

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.564 OF 2023

Divisional Manager, Maharashtra State Road }
Transport Corporation Ltd, }
Satara Office, Taluka & District-Satara } ...Appellant

Versus

1. Smt.Nirmala Mahadev Pawar }
Age-47 years, Occ: Housewife }

2. Nilam Mahadev Pawar }
Age-24 years, Occ: Education }

3. Chaitanya Mahadev Pawar }
Age-22 years, Occ: Education }

4. Geetanjali Kiran Ranaware }
Age-26 years, Occ: Household }
All above Resident of Sakharwadi, Taluka- }
Phaltan, District-Satara } ...Respondents

Mr.D.D. Rananaware, for the Appellant.

Mr.Ratan Adhe a/w Mr.Krishna Tarde, for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4th DECEMBER 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal are income of the

deceased is considered on higher side, accident occurred due to negligence of the deceased and deduction of the amount for personal expenses.

2. It is contention of the learned counsel for the Appellant that, the deceased was working as a Manager in Shahid Jagannath Pawar Gas Agency at Sakharwadi. No evidence is produced on record to show it, but the Tribunal has considered monthly income of the deceased at Rs.10,000/-, which is on higher side. The learned counsel further submitted that, the Claimant No.4 is married daughter of the deceased. She cannot be considered as dependent on the deceased. The Tribunal has considered her dependency, which is erroneous. The learned counsel further submitted that, accident occurred due to sole negligence of the deceased, as deceased gave dash to the offending bus, but this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondents-Claimants that, the deceased was working as Manager in Shahid Jagannath Pawar Gas Agency and he was

getting salary of Rs.19,500/- per month. He was doing agricultural work and he was getting agricultural income and the Tribunal has considered notional income at Rs.10,000/-, which is proper. The learned counsel further submitted that, offence was registered against the driver of the offending bus, who came on wrong side and gave dash to the motorcycle of the deceased. The learned counsel further submitted that, the Claimant No.4 is daughter of the deceased. She stays with the family of the deceased. Hence, she was dependent on the income of the deceased. The Tribunal has considered all the aspects while passing judgment and order. No interference is required in it and requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Satara.

5. To prove the income of the deceased the Tribunal has examined the Claimant No.3, Chaitanya Pawar at Exhibit-14. He has stated that, his father was working as a Manager in Shahid Jagannath Pawar Gas Agency. He was reputed Kirtankar and he

was doing agricultural work and he was getting pension of Rs.1,000/- per month. The Claimant's have examined PW-2-Yogesh Govekar. He has stated that, the deceased was working as a Manager in Shahid Jagannath Pawar Gas Agency and he was getting salary of Rs.19,500/- per month. The Salary Certificate is at Exhibit-29 and payment receipts at Exhibit-24 to 28. He further stated that, he was working in the said agency since 2019. In cross-examination he has stated that, he has not signed on the certificate at Exhibit-29 and he has not signed on receipts.

6. Considering the evidence on record, the Tribunal has considered monthly income of the deceased at Rs.10,000/- per month. I do not find infirmity in it. In my view, the deceased was maintaining family of four person and it has come in the evidence of PW-2 Yogesh. He was working in the gas agency hence, income of deceased considered at Rs.10,000/- per month, is proper.

7. The offence is registered against the bus driver to prove its defence the bus driver Hanmant Bhosale examined himself at Exhibit31. He has stated that, on the date of incident

motorcyclist came in high speed, rashly and negligently and gave dash to the ST Bus. It is contention of the learned counsel for the Appellant that, deceased was handicapped by one hand. He was not able to drive the motorcycle properly. In cross-examination he admitted that, offence is registered against him and against it he has not made any complaint.

8. While dealing with the issue of negligence the Tribunal has observed that, the documents i.e. FIR and Spot panchnamma at Exhibit-34 on record shows that there is negligence on the part of driver of bus. The spot panchnamma shows that bus came on other side of the road.

9. It is contention of the learned counsel for the Appellant that, width of the road was 12 feet and bus was proceeding on correct side of the road. Considering the width of the bus the motorcycle rider should have taken proper precaution. But he has not taken and gave dash to the bus. In my view, the spot panchnamma shows that the bus went on other side of the road from the middle side. The bus driver should have driven the bus on correct side of the road but he went on other

side by crossing middle line. It proves that accident occurred due to negligence of the bus driver and police has registered offence against bus driver after making enquiry.

10. It is contention of the learned counsel for the Appellant that, the Tribunal should not have considered Claimant No.4 as dependent of the deceased. She is married.

11. In my view, though the surname of the Claimant No.4 is mentioned as Rananaware but no question was asked in cross-examination to the PW-1 by the learned counsel for the Appellant that whether she is married or not. It has come on record that she was staying with the family of the deceased at the time of the accident. In cross-examination PW-1 has specifically stated that, the Claimant No.4 was staying with deceased. It shows she was dependent on the deceased.

12. Considering the above reasons, I do not find merit in the Appeal and I pass following order.

ORDER

- (i) The Appeal is dismissed.
- (ii) The Claimant's are permitted to withdraw

deposited amount along with accrued interest thereon.

(iii) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(iv) Record and Proceedings be sent back to the Tribunal.

(v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)