

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1713 OF 2005

	Maharashtra State Road Transport Corporation, having its office at Vahatuk Bhavan, Dr. A. Nair Marg, Bellasis Road, Bombay Central, Bombay 400 008.	...	Appellant
	versus		
1	Rohini Ravindra Pawar, Age -21, Occupation – Household.		
2	Shashikala Dattatraya Pawar, Age – 48, Occupation – Household.		
3	Rasika Ravindra Pawar, Age – 2 years, minor hence through guardian mother, claimant No.1, Smt. Rohini Ravindra Pawar. All residing of Sahyadrinagar in front of Datta Mandir, Sangli.		Respondents.

Ms. Pinky M. Bhansali along with Ms. Rajlaxmi Punjabi i/b. M/s. G. S. Hegde and Associates, Advocate for the Appellant.
 Ms. Samruddhi Kulkarni along with Mr. Ajit Savage, Advocate for Respondent Nos.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th APRIL, 2024.

Oral Judgment :

1. The issue involved in this appeal is that the accident occurred due to sole negligence of the deceased and the income of the deceased is considered on higher side.
2. It is contention of learned counsel for the appellant-Corporation that the deceased dashed the offending bus while overtaking other

vehicles. The scooter, on which the deceased, was riding was in high speed. The said scooter skidded in front of the offending bus and came under the wheels of the offending bus. The driver of the offending bus has examined himself to prove the negligence of the deceased but his evidence is not considered by the Tribunal. Learned counsel further stated that the deceased was working as a barbar. The Tribunal has considered monthly income of the deceased at Rs.3,000/- without any evidence, which is on higher side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos.1 to 3/claimants that an offence was registered against the driver of the offending bus. The eye-witness of the incident has been examined to prove the negligence of the driver of the offending bus. It is the claimants' case that the monthly income of the deceased was Rs.6,000/- per month but the Tribunal has considered it at Rs.3,000/- per month, which is proper. Moreover, the Tribunal has not awarded future prospects. Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded.

4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Sangli, (for short "the Tribunal").

5. It is claimants case that on 23rd August 2001, the deceased Ravindra was proceeding from Tasgaon to Sangli on his scooter along with his friend – Ganesh More. The said scooter was driven by deceased

and Ganesh More was a pillion-rider. The deceased was driving his scooter on left side of the road and it was in slow speed. When his scooter came in front of Budhagaon College on Tasgaon Sangli Road, one S.T.Bus bearing registration No. MH-12-Q-8953 driven by the driver in rash and negligent manner, and in high speed dashed the scooter. Due to dash, the deceased and pillion-rider sustained injuries and Ravindra succumbed to the injuries on the spot. An offence was registered against the driver of the S.T.Bus.

5.1. To prove the negligence of the driver of the S.T.Bus, the claimants have examined Ganesh More, who was a pillion-rider, on the scooter of the deceased at the relevant time. He has stated that, on the day of incident, he and deceased were proceeding on the scooter on left side of the road and the speed of the scooter was moderate. At the relevant time, one S.T.Bus came from opposite side and gave dash to their scooter after coming to the wrong side of the road. Due to dash, he was thrown away but deceased – Ravindra came under the front wheel of the bus and he died on the spot. The accident occurred due to negligence of the bus driver. Nothing elicited in cross-examination of this witness to disbelieve his evidence.

5.2. The driver of the offending bus – Balkrishna Chilwantkar examined himself at Exhibit-40. In his defense, he has stated that, on the day of incident, he was going on the road, at that time, he saw that two scooters were coming from the opposite direction. He has stated that the

scooter, which was behind the first scooter, was attempting to overtake the first scooter, in that attempt, it skidded in front of his bus and came under the wheels of the bus. He reported the said incident to the police. The police registered an offence against him. The accident occurred due to negligence of the deceased. In cross-examination, he has admitted that the road had sufficient width for two vehicles to pass side by side and he first saw the two scooters at the distance of 100 feet, when he saw the scooters, he attempted to stop the bus. While dealing with the issue of negligence, the Tribunal has observed that the evidence of DW1- driver of the offending bus is not corroborating and cannot be accepted inasmuch as his entire evidence tantamount to improve . The facts narrated by him in the evidence, are not pleaded in written statement. In the written statement, the respondent has pleaded that the deceased drove the said scooter in a rash and negligent manner and was in high speed and it dashed head on with the S.T.bus. On the other hand, a total new case has been made out by the driver (DW1) in his oral evidence to the effect that the deceased was trying to over take another scooter proceeding in the same direction and, in that process, the scooter of the deceased skidded and it came under the wheels of his S.T.bus. This story is not narrated in the written statement. The Tribunal has further observed that PW2-Ganesh More, who is eye-witness of the incident, has stated that when their scooter was on extreme left side of the road, the bus came in wrong direction and gave dash to the scooter. The Tribunal has further

observed that the spot-panchanama shows that after the dash, the S.T.Bus proceeded for further distance of 82 feet. The Tribunal further observed that the spot-panchanama shows that the bus was totally on the wrong side of the road, on that ground, the Tribunal has observed that the accident occurred due to sole negligence of the bus driver. I do not find infirmity in it. In my view, in written statement, the appellant has taken the stand that the deceased gave dash to the offending bus, whereas in oral evidence, DW1-the driver of bus has stated that the scooter skidded on the road and gave dash to the S.T.Bus. PW2, who is the eye-witness, has stated that due to dash given by the S.T.Bus, he was thrown away from the scooter. I find substance in the evidence of PW2 as, had the scooter skidded on the road, the deceased and pillion-rider both would have died in the accident by coming under the wheels of the bus, and the pillion-rider would not have got a chance to rescue himself after skidding of the scooter on the road. Moreover, the spot-panchanama shows the negligence of the driver of the offending bus. It appears that to avoid his liability, the driver of the offending bus is putting blame on the deceased. Moreover, though the driver of the offending bus reported the incident to the police, after making enquiry, the police has registered the offence against the S.T.Bus driver, it shows negligence of the driver of the offending bus. Considering evidence on record, I do not find merit in the contention of learned counsel for the appellant that the accident occurred due to negligence of the deceased.

5.4. It is claimants' case that, at the time of the accident, the deceased was 30 year old and he was running hair cutting salon in Sangli and was getting monthly income of Rs.6000/-. To prove the income of the deceased, claimant No.1 has examined herself. She has stated that deceased was earning Rs.200/- to Rs.250/- per day and his salon was situated in the colony known as "Sahayadri Nagar" and the said hair cutting salon was standing in the name of the deceased. Considering the evidence on record, the Tribunal has considered notional monthly income of the deceased at Rs.3,000/- per month. I do not find infirmity in it. In my view, the deceased was maintaining family of four persons. The license of salon shop is produced on record, it proves that the deceased was running hair cutting salon. Moreover, the Tribunal has not awarded future prospects.

5.5. While awarding consortium amount, the The Tribunal has awarded Rs.1,50,000/-. In my view, it is on lower side. As per the view of Hon'ble Apex Court in **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, each claimant is entitled for Rs.48000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18000/- for funeral expenses. There are three claimants, the total comes to Rs.1,80,000/-, if from this amount, Rs.1,50,000/- considered by the Tribunal is deducted, it comes to Rs.30,000/-. The claimants are entitled for this amount.

6. In view of above, I pass the following order :

ORDER

1. The appeal is dismissed. No order as to costs.
 2. The claimants are entitled for enhanced compensation of Rs.30,000/- @ 7.5% interest from 1st November 2017 till realisation of the amount.
 3. The appellant-Corporation shall deposit the enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.
 4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 5. The claimants shall pay court fees on enhanced amount as per Rule.
 6. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)