

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 555 OF 2008

	Karnataka State Road Corporation K.S.R.T.C.Depot, Bidar, Karnataka State, (Owner of S.T.Bus No.KA-38/F-33)	...	Appellant (Org.Opponent No.1)
	versus		
1	Gitanjali Himadri Chatterjee widow of the deceased, aged 44 years.		
2	Sorbojeet Himadri Chatterjee, Son of the deceased, age 21 years.		
3	Anurima Himadri Chatterjee, daughter of the deceased, age 18 years, - all residing at 1103, Ocean View Uman Park, Khar, Mumbai 400 052.		Original Applicant Nos. 1, 2 and 3
4	Prem Kaur Mehersingh, Room No.D-76, Chawl No.2, G.T.B.Nagar, Mumbai 400 037 (Owner of Motor Tax No.MRO-5462)		Org. Opponent No.2
5	The New India Assurance Co. Ltd. Kalina Divisional Office, 166, Maha Auto Show Room Building C.S.T.Road, Kalina, Santacruz (E), Mumbai 400 098. (Insurer of Motor Taxi No.MRO-5462 under policy no.140400/96/18718 valid from 20/7/1996 to 19/7/1997.		Insurer Respondents

Mr. C. M. Lokesh, Advocate for the Appellant.

Mr. Amol Gatne i/b. Ms. Swati Mehta, Advocate for Respondent Nos.1,2 and 3.

Mr. Shubham Misar i/b Mr. H. G. Misar, Advocate for Respondent No.5.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 19th MARCH, 2024.

Oral Judgment :

1. The issue involved in this appeal is accident occurred due to sole negligence of the driver of the offending car.

2. It is contention of learned counsel for the appellant-Corporation that the accident occurred due to sole negligence of the driver of the offending car who drove the car in rash and negligent manner, and while overtaking the other vehicle, gave dash to the offending bus. There was head-on collision. The driver of the offending car and the person, who were travelling in the car have been examined to prove that the accident occurred due to sole negligence of the driver of the offending car but this fact is not considered by the Tribunal. Hence, requested to allow the appeal.

3. Learned counsel further submitted that the Tribunal has considered income of the deceased on higher side. Some Income Tax Returns were filed after the death of the deceased. From these income tax returns, the Tribunal has considered income of the deceased, which is erroneous. The Tribunal has already considered income of the deceased at higher side, it includes future prospects. Hence, claimants are not entitled for future prospects.

4. It is contention of learned counsel for respondent No.5- Insurance Company that the offence was registered against the driver of the offending bus. The spot-panchanama shows that the accident occurred due to sole negligence of the driver of the offending bus. The police have recorded the statement of the occupants in the car who have stated that the driver of the offending bus had tried to over take the lorry ahead of bus and in that attempt, he gave dash to the car. The Tribunal has considered all the aspects while passing the judgment and order. Learned counsel further submitted that the witness – Prakash Desai, who was the occupant of the car and has been examined by the appellant in support of their case was declared hostile by the Trial Court.

5. It is contention of learned counsel for respondents/claimants that while awarding compensation, the Tribunal has not awarded future prospects and consortium amount is awarded on lower side, it be awarded.

6. I have heard both learned counsel. Perused the judgment and order passed by Motor Accident Claims Tribunal, Mumbai (for short “the Tribunal”).

7. It is claimants’ case that on 9th May, 1997 at about 6.30 am, the deceased along with other four persons were travelling from Mumbai to Pune by motor taxi bearing No.MRO-5462, when the said motor taxi was passing by Mumbai – Pune Road within limits of Village Khalapur, at

relevant time, one bus bearing No.KA-38-F-33 owned by the appellant-Corporation came from opposite direction in high and excessive speed. The driver of said bus was overtaking another vehicle, resulting in collision of the aforesaid two vehicles and gave dash to the motor taxi. Due to the said dash, the deceased – Himadri Chatterjee died on spot and other occupants in the motor taxi were injured. 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 relied on police papers. The claimants have examined PW2-Prakash Desai, who was occupant of the motor taxi. He has stated that he was proceeding to Pune from taxi and deceased was occupant of the said taxi. Near Khopoli, one lorry was ahead of their taxi. The taxi driver tried to overtake that lorry, therefore, there was head-on collision between taxi and S.T.Bus. Due to the said dash, Himadri Chatterjee was seriously injured and died. In cross-examination, he has admitted that the police has recorded his statement after the accident.

7.1. To prove its defense, the appellant-Corporation has examined the driver of the offending bus- Kashinath Chamale. He has stated that he was proceeding on Pune-Mumbai Road. He had seen one lorry was coming from the opposite side and behind that lorry, there was one taxi. When his bus was about 20 to 25 feet away, the taxi tried to overtake that lorry. He had applied the brakes of the bus to take the bus towards left side of the road but by that time, the taxi had come towards his side

and dashed the bus. In cross-examination, he has admitted that after the accident, he got down from the bus and ran away and went to the police station.

7.2. While dealing with the issue of negligence, the Tribunal has observed that the evidence given by PW2- Prakash Desai is not supporting the pleading of the claimants. The Tribunal has observed that PW2- Prakash Desai has been declared hostile by the JMFC court, hence, his evidence is unreliable. The Tribunal has further observed that though the driver of the offending bus has stated that he was driving the bus at the speed of 35 to 40 km per hour but the panchanama at Exhibit-20 shows the presence of brake marks to the extent of 10 feet. This shows that the bus was in high speed. The Tribunal further observed the bus driver has stated that after seeing the taxi, he took his bus on left side of kachha road but it is falsified by spot-panchanama as it says that the spot of impact was in the middle portion of the road about 15 feet away from the eastern side of the road and there is no mention in the spot panchanama that the bus had gone on kachha road. Considering the evidence on record, the Tribunal has considered that the accident occurred due to sole negligence of the offending bus driver. In my view, the FIR was lodged on the statement of Asif Hussain Mahadik, occupant of the taxi against the bus driver but he has not been examined as witness. Mr. Prakash Desai was the occupant of the taxi but his evidence is not reliable as he had given one statement before the police and

another statement before the Tribunal. Moreover, he has been declared as hostile witness by the Judicial Magistrate First Class, Court. The evidence given by the bus driver before the Tribunal is not matching with the contents of the spot panchanama. It appears that he had deposed before the Tribunal to avoid liability. In these circumstances, it is necessary to see the papers produced on record. Admittedly, the FIR is lodged against the driver of the offending bus. He has stated that after the accident, he ran away from the spot and went to the police station and informed them about accident. After making enquiry, the police has registered offence against the driver of the offending bus. The spot-panchanama shows that the accident spot was in the middle of the road. It shows that there was contributory negligence of driver of both the vehicles in the said accident. It has come in the evidence of the driver of the offending bus that when he had seen a taxi coming from opposite direction, in spite of that, he did not take care to avoid the accident. Hence, I am considering 80% negligence of the driver of the offending bus and 20% negligence of the driver of motor taxi.

7.3. At the time of the accident, the motor taxi was insured with respondent No.5, hence respondent No.5 is liable to pay the compensation to the claimants at 20%, out of the total compensation, fixed by the Tribunal. It is the contention of learned counsel for the claimants that the Tribunal has not awarded future prospects and consortium amount is awarded on lower side. While considering the

income of the claimant, the Tribunal has relied on Income Tax Returns filed for years 1994-1995, 1995-1996 and 1996-1997. The income for the year 1994-1995 is shown at 64,762/-, for the year 1995-1996 is shown as Rs. 1.24.250/-, for the year 1996-1997 is shown at **Rs.6,28,564/-**. It is contention of learned counsel for the appellant-Corporation that the income tax returns for the year 1996-1997 were filed four months after the death of the deceased. On the basis of the average income of income tax returns, the Tribunal has considered yearly income of the deceased at Rs.4,00,000/-. In my view, the Tribunal has considered the income of 1996-1997 as gross income, it should not have been taken as gross income. Considering this fact, the income considered by the Tribunal is on higher side and it must be along with future prospects. Hence, the claimants are not entitled for separate future prospects.

7.4. The Tribunal has awarded consortium amount 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, so the total comes to Rs.1,80,000/-. The Tribunal as awarded Rs.55,000/- towards consortium, if this amount is deducted from the amount considered by this Court, it comes to Rs.1,25,000/-. The claimants are entitled for this amount.

8. In view of above, I pass following order :
1. The appeal is partly allowed.
 2. The appellant-Corporation shall deposit 80% compensation as fixed by the Tribunal along with accrued interest thereon.
 3. Respondent No.5-Insurance Company shall pay 20% compensation, out of the amount fixed by the Tribunal along with accrued interest thereon to the claimants.
 4. The claimants are entitled for enhanced compensation of Rs. 1,25,000/- @ 7.5% interest per annum from 1st November 2017 till realisation of the amount. The appellant-Corporation and respondent No.5-Insurance Company shall deposit enhanced amount as per proportion of 80% and 20%.
 5. The appellant/Corporation is permitted to withdraw excess amount Rs. 6,77,000/- along with proportionate interest thereon out of the deposited amount.
 6. Respondent No.5-Insurance Company shall deposit 20% amount along with proportionate interest within four weeks from the receipt of this order.

7. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
8. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
9. The Claimants shall pay the deficit Court fees on enhanced amount as per Rule.
9. All pending applications, if any, stands disposed off.

(SHIVKUMAR DIGE, J.)