

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

FIRST APPEAL NO.1388 OF 2004

Maharashtra State Road Transport	}	
Corporation having its office	}	
at Vahatuk Bhavan, Dr. A. Nair Marg,	}	
Bellasis Road, Bombay Central	}	
Bombay – 400 008.	}	...APPELLANT
		(Org. Respondent)

Versus

1. Dyaneshwar Nathaji Shinde	}	
2. Vatsala Shankar Shinde	}	
All R/o: Lingnoor, Tal. Miraj,	}	
Dist. Sangli.	}	...RESPONDENTS
		(orig. claimants)

Ms. P. M. Bhansali i/by G. S. Hegde & Associate for the Appellants.
Mr. Tejpal Ingle for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATED : 21st APRIL, 2023

JUDGMENT:

1. The issues involved in this Appeal are the accident occurred due to sole negligence of deceased and the Tribunal has considered monthly income of deceased on higher side.

2. It is contention of learned counsel for the appellant that accident occurred on head collusion between two vehicles i.e. truck and bus. The accident occurred due to sole negligence of the deceased, who was driver of truck. But Tribunal has considered

the negligence of bus driver, which is not proper. Learned counsel further submits that Tribunal has considered monthly income of deceased at Rs.5,000/- per month, which is on higher side and on that basis compensation is awarded. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for respondents-claimants that accident occurred due to sole negligence of bus driver, the passengers of the bus gave statements to the Police that, bus was in high speed. The Tribunal has considered all the aspects and on that basis award is passed. No interference is required in it.

4. I have heard both learned counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal, Sangli (for short 'the Tribunal'). While dealing with the issue of negligence, the Tribunal has observed that from the evidence of PW-2 Tanaji Kore the cleaner on truck. He has stated that, the offending bus was in high speed and bus driver could not control his vehicle and gave dash to the truck, this witness thrown out of his seat and the truck got dragged backward for some distance. Considering the evidence of this witness and Police papers produced on record i.e. FIR it was lodged against the bus driver. The statement of passengers in the bus they have stated that, bus was in excessive and high speed. The Tribunal has considered that accident occurred due to sole negligence of bus driver. I do not find any infirmity in it. As FIR is lodged by the Police, after making enquiry with the passengers and persons who

saw the accident, they stated that, accident occurred due to negligence of the bus driver. The observations of Tribunal is proper.

5. While considering the income of deceased, the claimant No.1 Shalan Shinde, at Exhibit-25 has stated that, her husband was doing transport business and he himself was driving his truck bearing No.MH-09-A-6146. Her husband had purchased truck for Rs.4,50,000/-. He had taken loan of Rs.1,75,000/- from Ashta People Cooperative Bank Arag Branch. She further stated that, her husband had employed one Khandu Desai, as driver in case of need. He used to give him amount of Rs.3,000/- per month as a salary and Bhatta of Rs.50/- per day. Cleaner by named Tanaji Kore, was also employed by her husband. He was paid salary of Rs.1,000/- per month and Bhatta of Rs.40/- per day. Her husband used to give amount to this witness about Rs.8000/- to Rs.9,000/- per month for household expenditure. Out of the loan amount, he had repaid amount of Rs.1,00,000/-. Rest of the amount was outstanding. Nothing elicited in the cross-examination of this witness. The claimants have examined Tanaji Kore at Exhibit-26, he has stated that he was working as a cleaner on truck of deceased and he was getting salary of Rs.1,000/- per month and Bhatta of Rs.40/- per day. He also stated that another driver was employed by the deceased and he was getting salary of Rs.2,000/- per month and Rs.50/- per day bhatta. The Claimants have examined Sarjerao Tambavekar at Exhibit-44, who was working as Manager in head office of Shri Ganesh Nagari Sahakari Patsanstha,

Ashta. This witness has stated that deceased had purchased truck for Rs.3,85,000/- and this Patsanstha of this witness had given loan of Rs.1,75,000/- to the deceased. From the evidence of this witness, it reveals that, deceased was doing the business of transport and also doing driving work. The income of deceased considered by the Tribunal of Rs.5,000/- per month is proper.

6. The Tribunal has applied multiplier of 14. At the time of accident, deceased was 36 year old. So proper multiplier is 15. The Tribunal has awarded compensation of Rs.5,000/- which is on lower side. As per view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram**,¹ each claimant is entitled to Rs.40,000/- as consortium with 10% increase and Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate. Considering the above calculations, the claimants are entitled for following compensation :-

Particulars	Amount
Monthly Income	Rs. 5000.00
Annual Income Rs.5000X12(months)	Rs. 60,000.00
Rs.60,000X15 (multiplier)	Rs. 9,00,000.00
Add Consortium amount (4 claimants) (Rs.44,000X4)	Rs. 1,76,000.00
Add Funeral expenses and loss of estate (Rs.16,500+16,500)	Rs. 33,000.00
Total entitled compensation	Rs. 11,09,000.00
(Less) Compensation awarded by Tribunal	Rs. 8,75,000.00

1. 2018 ACJ 2782 (SC)

Total compensation payable Rs. **2,34,000.00**

7. The Tribunal has awarded Rs.8,75,000/-, if this amount is deducted from the amount considered by this Court of Rs.11,09,000/- it comes to Rs.2,34,000/-. The claimants are entitled for this amount. In view of the above, I pass following order:-

O R D E R

- (i) The Appeal is dismissed. No order as to cost.
 - (ii) The claimants are entitled for additional amount of Rs.2,34,000/- @ 7.5% per annum from the date of filing of claim petition till realization of the amount, out of this amount Rs.2,09,000/- is consortium amount, the claimants are entitled @ 7.5% per annum on this amount, from 1st November, 2017 till realization of the amount.
 - (iii) The Appellant is directed to deposit additional amount along with accrued interest thereon, within eight weeks after the receipt of the order.
 - (iv) The claimants are permitted to withdraw deposited amount along with accrued interest thereon.
 - (iv) The statutory amount be transmitted to the Tribunal. The parties are at liberty to withdraw it as per rule.
8. Pending applications, if any, are also disposed of.

(SHIVKUMAR DIGE, J.)