

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 142 OF 2006

1	Ujwala Pradeep Kamble, Age : 29 yrs., Occ: Household.		
2	Tejas Pradeep Kamble, Age " 11 yrs., Occ : Education, (Appellant No.1 for herself and as mother - legal guardian of Minor Appellant No.2).	...	Appellants (Orig.Petitioners)
	Versus		
1	Dashrath Sampat Bhandare, Age : 48 years, Occ : S. T. Driver; R/o. Chapadgaon, Tal : Karjat, District : Ahmednagar. (driver batch no.672 Jamkhed ST Depot).		
2	Divisional Controller, State Transport, Shankar Sheth Road, Pune-37.	...	Respondents Orig. Opponents

Mr. Rahul S. Kate, Advocate for the Appellants.
Ms. P. M. Bhansali along with Ms.Rajlaxmi Punjabi, Advocate for
Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th APRIL, 2024.

Oral Judgment :

1. By way of this appeal, the appellants/claimants have challenged the dismissal of the claim petition.

2. It is contention of learned counsel for the appellants/claimants that the accident occurred due to sole negligence of the driver of the offending bus. An offence was registered against the driver of the offending bus but the Tribunal has not considered this fact. Learned

counsel further submitted that the deceased was working as an electrician and he was earning Rs.6,000/- per month but the Tribunal has not considered this fact and has dismissed the claim petition, which is erroneous. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2-Corporation that the accident occurred due to sole negligence of the deceased as he gave dash to the offending bus in the middle front side of the bus. The photographs produced on record shows the sole negligence of the deceased. The Tribunal has considered all the aspects while passing the judgment and order. No interference is required in it.

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

5. It is the claimants' case that on 28th May 2004 at about 5.30 p.m, the deceased was riding on his motorcycle from Phaltan to Baramati. One – Arun Gevare was the pillion rider and the deceased – Pradeep was driving motorcycle in a moderate speed. At the relevant time, one S.T.Bus bearing No. MH-12-UA-8704 came from the opposite direction and gave dash to the motorcycle of the deceased. Due to the dash, deceased sustained injuries and died while taking treatment. An offence was registered against the driver of the offending bus. To prove the negligence of the driver of the offending bus, the claimants have examined PW3-Arun Gevare-eye witness. He has stated that, at the time

of the accident, the deceased was driving motorcycle in a moderate speed, the driver of the S.T.Bus drove the S.T.Bus in rash and negligent manner and there was head-on-collision between two vehicles. He has further stated that, the accident occurred due to the negligence of the driver of S.T.Bus. Nothing elicited in the cross-examination of this witness. To prove its defense, the driver of S.T.Bus – Dashrath Bhandare examined himself. He has stated that he saw the deceased coming on one motorcycle in rash and negligent manner, as he was coming on wrong side, this witness stopped the S.T.Bus on the spot. At that time, the deceased gave dash to the front side of the S.T.Bus. The accident occurred due to sole negligence of the S.T.Bus. While dealing with the issue of negligence, the Tribunal has observed that the motorcycle could have passed from the other side of the S.T.Bus and motorcycle went on wrong side and gave dash to the S.T.Bus, on the middle of the front grill, it shows that the deceased could not control his motorcycle, hence, the Tribunal has observed that the accident occurred due to sole negligence of the deceased. I am unable to understand the observations of the Tribunal as the police has registered an offence against the driver of the offending bus after making enquiry. Moreover, the spot-panchanama shows that brake marks of the S.T.Bus were appearing on the road. It shows that the S.T.Bus was in high and excessive speed. Moreover, the evidence of the eye-witness Arun Gevare cannot be disbelieved. He has stated that there was head on collision between two vehicles. It shows

that he has stated what had actually happened on that day. He could have stated that the accident occurred due to sole negligence of the driver of the S.T.Bus and that the S.T. Bus came on wrong side of the road but he has fairly stated that the accident happened due to head-on-collision between two vehicles. Considering the evidence on record, I hold that the accident occurred due to contributory negligence of the S.T.Bus driver and deceased, hence, I am considering 50% negligence of S. T. Bus driver and 50% negligence of the deceased.

5.1. To prove the income of the deceased, claimant No.1-Ujwala Kamble examined herself at Exhibit-22. She has stated that the deceased was working as electrician and earning Rs.6,000/- per month. In support of evidence of PW-1, the claimant has examined Lalasaheb Nalawade. He has stated that he is contractor and he takes the contract of doing electrical work. He has government license for doing the said work. He stated that he knows the deceased and deceased was doing electrical work and he had permission for doing the same. He further stated that the deceased was earning Rs.6000/- per month. In cross-examination, he has admitted that he has no documentary evidence to prove the income of the deceased. Considering the evidence on record as well as deceased was maintaining family of three persons and the deceased was electrician, I am considering monthly income of the deceased at Rs.4000/- per month.

5.2. At the time of the accident, the deceased was 36 year old. As per the view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi , 2017 ACJ 2700(SC)**, the claimants are entitled for 40% future prospects.

5.3. 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 two claimants.

5.4. In view of above, the claimants are entitled for following compensation :

Particulars	Rs.	Amount
Annual Income of the deceased (Rs.4000/- pm x 12)	Rs.	48000.00
1/3rd deductions towards personal expenses	Rs.	16000.00
Total	Rs.	32000.00
40% future prospects	Rs,	12800.00
Total	Rs.	44800.00
Rs.44800/- x 15 (multiplier)	Rs.	672000.00
(-) 50% Contributory Negligence	Rs	336000.00
Total loss of Dependency	Rs.	336000.00
Consortium (Rs.48000/- x 2 claimants)	Rs.	96000.00
Loss of Estate	Rs.	18000.00
Funeral Expenses	Rs.	18000.00
Total Entitled Compensation	Rs.	468000.00

The claimants are entitled for Rs.4,68,000/-.

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

ORDER

1. The appeal is allowed.
2. The appellants/claimants are entitled for enhanced compensation of Rs.4,68,000/- @ 7.5% interest per annum 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 for 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.
3. Respondent No.2-Corporation shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.
4. The appellants/claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
5. The appellants/claimants shall pay court fees on enhanced amount as per Rule.
7. Pending applications, if any, stand disposed of.
8. Learned counsel for Respondent No.2-Corporation requested for stay of this judgment. As the date of the accident is of the year 2004, I am not inclined to grant stay. Hence, request for stay is rejected.

(SHIVKUMAR DIGE, J.)