said Section is sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under sub- section (6) of Section 158 as an application for compensation under this Act." Hence, the Claims Tribunal in an appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed.

8. Sub-section (6) of Section 158 reads thus:
“158. Production of certain certificates, licence and permit in certain cases. -

(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer in charge of the police station

shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the insurer concerned , and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."

(emphasis supplied)

9. *It appears that due importance is not given to sub-section (4) of Section 166 which provides that the Tribunal shall treat any report of the accidents forwarded to it under sub-section (6) of Section 158, as an application for compensation under this Act.*

35. In *Sanobanu Nazirbhai Mirza & Ors. Vs. Ahmedabad Municipal Transport Service (supra)*, the Hon'ble Supreme Court was considering the challenge by the claimants to the decision of the Gujarat High Court where the Gujarat High Court modified the award of the Tribunal and directed the Appellants to refund an excess amount of Rs.99,500/- with interest at the rate of 9% per annum to the Respondent Corporation therein. The Hon'ble Supreme Court holding that the same was rightly challenged by the Appellants before the Hon'ble Supreme Court, observed that the approach of both the Tribunal as well as the High Court was erroneous approach to determine just and reasonable compensation in favour of the legal representatives of the deceased. In that case, both the Tribunal and the High Court had taken the notional income of the deceased as

Rs.15,000/- per annum to which Rs.30,000/- was added and divided by two, bringing it to a net income of Rs.22,500/- per year, which was interfered with by the High Court by taking Rs.15,000/- as notional income on the basis of the second schedule to Section 163-A of the M. V. Act. While holding that the deceased was working as a polisher which is a skilled job and setting aside the findings of the High Court on this issue and calculating Rs.16,96,000/- under the various heads of losses, to be awarded in favour of the Appellants / claimants, the Hon'ble Supreme Court clearly observed that though there is no specific mention regarding enhancing of compensation, as in the Appeal it has been basically requested by the Appellants to set aside the judgment and order passed by the High Court in the Appeal filed by the Respondents. Relying on paragraph 7 of the decision of the Hon'ble Supreme Court in the case of *Nagappa vs. Gurdial Singh and Ors. (supra)*, the Hon'ble Supreme Court held that the legal representatives of the deceased were entitled to the compensation as mentioned under the various heads in the table, even though certain claims were not preferred by them as the Hon'ble Supreme Court was of the view that they are legally and legitimately entitled to the said claims. Accordingly, the Hon'ble Supreme Court awarded compensation more than what was claimed by the Appellants stating

that it is the statutory duty of the Tribunal and the Appellate Court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held in a catena of cases. Paragraphs 8 and 9 of the said decision are usefully quoted as under :

“8. In view of the aforesaid fact, we have to hold that it would be just and proper for this court to take a sum of Rs.5000/- as the monthly income of the deceased having regard to the nature of job that the deceased was performing as a polisher, which is a skilled job, wherein the annual income would come to Rs.60,000/-. This Court in judgment of Santosh Devi V. National Insurance Co. Ltd., 2012 ACJ 1428 (SC), has held that an addition of 30% increase must be applied for increase in total income of the deceased over a period of time if he had been alive. Further, in the recent decision in Rajesh v. Rajbir Singh, 2013 ACJ 1403 (SC), this Court while referring to the case of Santosh Devi (supra) held that in the case of self-employed persons or persons with fixed wages, in case the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects of the deceased. Keeping in view the five dependants of the deceased in the case on hand, 1/5th amount is to be deducted for personal expenses. Having regard to the age of the deceased as 25, as mentioned in the post mortem report, which age is taken by both the Tribunal as well as the High Court, and keeping in mind the life expectancy of the deceased, multiplier of 20 must be applied to the multiplicand for the purpose of quantifying loss of dependancy. Further, following the decision of this Court in Rajesh V. Rajbir Singh (supra), Rs.1,00,000/- must be added under the head of loss of consortium and Rs.1,00,000 under the head of loss of care and guidance for minor children. Further, it was held by this Court in the case referred to supra that Rs. 25,000/- must be awarded for funeral expenses as this Court has made observations in the case referred to supra that the Tribunals have been frugal in

awarding the compensation under the head 'funeral expenses' and hence, we award Rs.25,000 under the head of funeral expenses to the claimants/legal representatives. Hence, the total compensation has to be assessed under the various heads as follows :

Sl.No.	Heads	Calculations
(i)	Income	Rs.5,000 p.m.
(ii)	50 percent of above to be added as future prospects [Rs.5,000 + Rs.2,500]	Rs.7,500 p.m.
(iii)	1/5th of (ii) to be deducted as per personal expenses of the deceased [Rs.7,500 – Rs.1,500]	Rs.6,000 p.m.
(iv)	Compensation after multiplier of 20 is applied [Rs.6,000 x 12 x 20]	Rs. 14,40,000
(v)	Loss of consortium	Rs. 1,00,000
(vi)	Loss of care and guidance for minor children	Rs. 1,00,000
(vii)	Funeral and obsequies expenses	Rs. 25,000
(viii)	Pain, loss and suffering	Rs. 25,000
(ix)	Medical expenses	Rs. 3,000
(x)	Attendant charges and transportation expenses	Rs. 3,000
Total compensation awarded		Rs.16,96,000

The amount of Rs.16,96,000/-as calculated above, under the various heads of losses, should be awarded in favour of appellants-claimants, though there is no specific mention regarding enhancing of compensation as in the appeal it has been basically requested by the appellants to set aside the judgment and order passed by the High Court in the appeal filed by the respondent. We must follow the legal principles of *Nagappa Vs. Gurudayal Singh & Ors.* 2003 ACJ 12 (SC) at para 7,

wherein with respect to the provisions of the M.V. Act, this Court has observed as under:

“(7)There is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is — it should be “just” compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.”

9. In view of the aforesaid decision of this Court, we are of the view that the legal representatives of the deceased are entitled to the compensation as mentioned under the various heads in the table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that they are legally and legitimately entitled for the said claims. Accordingly we award the compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this Court in a catena of cases. Therefore, this Court has awarded just and reasonable compensation in favour of the appellants as they filed application claiming compensation under Section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the absence of rebuttal

evidence adduced by the respondent, we determine just and reasonable compensation by awarding a total sum of Rs. 16,96,000/- with interest @ 7.5% from the date of filing the claim petition till the date payment is made to the appellants.”

36. Based on the aforesaid guiding principle as settled by the Hon'ble Supreme Court that the function of the Tribunal / Court is to award just compensation which is reasonable on the basis of evidence produced on record and even though the same may not be claimed or appealed for, and that there is no restriction that compensation could be awarded only up to the amount claimed by the claimants, although the Respondents claimants, as noted above, have not claimed and not filed an Appeal or a cross objection or a cross claim, this Court is of the view that the Tribunal will have to recompute the total compensation after deleting the deduction of 25% negligence erroneously attributed to the deceased, as that would be just, reasonable and proper.

37. The Tribunal is, therefore, directed to recompute the total compensation in view of the aforesaid discussion and modify the award accordingly. Learned Counsel for the Respondent has pointed out the discrepancy with respect to the rate of interest which the Tribunal will also correct and apply the rate of 7.5% per annum on the amount so recomputed from the date of the claim till payment to the Respondent claimants.

38. Let the balance amount of compensation as re-computed above be deposited in the Motor Accident Claims Tribunal, Pune, within a period of four weeks from the date of uploading of this order after which the Respondent claimants are at liberty to withdraw in accordance with the impugned judgment and award.

39. The Appeal stands disposed in the above terms. Parties to bear their own costs.

(ABHAY AHUJA, J.)