

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1350 OF 2011

Maharashtra State Road Transport Corporation	]	
Thane Divisional Office, Opposite Vandana Talkies,	]	 Appellant
Thane (West), Dist. Thane	]	(Orig.
Owner of M.Bus No. MH-12-CH-7322	]	Opponents)
Versus		
1. Prabhakar Rukka Shetty	]	
Aged about 52 years	]	
	]	
2. Rewati Prabhakar Shetty	]	
Aged about 46 years	]	
Residing at : 503, Aditya Complex, Adarsha Park	]	Respondents
Road 510, Kasal ali, Bhiwandi, District Thane	]	(Orig.Applicants)

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Mr. P.G.Lad a/w. Ms. Sayali Apte and Ms. Shreya Shah, Advocate for the Appellant.

Ms. Rina Kundu, Advocate for Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd DECEMBER, 2023

JUDGMENT :

1. The appellant Corporation has preferred this appeal against the Judgment and Order passed by the Motor Accident Claims Tribunal, Thane (for short “**the Tribunal**”). The respondents/claimants have also filed cross objection for enhancement of compensation amount. As appeal and cross objection are against the same Judgment and Order, hence I am deciding it with this common Judgment.

2. It is claimants case that on 15.12.2009 deceased Vijaysagar was riding on his Motorcycle bearing No. MH-04-CE-924 along with his friend who was pillion rider, from Sion to Mulund. When his motorcycle reached near traffic signal of Suman Nagar, Chembur, Mumbai on Mumbai-Thane highway, a S.T. bus bearing No. MH-12-CH-7322 came from their behind in high and excessive speed. Its driver was driving it rashly and negligently without observing the traffic rules and without taking care of vehicles on road, went towards its wrong side and dashed the motorcycle of Vijaysagar. Due to said dash, Vijaysagar fell on the road, wheel of the S.T.bus ran over him. Vijaysagar died while taking treatment. The offence was registered against the driver of S.T. bus.

3. It is the contention of learned counsel for the appellant/Corporation that accident occurred due to sole negligence of the deceased as his motorcycle dashed the S.T. bus but this fact is not considered by the Tribunal and has wrongly fixed liability on the bus driver of the Corporation which is erroneous, hence requested to allow the appeal.

4. It is the contention of learned counsel for the respondents/claimants that accident took place due to negligence of the driver of S.T. bus. While awarding compensation the Tribunal has not awarded future prospects it be awarded.

5. I have heard both the learned counsel. Perused the Judgment and

Order passed by the Tribunal. It is the contention of learned counsel for the appellant that accident occurred due to sole negligence of the deceased who was riding motorcycle. While dealing with this issue, the Tribunal has observed that offence was registered against the driver of S.T. bus. The driver of S.T. bus Suresh Khalle examined himself at Exhibit-27. In cross examination he has admitted that he has not witnessed the accident. The Tribunal has observed that evidence of S.T. driver is inconsistent with the defence hence it cannot be relied upon. Spot panchanama at Exhibit-17 shows that bus came from behind of the motorcycle of deceased from its left side and dashed the motorcycle. On that basis the Tribunal has observed that accident occurred due to negligence of the driver of S.T. bus. I do not find infirmity in it. As from the evidence on record and documents produced on record it appears that accident occurred due to negligence of the driver of S.T. bus. While awarding compensation 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 Sethi¹***, the claimants are entitled for future prospects. The deceased was the permanent employee of M/s. Shakti Power Tool Pvt. Ltd., Turbhe and at the time of accident, he was 20 years old hence he is entitled for 50% future prospects. The Tribunal has rounded up salary of deceased at Rs.3,00,000/- per annum. The Tribunal has awarded

¹ 2017 ACJ 2700 (SC)

consortium amount on lower side. As per the view of Hon'ble Apex Court *Magma General Insurance Co. Ltd. vs. Nanu Ram*², each claimant is entitled to Rs.48,000/- as consortium amount, Rs.18,000/- as a funeral expenses, Rs.18,000/- for loss of estate.

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

Particulars	Rs.	Entitlement
Annual Income	Rs.	3,00,000.00
50 % future prospects	Rs.	1,50,000.00
Total monthly income	Rs.	4,50,000.00
1/2 deduction for personal expenses	Rs.	2,25,000.00
Multiplier Rs. 2,25,000 X 18	Rs.	40,50,000.00
Consortium (Rs.48,000/- X 2 claimants)	Rs.	96,000.00
Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
Total	Rs.	41,82,000.00
Less compensation awarded by the Tribunal	Rs.	19,57,000.00
Enhanced amount	Rs.	22,25,000.00

The claimants are entitled for enhanced amount of Rs.22,25,000/-.

7. This Court while condoning delay for filing cross objection has directed that the claimants are not entitled for interest for delayed period of 12 years so claimants are not entitled for interest on enhanced amount.

8. In view of the above, I pass the following order :

2 2018 ACJ 2782 (SC)

ORDER

- i. The appeal is dismissed. The cross objection is allowed.
- ii. The claimants are entitled for enhanced amount of Rs.22,25,000/- @ 7.5 interest per annum from date of filing of the claim petition till realisation of the amount. Out of this amount Rs.1,32,000/- is consortium amount. The claimants are entitled for interest @7.5% per annum on this amount from 1st November, 2017 till realisation of the amount.
- iii. The claimants are not entitled for interest on enhanced amount for the period from 21.08.2011 to 20.03.2023.
- iv. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- v. The statutory amount deposited in First Appeal No. 1350 of 2011 be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

9. The appeal stands disposed of.