

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

FIRST APPEAL NO. 506 OF 2012

WITH

CROSS OBJECTION (ST) NO. 34696 OF 2023

IN

FIRST APPEAL NO. 506 OF 2012

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Maharashtra State Road Transport	)
Corporation, palghar Depot,	)
District Thane (Owner of Semi	)
Luxury Ashok Leyland S. T. Bus	)
Bearing No. MH-20-P-5294)	)
Address: At Divisional Office,	)
Opp. Vandana Talkies, L.B.S. Marg, Thane	)
District : Thane.	)....Appellant
	(Orig. Opponent)

Versus

1. Medha Mahesh Kulkarni	)
(Widow of the deceased)	)
Age: 20 years, Occ: Housewife	)
2. Master Chinmay Mahesh Kulkarni	)
(Son of the deceased)	)
Age: 20 years, Occ: Student	)
both residing at and post Jawhar	)
Taluka Jawhar, District Thane	)
Maharashtra 401603	)....Respondents
	(Orig. Claimants)

Mr. P. G. Lad a/w Sayli Apte and Shreya Shah, for the Appellant.
 Ms. Rina Kundu, for the Respondent Nos. 1 & 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th JANUARY, 2024.

Oral Judgment. :

1. The Corporation has preferred appeal against the judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short “the Tribunal”).
2. The Respondents/Claimants have also filed cross-objection for enhancement of compensation. As appeal and cross-objection are against the same judgment and order hence, I am deciding it by this common judgment.
3. It is contention of learned counsel for the Appellant - Corporation that accident occurred due to sole negligence of the deceased, who was driving the Maruti Car, he dashed the offending bus but this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.
4. It is contention of learned counsel for the Respondents/Claimants that the offending bus was in high speed, the driver of offending bus could not control the speed of bus and initially

he dashed the Ambulance, which was ahead of Car of deceased and then dashed Car of deceased. To prove the negligence of driver of offending bus, witness was examined. Considering the evidence on record, the Tribunal has held that accident occurred due to sole negligence of the driver of offending bus. Learned counsel further submitted that while awarding compensation, the Tribunal has not awarded future prospects and consortium amount. Hence, requested to allow the Cross Appeal and reject the Appeal.

5. I have heard both learned counsel. Perused judgment and order passed by Tribunal.

6. It is Claimant's case that on 24th February, 2004 deceased Mahesh had gone to Nashik for purchasing goods for his General and Stationary Stores. When, he was returning to Jawhar by his Maruti Omni Car bearing No. MH-04-CB-7502, one Ambulance bearing No. MH-04-H-0331 was ahead of Maruti Car. There was ascend on the road, at the place of accident, when his Maruti Car was proceeding at about 4:40 p.m. S.T. bus bearing registration No. MH-20-D-5249 came from opposite direction in high speed, driver was driving it rashly and negligently. Due to the high speed, driver of bus lost his control and consequently, it gave dash to the driver side of the

Ambulance, which was ahead of the Maruti Car of deceased. As a result of the dash given by the S.T. bus, the Ambulance went in a drainage, situated by the side of the road. After giving dash to the Ambulance the bus went ahead and dashed the Maruti Car driven by the deceased. Due to said dash, deceased sustained severe injuries and died on the spot. Offence was registered against the driver of offending bus.

7. To prove the negligence of deceased, the Claimants have examined Narendra Patil driver of Ambulance at Exhibit-50, he has stated that at the time of accident he was proceeding from Jawhar to Mokhada along with Medical Officer by Government Ambulance. At about 4:00 pm when Ambulance reached at the place of accident at that time, a bus came from opposite direction towards his Ambulance therefore, he took the Ambulance towards his extreme left side to avoid impact and in that process, left side front of the Ambulance went into the drainage. He has stated that S.T. bus gave dash to the right side of the Ambulance and then went further and dashed the another vehicle i.e. Maruti Car, which was behind his Ambulance. Nothing elicited in cross-examination of this witness. To prove its defense the driver of offending bus Upendra Mali examined himself.

He has stated that when the bus reached at a curve, he saw a Maruti Car coming from opposite direction, he further stated that Ambulance came in high speed from opposite direction by over taking Car and therefore, he stopped the bus but the Ambulance dashed against the bus and the Car was behind the Ambulance, the car dashed against the Ambulance. He has stated that accident took place due to negligence of the driver of Ambulance and Car.

8. While dealing with this issue, the Tribunal has observed that in cross-examination, the driver of offending bus has admitted that he had applied brake of bus. In spite of that, bus went ahead up to some distance, this fact shows that bus was in high speed and could not able to control it, even after applying the break. The Tribunal further observed that the driver of bus was driving the bus on road where, there was curve and descend. He had not taken care of the vehicular traffic passing by the road, therefore, bus dashed against the Ambulance, which was coming from opposite direction. Not only this but even after hitting the Ambulance and applying brake he could not able to stop it and consequently it went ahead and gave dash to the Maruti Car driven by the deceased Mahesh. The Tribunal further observed that the spot panchnama prepared by police supports the

contention of Claimants. On that basis, the Tribunal has observed that accident occurred due to the negligence of S.T. bus driver. I do not find infirmity in it. In my view, Ambulance driver is the independent witness. The driver of offending bus gave dash his Ambulance and thereafter the car in which deceased was proceeding F.I.R. was lodged against driver of offending bus. The spot panchanama supports the Claimant's case. Hence, I do not see merit in the contention that accident occurred due to sole negligence of the driver of Maruti Car.

9. The Tribunal has not awarded future prospects. The Tribunal has considered yearly income of deceased at Rs.81,000/- per annum. As per the view of Hon'ble Apex in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)***, Claimants are entitled for future prospects. At the time of accident deceased was 40 years old. The Tribunal has applied multiplier of 14, it should be 15 hence, I am considering multiplier of 15. The Tribunal has awarded consortium amount on lower side. As per the 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 Rs.48,000/- as consortium amount and Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

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

Annual Income	Rs.81,000/-
40% Add. Future Prospects	Rs.32,400/-
Total Income per Annum	Rs.1,13,400/-
Less 1/3rd amount	Rs.37,800/-
Total Income	Rs.75,600/-
Rs.75,600/- X 15 (Multiplier)	Rs.11,34,000/-
Add. Funeral Expenses	Rs.18,000/-
Add. Loss of estate	Rs.18,000/-
Add. Consortium amount (Rs.48,000/- X 2 Claimants)	Rs.96,000/-
Total Compensation	Rs.12,66,000/-
Less compensation Awarded by Tribunal	Rs.7,68,000/-
Enhanced Compensation	Rs.4,98,000/-

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

ORDER

- i. The appeal is dismissed.
- ii. The cross objection is allowed.
- iii. The Claimants are entitled for enhanced compensation of Rs.4,98,000/- @ 7.5% from the date of filing claim petition till realisation of the amount. Out of this amount Rs.1,32,000/- is consortium amount. The Claimants are entitled interest @ 7.5% on this amount from 1st November,

2017 till realisation of amount.

iv. The Appellant shall deposit enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.

v. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

vi. The statutory amount in Appeal be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

12. All pending applications stand disposed of.

(SHIVKUMAR DIGE, J.)