



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

FIRST APPEAL NO. 3560 OF 2016

Maharashtra State Road Transport Corporation
through the Divisional controller
Shrikant Madhukar Gabane
age 42 years, occ. Divisional Controller
r/o c/o Maharashtra State Road Transportation
Corporation, Division Parbhani
Gangakhed Road, Parbhani
Tq. & Dist. Parbhani.

.. Appellant

Versus

1. Mayuri w/o Vinodrao Shahane
age 30 years, occ. Household
2. Varad s/o Vinodrao Shahane
age 9 years, occ. Education
3. Mahi d/o Vinodrao Shahane
age 4 years, occ. Nil

Respondents No. 2 and 3 are minors
hence through Mother, respondent No. 1.

4. Vimalbai w/o vijaykumar Shahane
age 59 years, oc. Household

All r/o Lokmanya Nagar, Parbhani
Tq. & Dist. Parbhani.

5. Shashikant s/o sitaram Navale
age 48 years, occ. Business
r/o Karegaon, Tq. Shirur
Dist. Pune.
6. The New India Insurance Co. Ltd.
Through its Branch Manager
2nd floor, Yasodeep building

Shivaji Road, Parbhani
Tq. & Dist. Parbhani.

.. Respondents

Mr. A. B. Dhongade, Advocate for the appellant.
Mr. P. C. Mayure, Advocate for respondents No. 1 to 4.
Mr.M. M. Ambhore, Advocate for respondent NO. 6.

WITH
FIRST APPEAL NO. 2469 OF 2022

The New India Assurance Company Ltd.
D.O.No. 1 Adalat Road, Parbhani
Through its Authorized Signatory
Avinash A. Bugdani
occ. Service, r/o Parbhani

.. Appellant

Versus

1. Mayuri w/o Vinodrao Shahane
age 31 years, occ. Household
r/o Lokmanya Nagar,
Parbhani, Dist. Parbhani
2. Varad s/o Vinodrao Shahane
age 10 years, occ. Education
r/o Lokmanya Nagar, Parbhani
Dist. Parbhani
3. Mahi d/o Vinodrao Shahane
age 5 years, occ. Education
r/o Lokmanya Nagar, Parbhani
Dist. Parbhani
The claimants original petitioner
present respondents No. 2 and 3
are minors u/g of real mother
present respondent No. 1.
4. Vimalbai w/o vijaykumar Shahane
age 60 years, occ. Household
r/o Lokmanya Naagr
Parbhani, Dist. Parbhani

5. Shashikumar Sitaram Navle
age 49 years, occ. Business
r/o Karegaon, Tq. Shirur
Dist. Pune.
6. Maharashtra State Road Transport
Corporation,
Through its District Controller
Office at Gangakhed Road,
Parbhani, Dist. Parbhani

.. Respondents

Mr. M. M. Ambhore, Advocate for the appellant.
Mr. P. C. Mayure, Advocate for respondents No. 1 to 3.
Mr. A.B. Dhongade, Advocate for respondent No. 6.

CORAM : R. M. JOSHI, J.

RESERVED ON : 31st JANUARY, 2024.

PRONOUNCED ON : 12th FEBRUARY, 2024.

JUDGMENT :

1. First Appeal No. 3560/2016 is preferred by Maharashtra State Road Transport Corporation against the judgment and award dated 14th July, 2016, passed in MACP No. 86/2003 whereas against the same award insurer has filed appeal bearing First Appeal No. 2469/2022. Since common questions of fact and law are involved therein, both appeals are decided together finally with consent of both sides.

2. The facts which led to filing of present appeals can be narrated as under :-

Deceased Vinod was travelling in a State Transport bus bearing registration No. MH 14 BT 1995 from Parbhani to Pune. He was sitting exactly behind the driver. It is claimed that the bus was being driven in excessive speed by its driver. When it came near cotton ginning factory of Manwat, one tanker bearing registration No. MH 12 HD 2529 came from Manwat side in high speed and both vehicles collided. In the said accident, Vinod sustained serious injuries and he was declared dead when he was brought to the hospital. It is claimed that the accident has occurred due to negligent driving of both vehicles by their drivers. At the time of accident, deceased was aged about 34 years, he had educational qualification as B.Sc. (Computer) and had also obtained post graduation degree. He claimed to have served with various industries and lastly he was employed with Fundtech India Company, Pune as Software Developer and was earning Rs. 9,17,468/- per annum. His basic salary was Rs. 37,934/- with allowances in all Rs. 76,455/- per month. There were four dependents on the income of the deceased.

3. Maharashtra State Road Transport Corporation filed written statement at Exhibit 15 denying all allegations and contentions of claimants including age, income, future prospects of the deceased. It is claimed that the driver of the S.T. Bus was driving the vehicle in slow speed by taking all precautions and the accident has occurred on account of negligence of driver of the tanker.

4. Insurer of said vehicle filed written statement at Exhibit 19 denying the allegations and contentions of claimants. It is specifically averred that the driver of the offending vehicle was not holding valid and effective licence and hence insurer is not liable to pay compensation. The owner of tanker inspite of service of notice failed to appear and contest the claim.

5. Evidence led before the Tribunal shows that the deceased was travelling in S.T. Bus and as such he cannot be said to be responsible for occurrence of the accident in any manner whatsoever. Learned Tribunal after appreciating evidence led on record has held that both drivers are responsible for causing of accident and though offence has been registered against driver of tanker, from the account of accident given by witnesses, driver of bus is also held responsible

for the accident. Perusal of evidence on record and in particular Spot Panchanama indicates that the accident has occurred at the middle of the road and there was almost head on collision between the two vehicles. This shows that drivers of both the vehicles were at equal fault in occurrence of the accident. As such, it is a case of composite negligence of drivers of both the vehicles in occurrence of the accident and hence both are held responsible for causing accident as well as for payment of compensation to the claimants. The learned Tribunal has jointly and severally held owners of both the vehicles and insurer of the tanker liable to pay compensation.

7. Insurer as well as Maharashtra State Road Transport Corporation are seeking challenge to the impugned award on the ground that the Tribunal has committed error in considering the material evidence on record in proper perspective with regard to income of deceased and has granted compensation on higher side. As against this, learned counsel for claimants sought enhancement of compensation. Learned counsel for the claimants claim that even without filing appeal or cross-objection, such enhancement can be sought. In view of judgment in case of Nagappa v. Gurudayal Singh & others, [(2003) 2 SCC 274], and other judgments of Apex Court, it

is no more res-integra that Tribunal has power to grant compensation more than asked for and as such it is open for the claimants even without filing cross objection or appeal to seek enhancement as it is the obligation of the Court to decide just compensation. Thus, there is no impediment in considering the prayer of enhancement of compensation made by the claimants.

8. Perusal of record indicates that the learned Tribunal has rightly taken into consideration the evidence placed on record to arrive at income of the deceased. However, Tribunal has not taken into account a fact that there were four dependents on the income of the deceased and hence $1/4^{\text{th}}$ amount is required to be deducted towards personal expenses. Tribunal, instead has deducted $1/3^{\text{rd}}$ amount, which is not in consonance with settled law. Age of deceased was 34 years and appropriate multiplier applicable to this case would be '16'. Thus, the total loss of dependency would come to Rs. 81,61,344/-.

9. Learned counsel for insurer and State Transport Corporation have claimed that the Tribunal has committed error in granting 50% future prospect which is contrary to the judgment of

Hon'ble Apex Court in case of National Insurance Co. Ltd. v. Pranay Sethi and others, **2017 SCC OnLine SC 1270** and hence, instead of 50% towards future prospects, owing to the age of the deceased, future prospects be considered at 40%. Considering the obligation of the Court to decide just compensation, there cannot be even undeserving enrichment and hence modification of award is contemplated and hence recalculation is required to be done.

10. By following dictum in the case of Pranay Sethi (supra), after adding 40% towards future prospects in the amount of loss of dependency, total amount comes to Rs. 1,14,25,881/- (Rs. 81,61,344/- + Rs.32,64,537/-). As far as non-peculiar heads are concerned, the learned Tribunal has granted Rs. 50,000/- towards consortium and love and affection and Rs. 10,000/- towards funeral expenses. As per the judgment of Pranay Sethi (supra), wife, two children and mother of the deceased are entitled to consortium of Rs. 40,000/- each. Similarly, funeral expenses are required to be granted at Rs. 15,000/- so also loss of estate at Rs. 15,000/-. Thus, total amount of compensation comes to Rs.1,16,15,881/- (Rs. 1,14,25,881/- + Rs. 1,60,000/- + Rs.15,000/- + Rs.15,000/-). The compensation is enhanced by Rs. 6,68,089/-. Both Maharashtra

State Road Transport Corporation and owner/insurer of the vehicles are jointly and severally liable to pay the same.

11. The learned Tribunal has held the State Transport Corporation as well as owner and insurer of the tanker jointly and severally liable for payment of compensation. Though this Court finds no reason to interfere into the said order, however, learned counsel for the both appellants i.e. State Transport Corporation and Insurer made a joint request on instructions that both appellants are ready for apportionment of 50% of liability to pay compensation and sought direction in that regard. No doubt it is right of claimant to recover entire compensation from either of joint tortfeasors but pertinently, in this case entire amount of compensation directed by Tribunal (except enhanced compensation of Rs. 6,68,089/-) has been deposited by both appellants to the extent of 70% and 30% by Maharashtra State Road Transport Corporation and Insurance Company respectively. In such peculiar circumstances, no prejudice will cause to claimants if apportionment is made with regard to liability of both appellants to pay compensation, subject to deposit of remaining compensation in this Court. Learned counsel for claimants also records no objection for the said arrangement/order.

Provisions of Section 165 read with Section 168 of M.V. Act empowers Tribunal not only to decide disputes between claimants and owner/insured but also inter se disputes between joint tortfeasors. Thus, there is no impediment in passing order as sought by both appellants jointly with consent of claimants. In view of the said statement, following order is passed :-

ORDER

- i) Appeals are allowed.
- ii) Claimants are entitled to recover compensation of Rs. 1,16,15,881/- (Rs. One Crore Sixteen Lacs Fifteen Thousand Eight Hundred & Eighty One only) with interest at the rate of 7.5% per annum, from the date of petition till realisation, from Maharashtra State Road Transport Corporation, owner of vehicle and insurer.
- iii) Apportionment of amount of compensation is done at 50% each between Maharashtra State Road Transport Corporation on one side and owner and insurer of tempo on another.
- iv) Maharashtra State Road Transport Corporation has deposited 70% amount of compensation whereas the insurer has deposited 30% amount. The insurer, therefore to deposit enhanced compensation of

Rs. 6,68,089/- along with interest @ 7.5% per annum from date of award till deposit, within 6 weeks.

v) Claimant shall be entitled to withdraw entire amount deposited with accrued interest as per apportionment done by Tribunal.

vi) Insurer to deposit difference between amount deposited by it and 50% of the amount of compensation payable by it, and Maharashtra State Road Transport Corporation would be entitled to withdraw such amount.

vii) Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge