

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 2142 OF 2005**

1.Ranjana Baban Gurav & Ors.

....Appellants

Versus

Akber Travels of India & Anr.

....Respondents

Mr. T.J. Mendon Advocate for the Appellants

Mr. K.V. Sharafudeen i/b O.S. Kutty Advocate for the Respondent
No.1

Mr. Ketan Joshi Advocate for the Respondent No.2.

CORAM : S. G. DIGE, J.

DATE : 6TH FEBRUARY, 2023.

JUDGMENT :

1. The issue involved in this appeal is the contributory negligence of deceased considered by the Motor Accident Claims Tribunal, Mumbai (for short 'the Tribunal).

2. It is contention of learned counsel for appellant that the accident was occurred when deceased was crossing the road. It has come on record that the driver of offending bus i.e Respondent No.1 had seen the deceased while crossing road inspite of that he did not

apply break and gave dash to the deceased. There is eye witness to the incident. He has stated that Respondent No.2 drove the offending bus rashly and negligently and gave dash to the deceased. In spite of that the tribunal has fixed 60% liability on the deceased.

3. Learned counsel further submits that the Tribunal has not awarded future prospect and consortium amount. The Tribunal has wrongly deducted 1/3 amount for personal expenses it should be $\frac{1}{4}$ as there are 5 claimants. Hence, requested to allow the appeal.

4. Learned counsel for Respondent No.2 submits that it has come on record that the accident was occurred on highway. While crossing the highway, the deceased should have taken proper care but he did not take.

5. Learned counsel further submits that the eye witness who saw the incident has stated that deceased crossed the road quickly and while seeing the offending bus, he did not stop and he tried to cross the road quickly. It shows that accident was occurred due to sole negligence of deceased, but Tribunal has wrongly fixed 40%

liability on the driver of offending bus which is not proper. In view of that appeal be dismissed.

6. Leaned counsel for Respondent No.1 adopted the submission of learned counsel for Respondent No.2.

7. I have heard all learned counsel. Perused judgment and order. The issue involved in this appeal is of contributory negligence.

8. It is contention of learned counsel for appellant that the accident was occurred due to sole negligence of Respondent No. 1. Whereas it is contention of learned counsel for Respondent No. 2 that it was occurred due to sole negligence of deceased. The Tribunal has observed that deceased should have taken proper care while crossing the road on that basis, the Tribunal has fixed 60% negligence on deceased and 40% on Respondent No.1. It appears from evidence that the accident is witnessed by PW 2 Dada Shankar Kachawe Gurav, he has deposed at Exhibit-18. He has stated that on 28th September 1997 at about 3:50 PM, he was standing at the bus stop of Agripada, Santacruz (East) deceased Baban Gurav was his friend he saw him crossing the road from

East to West at that time, there was no traffic on the road. He crossed about 50% feet of the road from the divider. One bus came from Bandra side. It was in high speed. It gave dash to him, therefore, he felt unconscious on the road, that bus did not stop it went ahead.

9. In cross examination, he admitted that deceased did not stop on seeing that bus. Deceased was trying to cross the road quickly. The front portion of the bus hit the deceased.

10. It is contention of learned counsel for Respondent No.2 that these admissions given by eye witness clearly shows that there was negligence of the deceased.

11. In my view, this witness has clearly stated in his examination-in-chief that there was no traffic on the road and deceased had crossed about half portion of the road from the divider and the offending bus came from Bandra side. It shows that at time of crossing road by deceased, there was no bus coming from the other side, when deceased reached in the middle of the road suddenly the offending bus came. So, it does not prove the negligence of deceased as observed by the Tribunal. After crossing

half of the road, it is natural that while seeing bus, person may try to cross the remaining road quickly. So it does not amount to negligence by the pedestrian. Rather it would be negligence of driver of offending bus as he didn't apply brake after seeing that deceased was crossing the road, moreover after dashing the deceased bus didn't stop and went ahead it shows it was in high speed and driver was driving it in rash and negligent manner. Hence, the observation of Tribunal fixing the 60% negligence on the deceased is wrong. I am considering it 25% on deceased and 75% on Respondent No.1. The Tribunal has considered monthly income of deceased at Rs. 7,000/- per month. He was BMC employee. I do not find any infirmity in it.

12. The Tribunal has not awarded future prospect, as per the view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi, 2017 16 SCC 680**. The Claimants are entitled for 50% future prospects. The Tribunal has not awarded consortium amount as per the view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram, 2018 18 SCC 130**. Each Claimant is entitled for Rs. 40,000/- as consortium. There are five claimants. The Tribunal has deducted amount of Rs.1/3 for personal expenses. There are five claimants, it should be $\frac{1}{4}$.

13. Considering the above calculations, the appellants are entitled for following compensation :

Particulars	Amount
Monthly Income	Rs. 7000.00
50% future prospects	Rs. 3500.00
Total monthly Income	Rs. 10500.00
Annual Income 10500 X 12	Rs. 1,26,000.00
Rs.1,26,000/- X 15(multiplier)	Rs. 18,90,000.00
¼ Deduction for personal expenses	Rs. 4,72,500.00
Total Expenses	Rs. 14,17,500.00
Deductions towards 25% contributory negligence of deceased	Rs. 3,54,375.00
Total	Rs. 10,63,125.00
Consortium (Rs.40,000/- x 5 (claimants))	Rs. 2,20,000.00
Funeral Expenses and Loss of Estate	Rs. 33,000.00
Total	Rs. 13,16,125.00
Less Compensation awarded by the Tribunal	Rs. 3,56,000.00
Enhanced Compensation	Rs. 9,60,125.00

The claimants are entitled for an enhanced amount of Rs. 9,60,125/-.

14. In view of the above, I pass following order.

ORDER

- i. Appeal is allowed.
- ii. The Claimants are entitled for enhanced amount of Rs. 9,60,125/- @ 7% from the date of filing of claim petition till realization of amount out of this amount Rs. 2,53,000/- is amount of consortium, the Claimants are entitled 7% interest on this additional amount from 01.10.2017 till its realization.
- iii. The Respondents are directed to deposit the additional amount along with accrued interest thereon within six weeks from the receipt of the order. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- iv. Appeal is disposed off.

(S. G. DIGE, J.)