

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

FIRST APPEAL NO. 538 OF 2010

- | | | |
|-----------------------------|---|-------------------------|
| 1. Managing Director, |) | |
| NWKRTC Co. Hubli, Chikodi |) | |
| Division, Dist. Balgaum |) | |
| | | |
| 2. The Karnataka State Road |) | |
| Transport Corporation, |) | |
| Self Insurance Scheme, |) | |
| Bangalors |) |Appellants |
| | | (Original Opp. No.1 &2) |

Versus

- | | | |
|---------------------------------|---|--|
| 1. Lata Chandrakant Kamble |) | |
| Age: 35 years, Occ: Household |) | |
| | | |
| 2. Sharad Chandrasen Kamble |) | |
| Age: 16 years, Occ: Education |) | |
| | | |
| 3. Mayur Chandrasen Kamble |) | |
| Age: 16 years, Occ: Education |) | |
| | | |
| 4. Rajnandini Chandrasen Kamble |) | |
| Age: 14 years, occ: Education |) | |

Applicant Nos. 2 to 4 minor)
 through natural guardian Mother)
 Respondent No.1.)

5. Tarabai Kamble, Age-58 years)
 Occupation-Household)

All residents of 2831, Juna)
 Budhwar Peth, Siddharthnagar)Respondents
 (Original Applicants
 Nos. 1 to 5.)

 Mr. C. M. Lokesh , Advocate for the Appellant.
 Mr. Jayant J. Burdeskar, Advocate for the Respondent Nos.1 to 5.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4th MARCH, 2024.

Oral Judgment. :

1. The issues involved in this appeal are accident occurred due to sole negligence of the deceased, interest rate on compensation amount is awarded on higher side and application of wrong multiplier.

2. It is contention of learned counsel for the

Appellant/Corporation that accident occurred due to sole negligence of the deceased but, the Tribunal has fixed 50% contributory negligence on the driver of offending bus, which is erroneous. Learned counsel further submitted that at the time of accident deceased was 43 years old, the proper multiplier is 14 but, Tribunal has applied 15, which is erroneous. Learned counsel further submitted that the Tribunal has awarded 9% interest on compensation amount, which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent that accident occurred due to sole negligence of the driver of offending bus but the Tribunal has wrongly fixed 50% contributory negligence on the deceased. Learned counsel further submitted that, to prove the negligence of the deceased, driver of offending bus did not enter into the witness box. Learned counsel further submitted that the Tribunal has not awarded consortium amount, it be awarded.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Kolhapur (for

short “the Tribunal”).

5. It is Claimant’s case that on 12th August, 2007 deceased Chandrakant was driving the motorcycle bearing registration No. MH-09-AV-2798 on Gokulshirgaon via Kagal-Kolhapur highway. The service road proceeding towards Kolhapur side was closed due to heavy rain hence, he was required to go from highway, at about 7:30 p.m, when he was trying to cross highway putting the head light and indicators on, the S. T. bus bearing registration No. KA-23-F-385 came from opposite direction in high and excessive speed and gave dash to the motorcycle of the deceased. Due to said dash deceased died on the spot. The offence was registered against the deceased.

6. While dealing with the issue of negligence, the Tribunal has observed that the width of the road was 30 feet. The deceased was 4 feet away from the road divider, he was going on wrong direction. There was 26 feet road open for the S. T. bus driver so, when S. T. driver saw the motorcyclist, he should have avoided the accident by taking the S. T. bus towards extreme left side of the road. On the other side, there was no scope for the motorcyclist i.e. deceased to go

to his left side as there was divider so, it cannot be said that there was no duty on the part of the driver of S. T. bus to take care if, any other person is coming from the opposite direction. Considering these facts and circumstances, the Tribunal has held that there was contributory negligence of the S. T. bus driver and deceased. I do not find infirmity in it. In my view, S. T. bus driver had seen the motorcycle of the deceased coming from opposite direction. Though, deceased was on the wrong direction, the S. T. bus driver had opportunity to avoid the said accident as, there was 26 feet road open for the bus but S. T. bus driver did not take the efforts to avoid the accident. Moreover, S. T. bus driver did not step into witness box to prove the negligence of the deceased. Hence, I do not see merit in the contention that accident occurred due to sole negligence of the deceased.

7. While awarding compensation, the Tribunal has applied multiplier of 15, as per the age of the deceased, it should be 14 hence, I am considering multiplier of 14. The Tribunal has awarded consortium amount on lower side. As per view of Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)*, each claimant is entitled to Rs.48,000/- for

consortium amount and Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses. The Tribunal has awarded interest rate at 9% on compensation amount which is on higher side hence, I am considering it at 7.5% interest per annum.

8. Considering the above calculations, the Claimants are entitled for following compensation.

Monthly income	Rs.4,267/-
Annual Income	Rs.51,204/-
Multiplier 14	Rs.7,16,856/-
Consortium X 5 (Claimants)	Rs.2,40,000/-
Funeral Expenses	Rs.18,000/-
Loss of estate	Rs.18,000/-
Total	Rs.9,92,856/-
50% deductions towards contributory negligence	Rs.4,96,428/-
Less awarded by the Tribunal	Rs.4,00,000/-
Enhanced amount	Rs.96,428/-

9. In view of above, I pass following order.

ORDER

- i. Appeal is partly allowed.
- ii. The Respondents/Claimants are entitled for enhanced amount of Rs.96,428/- @ 7.5% interest per annum

from the 1st November, 2017 till realisation of the amount.

- iii. The Appellant/Insurance Company shall deposit enhanced amount along with accrued interest within six weeks after receipt of the order.
- iv. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- v. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

10. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)