



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4277 OF 2016

Maharashtra State Regional Transport
Corporation, Through Depot Manager
MSRTC, Jalgaon Division,
Jalgaon.

....APPELLANT
[Orig. Respondent No. 2]

VERSUS

1. Kiran Dharmaraj Chavan
Age- 51 yrs, Occu- Service.
2. Bhushan Kiran Chavan
Age- 23 yrs, Occu-Education.
3. Prabhodhan Kiran Chavan
Age- 17 yrs, Occ- Education,
[Resp. No. 3 being minor through
its legal guardian father i.e.
respondent No. 1]
All R. No. 1 to 3 are R/o. Plot No. 7,
Prabhat Colony, Jalgaon
Tq. & Dist. Jalgaon.
4. Prakash Shankar Patil
Age: 60 years, Occ: Retired (Bus Driver),
R/o. Plot No. 31, Gut No. 101, Shivshakti
Nagar, Jalgaon, Tq. & Dist. Jalgaon.

.....RESPONDENTS
[Res. No. 1 to 3 are Ori.
Claimants & Resp. No. 4
is Ori. Resp. No. 1]

.....
Mr. M.K. Goyanka, Advocate for Appellant
Mr. S.S. Patil, Advocate for respondents No. 1 to 3
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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 25th SEPTEMBER 2024

Bhagyawant Punde

ORAL JUDGMENT :

1. Heard.
2. **Admit.** Taken up for final hearing with the consent of the parties.
3. This appeal filed under Section 173 of Motor Vehicles Act by Maharashtra State Regional Transport Corporation, challenges judgment and award dated 17.03.2016 passed by Member, Motor Accident Claim Tribunal, Jalgaon in M.A.C.P. No. 25 of 2012.
4. Facts giving rise to the present first appeal, in brief, can be stated thus;

It is the case of claimants that on 08.09.2011 at about 7.00 am Manjusha Kiran Chavan was driving her Activa scooter at Swantatra Chowk, near Aakashwani Kendra, Jalgaon. S.T. bus no. MH-14-B-0379 gave dash to Activa scooter no. MH-19-AJ-6485 driven by Manjusha, due to which she came under the cleaner side rear wheel of bus. She was admitted in the hospital and during treatment expired after two months of accident. Multiple operations were performed on her till her death. Manjusha was working as Assistant Teacher Ramlalji

Choubey Kanya Madhyamik Vidhyalaya, Jalgaon and was drawing salary of Rs. 32,361/-.

5. FIR about the accident was lodged by Rajesh Karjotkar with Zilla Peth Police Station, Jalgaon which is registered at C.R. No. 266/2011 under Sections 279, 337, 427 of IPC and under Section 184 of M.V. Act. On completion of investigation, charge sheet is filed against driver of the bus. Claimants, therefore, claimed compensation of Rs. 50 Lakhs from MSRTC.

After recording of evidence and hearing the parties, Tribunal allowed the claim and awarded compensation of Rs. 55,99,680/- along with interest @ 7.5% per annum. Appellant-MSRTC is aggrieved by this judgment and award.

6. Heard learned advocate for the appellant and learned advocate for claimants.

7. Learned advocate for appellant by relying on spot panchnama submits that there was total negligence on the part of deceased which has caused accident and therefore claimants were not entitled for compensation. According to him, deceased had come under the cleaner side rear wheel of the bus,

therefore, no negligence can be attributed to the driver of the bus. He therefore submits that Tribunal has erred in recording a finding that bus driver was rash and negligent in driving the bus. In the alternate, he submits that excessive quantum is awarded by the Tribunal and compensation is liable to be reduced.

8. Learned advocate for respondents No. 1 to 3/claimants, on the other hand, supported the impugned judgment and award. He submits that Tribunal is justified in holding that due to the rash and negligent driving of the bus driver, the accident has taken place. He submits that taking into consideration the income of deceased at the time of accident and dependency of claimants, Tribunal is justified in deciding the quantum of compensation. He therefore submits that there is no merit in the appeal and appeal may be dismissed.

9. Heard learned advocate for appellant and learned advocate for respondents No. 1 to 3 at length. Perused the record.

10. It is a matter of record that in the accident deceased had come under the cleaner side rear wheel of the bus. Eye witness of the accident has lodged FIR stating that on hearing loud noise, he saw that due to dash given by bus, one lady had

come under the cleaner side rear wheel of the S.T. Bus. People called out driver and asked him to take bus in reverse direction, which was so taken and then deceased was removed from the wheel. FIR further states that bus driver has driven bus in rash and negligent manner and gave dash to the deceased. Informant has witnessed the accident.

11. Learned advocate for the appellant has read spot panchnama and submitted that width of the road is not stated, hence, the spot panchnama does not give correct picture of accident. He may be justified in arguing so, but only because width of the road is not stated in the spot panchnama this by itself is not sufficient to deprive claimants from compensation. Admittedly, charge sheet is filed against the bus driver for driving the bus in rash and negligent manner and causing accident. In this view of the matter, claimants have discharged their initial burden of proving that accident has occurred due to rash and negligent driving on the part of bus driver.

12. The Tribunal by appreciating material on record has rightly recorded a finding that "*filing of charge-sheet by the Police against Bus driver shows that bus driver is involved for rash and negligent act in this accident.*" It is further observed

that "*the Opponent has not examined the S.T. bus driver nor has lead any evidence on oath to rebut rash, negligent act of S.T. bus driver. In absence of evidence, the contributory negligence of deceased cannot be considered.*" These findings recorded by the Tribunal are in consonance with the material placed on record and no fault can be found with these reasons given by the Tribunal.

13. There is no substance in the contention of appellant that excessive quantum is awarded by the Tribunal. It is a matter of record that deceased was drawing salary of Rs. 32,511/- per month. The Tribunal has rightly calculated annual salary of deceased at Rs. 3,90,000/-. The Tribunal has deducted Rs. 34,000/- towards income tax and profession tax and is deducted 1/3rd amount towards personal expenses. Then by relying on decision of Sarla Verma, and adding 30% future prospects and applying multiplier of 14, figure comes to Rs. 43,20,680/-. Then non pecuniary damages i.e. funeral expenses, consortium, loss of love and affection, ambulance charges and total medical expenses incurred by claimants are added in the said figure and Tribunal has rightly arrived at figure of compensation at Rs. 55,99,680/-.

14. The Tribunal has assigned proper reasons in support of impugned judgment and award and has awarded just and fair compensation to the claimants. No case is made out by the appellant to interfere in the impugned judgment and award. First appeal being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]