

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

FIRST APPEAL NO. 71 OF 2015

The General Manager,	)	
Bombay Electric Supply &	)	
Transport Undertaking,	)	
Electric House, Colaba,	)	
Mumbai - 400 001.	)	Appellant (Orig. Opp. Party)

Versus

1. Mr. Eugene Aleixo Maderia	)	
2. Mrs. Maria Eugene Maderia	)	
4, Asafa Manzil, Juhu Tara Road,	)	
Opp. Hotel Royal, Juhu, Mumbai- 49	)	Respondents (Orig. Applicant)

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Mr. Hemal i/b Navdeep Vora & Associates for the Appellant.
Mr. Navinchandra C. Sheth for the Respondent Nos. 1 & 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th APRIL 2023.

JUDGMENT. :

1. The issue involved in this appeal is contributory negligence of the deceased.

2. It is contention of learned counsel for the appellant that the accident occurred due to sole negligence of the deceased but, tribunal has not considered this fact and has fixed entire liability on the driver of appellant, which is improper. Learned counsel further submits that the tribunal has awarded exorbitant and excessive compensation, which is improper. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent/claimant that deceased was riding on motor bike. At that time, offending bus came from rear left side in fast speed and in rash and negligent manner and gave dash to the motorcycle of deceased. The FIR was lodged against the driver of offending bus. The FIR & spot panchanama shows that there was negligence of the driver of the offending bus. On that basis, tribunal has passed the order, which is proper. Learned counsel further submits that the tribunal has applied wrong multiplier. At the time of accident, deceased was 21 year old, so multiplier should be 18, the tribunal has applied 17. Learned counsel further submit that, tribunal has not awarded consortium amount, it be awarded.

4. It is contention of learned counsel for the appellant that in the appeal filed by the appellant, the claimant is not entitled for consortium amount.

5. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short 'the Tribunal').

6. It is claimant's case that, on 28th May, 2005 at about 18:30 hrs. deceased was riding on motor bike. When he was on Andheri-Kurla Road, Marole, Mumbai, the offending bus No. MH-01-9732 came from left side in fast speed and in rash and negligent manner and gave dash to the bike of deceased, deceased was dragged on the road and expired while taking treatment. An offense was registered against the driver of offending bus. While dealing with the issue of negligence, the tribunal has observed that the FIR was lodged by the one traffic police naik, Shri. Dilip Devkar. The FIR was lodged immediately after the accident. From the contents of the FIR, it reveals that while turning left, the bus gave dash by its rear side to the bike of deceased. Hence, he fell down, sustained injuries and

succumbed to injuries. To prove the negligence of the deceased, the appellant has examined driver of the offending vehicle, Vasant D. Sawant at Exhibit-'37'. He has stated that deceased was trying to overtake his bus, while doing so, he gave dash to his bus, on right backside. The deceased fell on the road and sustained injuries. In cross-examination, this witness admitted that he got down from the driving seat after 10 minutes of the accident. The accident took place because of his vehicle. There was bus stop at about 10 to 15 meter ahead. He further admitted that his bus was required to go by left side of the road and his bus was on the right side of the road. From the evidence of this witness, it reveals that accident occurred due to his vehicle. Bus of this witness was on right side, when it was supposed to be on left side. The claimant has examined PW-2 Dilip Devkar (Traffic Police) who lodged FIR. He has stated that, at about 6:30 p.m., when he was on duty, he heard noise of the accident. He went on the spot, he saw that there was accident between two vehicles i.e. best bus and motorcycle. He lodged F.I.R. The FIR is at Exhibit-'24' and spot panchanama is at Exhibit-'25'. Nothing elicited in his cross-examination. The claimant examined PW-3 Abdul Khan at Exhibit-'26', who witnessed the accident. He stated that on 28th May,

2005 he was standing on the corner of Mittal Industrial Lane. The motorcycle was ahead of the best bus, the bus gave dash to the motorcycle. He saw the accident from the distance of 40 feet, passengers were beating the driver of Best Bus as he had given dash to the motorcycle, the injured was taken to the hospital. This witness further stated that accident occurred due to rash and negligent driving of the driver of best bus. In cross-examination, this witness admitted that his statement was recorded after 2-3 days of accident. From the evidence of eye witness and police constable who are independent witness, it reveals that the accident occurred due to sole negligence of the driver of offending bus. I do not see merit in contention of learned counsel for the appellant that there was sole or contributory negligence of deceased in the said accident. While calculating the compensation, the tribunal has applied multiplier of 17. At the time of accident the deceased was 21 year old, the multiplier should be 18. Hence, I am considering multiplier 18. The tribunal has not awarded the consortium amount. It is contention of learned counsel for the appellant that without filing appeal the claimants are not entitled for consortium amount. In my view, it is settled principle of law that the claimants are entitled for just

compensation. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for Rs.40,000/- as consortium amount, Rs.15000/- for funeral expense and Rs.15,000/- for loss of estate. There are two claimants, hence, they are entitled for Rs. 80,000/- as consortium amount.

7. In view of the above calculations, the claimants are entitled for following compensation :

Particulars	Rs.	Amount
Annual Income 10500 X 12	Rs.	1,62,084.00
Rs.1,62,084/- X 18(multiplier)	Rs.	29,17,512.00
1/2 Deduction for personal expenses	Rs.	14,58,756.00
Total	Rs.	14,58,756.00
Add : Consortium (Rs.40,000/- x 2 claimants))	Rs.	80,000.00
Add : Funeral Expenses	Rs.	15,000.00
Add : Loss of Estate	Rs.	15,000.00
Total Compensation	Rs.	15,68,756.00

The Tribunal has awarded compensation of Rs.14,02,714/-, if this amount is deducted from the amount of

Rs.15,68,756/- considered by this Court, it comes to Rs.1,66,042/-.

The claimants are entitled for this additional amount.

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

ORDER

- i. Appeal is dismissed. No order as to cost.
- ii. The claimant is entitled for enhanced amount of Rs. 1,66,042/- along with @ 7.5% per annum from date of filing application, till realization of amount. Out of this amount Rs.1,10,000/- is consortium amount, the claimants are entitled for interest @ 7.5% on this amount from 1st October, 2017 till realization of amount.
- iii. The respondents are directed to deposit the enhanced amount along with accrued interest thereon, within six weeks after receipt of the order.
- iv. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

- v. The statutory amount be transmitted to the tribunal.

The parties are at liberty to withdraw it, as per Rule.

8. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)