



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

202 FIRST APPEAL NO. 985 OF 2007

The Depot Manager,
Maharashtra State Road Transport
Corporation, Jalgaon office, Jalgaon.

...Appellant
(Original Respondent)

VERSUS

1. Sunita w/o Dilip Sonawane,
Age 30 years, Occ. Household,
2. Pooja d/o Dilip Sonawane,
Age 13 years, Occ. Nil,
3. Rahul s/o Dilip Sonawane,
Age 11 years, Occ. Nil,
4. Swapnil s/o Dilip Sonawane,
Age 7 years, Occ. Nil,

(Respondents No.2 to 4 are minors,
therefore represented by heir natural
guardian mother i.e. respondent No.1)

All R/o Asoda, Taluka Jhalgaon,
District Jalgaon.

(Original Petitioners)

5. Premsing s/o Manga Sonawane,
Age 47 years, Occ. S. T. Driver,
R/o and C/o S. T. Depot, Jalgaon
District Jalgaon. (**Appeal Dismissed
as per Court's order dated 04/09/2015**).
6. Sunil s/o Vishnu Narkhade,
Age 35 years, Occ. Rickshaw Driver,
7. Shantaram s/o Narayan Mali,
Age 37 years, occ. Rickshaw Owner,
Respondents No.6 and 7.
R/o Asoda, Taluka and Dist. Jalgaon.
8. Ramesh s/o Tukaram Chaudhari,
Age years, Occ. Rickshaw Owner,
R/o Lohar Lane, Varangaon,
Taluka Bhusawal, Dist. Jalgaon.

9. The Divisional Manager,
New India Insurance Co. Ltd.,
Dadhiwala Bunglow, Jalgaon
District Jalgaon.
10. Smt. Kashabai Pandit Sonawane,
Age 52 years, occ.Service,
R/o Manmad, Dist. Nasik.

...Respondents

Advocate for Appellant : Mr. M. K. Goyanka
Advocate for Respondent No.9 : Mr. Dhananjay Deshpande
Advocate for Respondents No.1 to 4 : Mr. G. V. Wani

**WITH
CIVIL APPLICATION NO. 5532 OF 2006
IN FA/985/2007**

**WITH
FIRST APPEAL NO. 341 OF 2011**

New India Assurance Co. Ltd.,
through its Div. Manager, Mandore
Market Behind Dahiwala Bunglow,
Jalgaon Through its authorized
Signatory, Mr. Sanjiv s/o Ramrao
Gaisamudre, Age 50 years, Occ.
Service, Sr. Div. Manager, New
India Assurance Co. Ltd., R/o
Aurangabad.

...Appellant
(Original Resp.No.5)

VERSUS

1. Sharad Shantaram Patil,
Age 39 years, Occ. Service,
R/o Asoda, Tq. Dist. Jalgaon. (Orig.Claimant)
2. Premsing Manga Sonawane,
Age 51 years, Occ.Service,
S.T.Depot, Jalgaon Dist.Jalgaon.

3. The Divisional Controller,
MSRTC Jalgaon, New Bus Stand
Premises, Zilla Peth Jalgaon.
4. Sunil Vishnu Narkhede,
Age 41 years, Occ. Rickshaw Driver,
R/o Asoda, Tq. Dist. Jalgaon.
5. Ramesh Tukaram Chaudhari,
Age 45 years, Occ. Business,
R/o Lohar Galli, Varangaon,
Tq. Bhusawal, Dist. Jalgaon.

...Respondents

(Orig.Claimant and Resp.No.1 to 4)

Advocate for Appellant : Mr. Dhananjay Deshpande
Advocate for Respondents No.1 to 4 : Mr. G. V. Wani

...

...

**WITH
CIVIL APPLICATION NO. 3433 OF 2011
IN FA/341/2011**

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CORAM : ARUN R. PEDNEKER, J.

Dated : September 5, 2024.

ORAL JUDGMENT :-

1. Heard the learned counsel for the parties.
2. The appellant, MSRTC, challenges the order passed by the Motor Accident Claims Tribunal, in MACP No.590/199, dated 08/08/2005, which granted compensation to the claimants, dependents of the deceased, who was traveling in the auto-rickshaw that met with an accident involving an MSRTC bus.

3. The brief facts of the case are as follows :-

On 10/09/1998, Dilip Pandit Sonawane was traveling in auto-rickshaw from Jalgaon to Asoda. At around 6:00 p.m., near Khari Doha, the auto-rickshaw collided with MSRTC bus bearing No. MH-20/A-4697 coming from the opposite direction. The auto-rickshaw, bearing No. MH-19/8141, in which Dilip Sonawane was traveling, was involved in the collision, resulting in his death at the spot. The claimants, being the legal heirs and dependents of late Dilip Sonawane, filed a claim petition against MSRTC, the auto-rickshaw owner, and its insurer, seeking compensation for loss of dependency.

4. After considering the evidence, the Tribunal held that the MSRTC bus driver was solely negligent in causing the accident and directed MSRTC to pay the entire compensation amounting of Rs.3,60,788/- to the dependents. The Tribunal based its calculation considering the deceased's monthly income of Rs. 2,583/- and his age at the time of accident being 32 years.

5. Challenging this order, the learned Counsel for the MSRTC contends that the case involved contributory negligence and that both the auto-rickshaw owner and its insurer should bear a portion of the

liability. The learned counsel for MSRTC argued that the auto-rickshaw was also partially responsible for the accident. The learned counsel for MSRTC referred to the spot panchanama, the complaint filed by occupant of the rickshaw, and the testimony of the rickshaw driver. He submits that the rickshaw driver was an interested witness who shifted the entire blame on to the driver of the MSRTC bus. The spot panchanama and the complaint indicated that the auto-rickshaw was also partially responsible, and thus the compensation should have been apportioned between the owners of both vehicles.

6. After reviewing the original record, with the assistance of learned counsel Mr. M. K. Goyanka for appellant/ MSRTC and learned Counsel Mr. D. P. Deshpande for respondent No.9/ Insurance Company, it is to be noted that the learned Motor Accident Claim Tribunal has observed that the road where the accident occurred was 18 feet wide, with 11 feet occupied by the bus. The auto-rickshaw on impact was taken off the road and went on to the mud lane. It was also established that the bus had only one functioning headlight on the left side. The accident occurred in the evening during rain, reducing visibility. While both drivers were driving vehicles in high speed, the totality of the circumstances and the complaint filed by the rickshaw occupant, along with the chargesheet filed against the drivers of both the vehicles,

suggest that the auto-rickshaw was 25% responsible for the accident, and MSRTC was 75% responsible. Therefore, the apportionment should be 75% to MSRTC and 25% to the auto-rickshaw owner and its insurer.

7. Regarding the compensation awarded, although the Tribunal computed it based on the deceased's monthly income of Rs. 2,583/-, it appears that the further compensation under various heads was not correctly calculated as per ratio laid down in ***National Insurance Co. Ltd. v. Pranay Sethi & Ors. [(2017) 16 SCC 680]***. The Hon'ble Supreme Court in the case of ***Jitendra Trivedi & Ors. vs. Kasam Daud Kumbhar & Ors. [(2015) 4 SCC 237]*** has held that compensation must be just, even if no cross-objections or appeals are filed by the claimants, the same should be granted by the High Court.

8. After applying the appropriate multiplier and adding conventional heads as per ***Pranay Sethi*** (supra) and ***Magma General Insurance Co. Ltd. v. Nanu Ram & Ors. [(2018) 18 SCC 130]***, the revised compensation amount is Rs.4,27,356/- with interest at 7% per annum from the date of filing the claim petition.

9. Accordingly, the claimants, who were awarded Rs.3,60,788/- by the Tribunal, are entitled to an enhanced compensation of Rs.4,27,356/-

with 7% interest from the date of filing the claim. The computation is as follows :

Particulars	Amount
Monthly income of the deceased	Rs. 2,583/-
50% future prospects (as per <i>Sarla Verma</i>)	Rs. 1,292/-
Total	Rs. 3,875/-
1/4th deduction for personal expenses	Rs. 968/-
Total (after deductions)	Rs. 2,907/-
Rs. 2,907 x 12 (months) x 16 (multiplier)	Rs. 5,58,144/-
Consortium (Rs. 40,000 x 5 claimants)	Rs. 2,00,000/-
Loss of estate	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
Total compensation	Rs. 7,88,144/-
Granted by the Tribunal	Rs. 3,60,788/-
Enhanced compensation	Rs. 4,27,356/-

10. In light of the above, the apportionment as made in First Appeal No.985/2007 would also apply to First Appeal No.341/2011. First Appeal No.341/2011 relates to injury claim and the apportionment of compensation would be 75% by MSRTC and 25% jointly and severally by auto-rickshaw driver/ respondent No.4, owner/ respondent No.5 and insurance of auto-rickshaw / petitioner. The enhanced amount is directed to be deposited within eight weeks from the date of this judgment before the Motor Accident Claims Tribunal. The amount already deposited in this Court, if any, shall be transferred to the Motor Accident Claims Tribunal, Jalgaon in Motor Accident Claim Petitions

No.590/1999 and No.217/2000 for disbursement as per the law. Accordingly, the FA/985/2007 is disposed of in above terms and FA/341/2011 stands partly allowed with modification as above. Pending applications stand disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.