

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

FIRST APPEAL NO. 1122 OF 2015

The Manager,)
Thane Municipal Transport, undertaking)
Administrative Bhavan,)
Wagle Estate, Wagle Depot,)
Road No. 27, 16)
Thane (W) 400 604.)
(Owner of TMT bus. No.)
MH-04-G-8130)....Appellant
(Orig. Opp.)

Versus

1. Master Aarav Harshal Hadkar)
Age 4 years, Occ: Nil,)
2. Mr. Harshal Bpuji Hadkar,)
Age: 35 years, Occ: Service.)
3. Smt. Sulbha Bapuji Hadkar)
Age: 63 years, Occ: Housewife)
- Respondent No.1 since minor,)
Through his father and natural)
Guardian and next friend, the)
Respondent No.2.)
- All residing at A-103,)
Anjalika Pride Park,)
Ghodbunder Road, Thane.)
4. Mr. Arun Balu Jadhav)
Age:- Adult, Occ: Driver)
R/at:- Nilkanth Chawl)

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Davle Nagar, Behind Nakoda Building,)
 Lokmanya Nagar, Pada No.3,)
 Thane (W).)....Respondent
 (No.1 to 3 Ori. Claimants)

FIRST APPEAL NO. 1150 OF 2018

1. Master Aarav Harshal Hadkar, age 6 years)
 Occu: Student, son of the deceased.)
 2. Mr. Harshal Bapuji Hadkar, age 37 years,)
 Occu: - Service, husband of the deceased.)
 3. Smt. Sulbha Bapuji Hadkar, age about)
 65 years, Occu: Housewife, mother of)
 the deceased.)
- {Applicant No.1 being minor is represented)
 through his next friend, his father / natural)
 guardian i.e. applicant No.2})
- All appellants are residing at A- 103,)
 Anjalika, Pride Park, Ghodbunder Road,)
 Thane, PIN. 400601.)

... Appellants/
 Original Applicants

Versus

1. Mr. Arun Balu Jadhav, age adult,)
 Occupation Driver, R/at Nilkantha Chawl,)
 Davle Nagar, behind Nakoda building,)
 Lokmanya Nagar, Pada No.3, Thane (W))
 {Driver of TMT Bus No. MH-04-G-8130})
Respondent No.1
 Orig. Oppo. No.1
2. Thane Municipal Transport Undertaking,)

Through The Transport Manager, Having)
Office at Administrative Bhavan, Wagle Depot,)
Road No.27, 16, Wagle Estate, Thane (W))
{Owner of TMT Bus No. MH-04-G-8130})

...Respondent No.2
Opponent No.2.

Mr. Mandar Limaye for the Appellant in FA/1122/2015 and
Respondent No.2 in FA/1150/2018.

Ms. Rina Kundu for the Respondent in FA/1122/2015 and Appellant
in FA/1150/2018.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th DECEMBER, 2023.

Oral Judgment. :

1. The Appellant/Corporation has challenged, the judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short “the Tribunal”).

2. The Claimants have also filed Cross Appeal for enhancement of compensation, as Appeal and Cross Appeal are against the same judgment and order passed by the Tribunal. Hence, I am deciding it with this common judgment.

3. It is contention of learned counsel for the Appellant that

accident occurred due to contributory negligence of deceased, but this fact is not considered by the Tribunal. Learned counsel further submitted that driver of the TMT bus was proceeding on right side and he was taking turn at that time deceased who was riding on scooter gave dash to the TMT bus from back side. Due to dash deceased fell down and came under the left rear wheel of the TMT bus. There was no negligence of the driver of the TMT bus but, the Tribunal has considered 60% negligence of the bus driver and 40% of the deceased, which is not proper. The accident occurred due to sole negligence of the deceased. Hence, requested to allow the appeal. Learned counsel relied on *Municipal Corporation of Greater Bombay vs. Laxman Iyer and Another (2003) 8 SCC 731*.

4. It is contention of learned counsel for the Claimants that accident occurred due to sole negligence of the driver of TMT bus but, the Tribunal has wrongly fixed 40% liability on deceased. Learned counsel further submitted that driver has admitted in cross-examination that he did not see vehicle of deceased. She further submitted that, the Tribunal has considered monthly income of deceased on lower side and consortium amount is awarded on lower side. Hence, requested to allow the Cross Appeal and reject the Appeal

filed by the Appellant.

5. I have heard both learned counsel. Perused judgment and order passed by the Tribunal. It is Claimants' case that on 6th February, 2012 at about 8:00 a.m. deceased Tejal Hadkar was going on Honda Duo Scooter bearing No. MH-04-EM-3144 along with sister-in-law, who was a pillion rider. They were proceeding towards Thane station. Deceased was driving the scooter by extreme left side of the road in moderate speed and by following traffic rules. When the scooter reached in the vicinity of S.P. Joshi Chowk, at relevant time TMT bus bearing No. MH-04-G-8130 came from the back side in high and excessive speed and took sharp turn in rash and negligent manner and while overtaking the scooter of the deceased, the driver of the said bus lost control over his vehicle and dashed the scooter of the deceased from her back side. Due to dash deceased fell down and came under the left rear wheel of the TMT bus, deceased died on the spot.

6. While dealing with the issue of negligence, the Tribunal has considered that offence was registered against the driver of the TMT bus. The driver of TMT bus Arun Jadhav examined himself at Exhibit-57. He has stated that accident occurred due to negligence of

deceased. He was turning his bus to the left side, at that time Honda Duo Scooter came suddenly from left side in very high speed. When the TMT bus took left turn, at that time the rider of the scooter who wanted to go straight towards Wadia Hospital lost her control over the scooter and thus rider as well as pillion rider fell down as they had frightened at that time this witness noted that the pillion rider suddenly jumped down from the scooter and the rider of the scooter came under the left side rear wheel of the TMT bus. He further stated that there was not his mistake in the said accident. In cross-examination he admitted that he had not seen the scooter, which was on the left side of his bus. In an accident, the rear left side portion of the TMT bus came in contact with the scooter. He further admitted that instead of the departmental inquiry the punishment was imposed on him directly. From the evidence of this witness, it appears that though he has stated that deceased had given dash to rear side of his bus but this witness was not aware about it. To prove the negligence of the driver of TMT bus, the Claimants have examined eye witness of the incident Shri. Nitin Bhosle Newspaper Vendor at Exhibit-31 he has stated that on 6th February, 2012, he was present on his stall situated at Court Naka bus stop, he saw one lady with another lady

were coming on scooter, at that time one TMT bus over taken the said scooter in rash and negligence manner and turned left side while taking a turn bus dashed to the said scooter because of that rider of scooter lost balance and both ladies fell down and rider of the scooter came under the rear wheel of the TMT bus and sustained serious injury on the head. Nothing elicited in the cross-examination of this witness to disbelieve his evidence.

7. In my view, the newspaper vendor is independent witness who witnessed the incident supports the claimants' case that while taking turn on the curve the driver of the TMT bus was driving the bus rashly and negligently and he gave dash to the scooter of deceased but this fact is not considered by the Tribunal and has wrongly fixed 40% contributory negligence on the deceased, which is erroneous. Hence, I am setting aside this observation. Moreover, the spot panchnama shows the negligence of driver of the TMT bus, as color of the tin shed of the bus removed due to dash to the scooter. Considering evidence on record, I hold that accident was caused due to sole negligence of the driver of the TMT bus.

8. To prove the income of deceased the Claimants have examined Harshal Hadkar Claimant No.2, husband of deceased. He

has stated that deceased was in permanent service of M/s. Dun and Bradstreet Information Services India Pvt. Ltd. as Senior Analyst – Economic Analyst group. Her gross annual income was Rs.6,30,000/- in year 2008 and her gross annual income was Rs.7,95,100/- in 2010-2011 with Rs.20,000/- incentive. Nothing elicited in his cross-examination. To support the evidence of this witness, claimants have examined witness Amit Limaye (C.A.) at exhibit 26, he has stated that deceased Tejal was his client and he used to file her Income Tax Returns. He had filed income tax returns of deceased Tejal for assessment of year 2010-2011 and year 2011-2012 it is at Exhibits - 27 and 28. In cross-examination, this witness has admitted that the both these Income Tax Returns were prepared by him on the basis of form No.16. The Claimants examined witness Vijaya Prabhu Manager Legal and Compliance with Dun and Bradstreet Information Service India Private Limited at Exhibit-36. She has stated that deceased Tejal was working in their company as Senior Analyst and she was getting annual salary of Rs.8,15,000/-. Considering the evidence on record the Tribunal has considered annual income of deceased at Rs.6,64,233/-. I am unable to understand the income considered by the Tribunal, when it has come on record that yearly income of

deceased was more than Rs.8 Lakh. The revise salary annual compensation letter shows, which was filed before the Tribunal, as well as it has come on record in the evidence of Vijaya Prabhu that annual salary of deceased was Rs.8,15,000/-,but this fact is not considered by the Tribunal. Hence, I am considering her salary after deducting Rs.20,000/- incentive and deduction of income tax of Rs.19,968, it comes to Rs.7,75,132.

I have gone through case laws cited by the learned counsel for the Appellants, the facts of cited case and case in present case are different, as in present case eye witness has stated that accident occurred due to negligence of driver of TMT bus.

9. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)** each claimant is entitled for Rs.48,000/- as consortium amount and Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

10. Considering the above calculations, the claimants are entitled for following compensation.

Annual income	Rs.7,75,132/-
50% Future Prospects	Rs.3,87,566/-
Total Annual Income	Rs.11,62,698/-

1/3 Deduction for personal expenses	Rs.3,87,566 /-
Remaining 2/3 of income of the deceased for the family.	Rs.7,75,132/-
Rs.7,75,132/- X 16	Rs.1,24,02,112/-
Consortium (Rs.48,000/- X 3)	Rs.1,44,000/-
Funeral Expenses	Rs.18,000/-
Loss of Estate	Rs.18,000/-
Total Compensation	Rs. 1,25,82,112/-
Tribunal Awarded amount	Rs.60,14,223/-
Enhanced amount	Rs.65,67,889/-

The claimants are entitled for enhanced amount of Rs.65,67,889/-.

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

ORDER

- i. Appeal is dismissed and cross appeal is allowed.
- ii. The claimants are entitled for enhanced amount of Rs.65,67,889/- @ 7.5% interest from date of filing claim petition till realisation of the amount. Out of this amount Rs.1,80,000/- is consortium amount, the claimants are entitled @ 7.5% interest on this amount from 1st November, 2017 till realisation of the amount.
- iii. The Respondent/Corporation shall deposit enhanced amount along with interest within six

weeks after receipt of the order.

iv. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

v. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

11. Pending interim applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)