IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1429 OF 2016

1. Smt. Pratibha Narayan Pawar
Age- 26 years, Occupation- Household

2. Chi. Aman Narayan Pawar
Age- 6 years, Occupation-Education

3. Chi. Moti Narayan Pawar
Age- 4 years, Occupation- Education

4. Shri. Pandharinath Gangaram Pawar
Age- 60 years, Occupation- Nil

5. Sau. Indubai Pandharinath Pawar
Age- 54 years, Occupation- Household
[Appellant No. 1 is mother and natural guardian of Appellant No. 2 and 3 who are her sons].
All R/o. Karmad Bk., Tal. Parola,
District- Jalgaon. ...APPELLANTS
[Ori. Claimants]

VERSUS

1. Shri. Subhash Sitaram Borkar
Age- Major, Occupation- Service,
R/o. Korali, Tql. Kamthi, Dist. Nagpur.

[Respondent No. 1 Deleted as per order dated 29.01.2018]

2. The Maharashtra State Road Transport Corporation, Through its Divisional Manager,
MSRTC, Jalgaon. ...RESPONDENT
[Ori. Respondent]

Mr. M.M. Bhokarikar, Advocate for claimants
Mr. M.K. Goyanka, Advocate for respondent No. 2

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Bhagyawant Punde

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 28th AUGUST, 2024

JUDGMENT :

1. By this appeal filed under Section 173 of Motor Vehicles Act, claimants challenge judgment and award dated 02.02.2016 passed by Chairman, Motor Accident Claims Tribunal, Jalgaon in M.A.C.P. No. 550 of 2009.

2. Narayan Pandharinath Pawar was proceeding on motorcycle bearing registration No. MH-18-Y-3540 from Jalgaon towards Erandol on 11.11.2009. At about 8.30 am, near Paldhi bypass on National Highway No. 6, S.T. bus No. MH-4-U-8842 came from opposite direction in high speed and gave dash to the motorcycle, Narayan came under the wheels and died on the spot.

3. Claimants filed claim petition claiming compensation of Rs. 40,00,000/- contending that deceased was 33 years old at the time of accident and was employed in Indian Army and was earning monthly salary of Rs. 25,000/-.

Respondent No. 1/driver did not appear in the Tribunal, hence, *ex-parte* order was passed against him.

Respondent No. 2/MSRTC opposed the claim by filing written statement and claimed that deceased himself was rash and negligent and has contributed to the accident.

4. The Tribunal after recording evidence partly allowed the claim and directed respondent No. 2/MSRTC and driver to jointly and severally pay compensation of Rs. 39,09,000/- along with interest @ 7.5% per annum. Being aggrieved by inadequate compensation claimants have preferred this appeal.

5. Heard learned advocate for claimants and learned advocate for MSRTC.

6. Learned advocate for claimants submits that claimants have brought salary slip of the deceased on record, which shows that his salary at the time of accident was Rs. 20,465/-, the same should have been taken into consideration by the Tribunal for calculating the compensation amount. The Tribunal has erred in deducting Rs. 1,000/- from the salary of deceased towards income tax and profession tax. A finding of the tribunal that there was 15% contributory negligence on the part of deceased as the deceased was not wearing helmet at the time of accident is unacceptable in view of decision in ***Anjana Narayan Kambale Vs. Branch Manager, Reliance General***

Insurance Company Ltd., AIROnline 2022 Sc 1562. He therefore submits that claimants are entitled for enhanced compensation. He relied on ***National Insurance Company Co. Ltd. vs. Pranay Sethi and others***, AIR 2017 SC 5157, in support of his arguments.

7. Learned advocate for respondent No. 2/MSRTC, on the other hand, supported the impugned judgment and award. He submits that in fact taking into consideration the income tax payable for the assessment year 2009-2010 relevant to financial year 2008-2009, 10% amount exceeding Rs. 1,50,000/- is liable to be deducted towards income tax. Hence, Tribunal has rightly deducted Rs. 1,000/- from the salary of the deceased. On the point of contributory negligence, he fairly conceded that in view of decision of Anjana Kambale (supra), the Apex Court has clarified the position and therefore, said finding of the Tribunal in respect of contributory negligence is not sustainable. He therefore submits that there is no merit in the appeal and appeal is liable to be dismissed.

8. Heard learned advocate for claimants and learned advocate for MSRTC at length. Perused the record.

9. Accidental death of the deceased is not in dispute. The Tribunal has held that since the deceased was not wearing helmet at the time of accident, there was contributory negligence on the part of deceased and hence 15% amount is deducted from the compensation. Said finding is unsustainable in view of ratio in Anjana Kambale (supra), wherein it is held:

> *"7. In the present case, there is no such evidence of contributory negligence except fact of three riders on the motor cycle and of not wearing helmet by the deceased. Therefore, in view of the enunciation of law, we find that the High Court was not justified in deducting 30% of the amount of compensation assessed by the Tribunal for the reason that the deceased was triple riding the Motor Cycle or was not wearing a helmet. The violation of rules for driving of motor vehicle is not a ground to deduct the amount of compensation awarded unless there is proof of either the accident could have been averted or the impact could have been minimized."*

10. Claimants have produced salary slip (Exhibit-55) of deceased on record, which shows that total salary of deceased for the month of October-2009 was Rs. 20,465/-. The salary slip does not indicate any deductions towards income tax or profession tax. In the financial year 2008-2009 income up to Rs. 1,50,000/- was exempted from income tax. 10% income tax was to be paid on the amount exceeding Rs. 1,50,000/-. Annual

gross income of deceased comes to Rs. 2,45,580/- (20,465 x 12). Thus, taxable income of the deceased comes to Rs. 95,580/-. By deducting 10% income tax of Rs. 9558/- and profession tax of Rs. 2400/- annual net income of the deceased is assessed at Rs. 2,33,622/-.

11. By relying on Pranay Sethi (supra) claimants are right in contending that the Tribunal has awarded inadequate compensation of Rs. 1,00,000/- towards loss of consortium. In terms of Pranay Sethi (supra), claimants are entitled for loss of consortium @ Rs. 40,000/- each and Rs. 15,000/- towards loss of estate. The Tribunal has erred in awarding Rs. 2,10,000/- towards loss of love and affection. Funeral expenses of Rs. 25,000/- awarded by the Tribunal are not liable to be disturbed in the facts of the present case. Claimants are therefore entitled for following compensation:

Sr. No.	Heads	Amount in Rs.
1	Annual Salary + 50% future prospects (2,33,622+1,16,811/-)	3,50,433/-
2	1/4th deduction towards personal expenses i.e. Rs. 87,608.25/- which is rounded off to Rs. 87,608/- (3,50,433-87,608)	2,62,825/-
3	Annual Dependency multiplied	42,05,200/-

	by multiplier of 16 (2,62,825 X 16)	
4	Compensation towards Non Pecuniary damages i) Loss of Consortium- 40,000/- each i.e. 5 claimants Rs. 2,00,000/- ii) Funeral Expenses- Rs. 25,000/- iii) Loss of Estate- Rs. 15,000/-	2,40,000/-
5	**Total Compensation needs to be awarded**	**44,45,200/-**
6	Compensation awarded by Tribunal	39,09,000/-
7	**Total Enhanced compensation (44,45,200 – 39,09,000)**	**5,36,200/-**

12. In the result, following order:

ORDER

I) First Appeal is partly allowed with proportionate costs.

II) Impugned Judgment and Award dated 02.02.2016 passed by Chairman, Motor Accident Claims Tribunal, Jalgaon in M.A.C.P. No. 550 of 2009 is modified to the effect that claimants are held entitled for enhanced compensation of Rs. 5,36,200/- to be paid by respondent No. 2 along with interest @ 7.5 per annum from the date of filing of petition till realization.

III) Respondent No. 2 shall deposit the enhanced compensation amount along with accrued interest in the Tribunal within 12 weeks from the date of uploading of this judgment.

IV) Claimants to pay court fees on enhanced compensation as per rules.

V) Rest of the award is maintained.

[NITIN B. SURYAWANSHI, J.]

Bhagyawant Punde