



This judgment is corrected pursuant to the speaking to the minutes of order dated 22.08.2024.
{1} 906-fa-4664-2017 II

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4664 OF 2017

Divisional Controller,
N.W. Karnataka State Road
Transport Corporation,
Bus Depot Manager,
Bus Depot, Division, Bijapur,
Tq. & Dist. Bijapur.

....APPELLANT

VERSUS

1. Manjusha Umesh Pawar
Age- 34 years, Occ- Education,
R/o. Datta Nagar, In Front of
Dudhsangh, Aurangabad Road,
Osmanabad, Tq. & Dist. Osmanabad.
2. Vishaka Umesh Pawar
Age- 14 years, Occ. Education,
U/g of Real Mother Non-Applicant No. 1,
R/o. As above.
3. Vishanavi Umesh Pawar
Age- 7 years, Occ. Education,
U/g of Real Mother Non-Applicant No. 1
R/o. As Above.
4. Omkar Umesh Pawar
Age- 7 years, Occ. Education,
U/g of Real Mother Non Applicant No. 1,
R/o. As Above.
5. Shakuntala Vitthalrao Pawar
Age- 64 years, Occ. Nil,
R/o. As Above.
6. Vitthalrao Nivruttirao Pawar,
Age- 69 years, Occ. Nil
R/o. As above.

.....RESPONDENTS

.....

Mr. V.D. Gunale, Advocate for Appellant
Mr. P.D. Dadape, Advocate for respondents

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 06th AUGUST, 2024

ORAL JUDGMENT :

1. By this appeal filed under section 174 of Motor Vehicles Act, 1988 (for short "M.V. Act") appellant/original respondent challenges judgment and award dated 06.02.2016, passed by Member, Motor Accident Claims Tribunal, Osmanabad in Motor Accident Claim Petition No. 296/2012.

2. Umesh Vitthalrao Pawar, age 34 years was working as labour in Water Supply Department of Nagar Parishad, Osmanabad. On 21.07.2012 he was going to village Ter on motorcycle belonging to one Rahul Raibhan bearing registration No. MH-25-V-3900 as a pillion rider, along with Akbar Rahematulla Shaikh. When the motorcycle reached near village Shingoli on National Highway No. 211 at about 11.00 am, State transport bus bearing registration No. KA-28-F-1709 came from opposite direction in high speed and gave dash to the handle of motorcycle, due to which deceased fell on road near right side rear wheel of bus and bus ran over his head, due to which he died on the spot. The motorcycle and Akbar were thrown away from the road due to the said dash. Claimants, therefore, filed

claim petition under section 166 of M.V. Act, claiming compensation of Rs. 32,00,000/- due to the death of deceased.

3. Appellant opposed the claim petition by filing say/written statement and claimed that it was the rider of motorcycle who was rash and negligent in riding motorcycle and because of him accident has taken place. Owner and insurer of motorcycle are not made party to the claim, hence claim petition is not maintainable. Appellant prayed for dismissal of claim.

4. Tribunal after recording evidence partly allowed the claim and awarded compensation of Rs. 23,89,224/- along with 9% interest per annum. Appellant is aggrieved by the quantum of compensation.

5. Heard learned advocate for appellant and learned advocate for respondents.

6. Learned advocate for the appellant strenuously urged that compensation awarded by the Tribunal is excessive and exorbitant. In fact, accident has taken place due to negligence of motorcycle rider. As the motorcycle rider, owner and insurer of motorcycle were not made party to the claim petition, claim was

liable to be dismissed on that ground alone. He submits that rider of motorcycle was not examined by claimants in support of their claim and this aspect is ignored by the Tribunal. He further submits that calculations made by the Tribunal are wrong. In fact, 1/6th deduction to be made from the earning of the deceased is not properly calculated while assessing earning of the deceased. The Tribunal has committed an error in awarding 50% future prospects, which is on higher side. Similarly, the Tribunal has awarded excessive non pecuniary damages and therefore, appeal deserves to be allowed and compensation awarded by the Tribunal may be reduced.

7. Per contra, learned advocate for respondents/original claimants submits that calculations made by the Tribunal are proper. Taking into consideration the permanency granted to the deceased, Tribunal is justified in awarding 50% towards future prospects. He submits that order granting permanency benefit to deceased was confirmed up to the Apex Court. According to him as per the calculations of difference of salary which the deceased would have been entitled to receive after conferring permanency benefit is rightly taken into consideration by the Tribunal while awarding 50% future prospects. He submits that Tribunal has

properly appreciated the evidence and has rightly awarded compensation, which is not liable to be interfered with.

8. Heard learned advocate for appellant and learned advocate for respondents at length. Perused the record.

9. Record indicates that FIR of the accident was lodged by Akbar Shaikh who was riding the motorcycle. In the FIR he has stated that the bus was coming from the opposite side and was proceeding towards Osmanabad and it gave dash to the handle of motorcycle, due to which deceased who was pillion rider was thrown on the road and rear wheel of bus ran over his head. Spot panchnama and police papers show that the bus driver was rash and negligent in driving the bus, due to which accident has taken place. Merely because bus driver is acquitted in a criminal case that would not help the appellant in any manner as considerations while deciding claim petition and criminal case are different.

10. Though, appellant has examined bus driver his evidence is rightly discarded by the Tribunal being contrary to the police papers. If at all his version that rider was negligent in riding motorcycle was right then he would have gone and

reported the accident to the police station.

11. There is no merit in the submission of learned advocate for appellant that the Tribunal has committed an error in calculating income of the deceased. Record indicates that by deducting 1/6th share of deceased from the monthly income of deceased of Rs. 7,768/- his monthly income is rightly assessed at Rs. 6,473/-. No fault can be found with the calculations made by the Tribunal.

12. Next submission of appellant that 50% future prospects awarded by the Tribunal is excessive is also not acceptable in the peculiar facts of the present case, as it is a matter of record that deceased was granted permanency benefits prior to his death and as stated by learned advocate for claimants said order is confirmed up to the Apex Court. By placing reliance on ***Munna Lal Jain and Anr. vs. Vipin Kumar Sharma & Anr***, 2015(3) T.A.C. 1 (S.C.), the Tribunal has rightly awarded 50% future prospects.

13. In the light of decision in ***Khenyei vs. New India Assurance Co. Ltd. and Ors***, 2015(2) T.A.C. 677 (SC), Tribunal has rightly rejected contention of appellant that for not making

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rider of the motorcycle, its owner and insurer as party respondents claim petition was liable to be dismissed.

14. The Tribunal has properly appreciated the material on record and has rightly awarded compensation. No fault can be found with the reasoning adopted by the Tribunal. No case is made out by appellant to interfere in the impugned judgment and award. First Appeal being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]