

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

FIRST APPEAL NO.519 OF 2023

**Maharashtra State Road Transport }
Corporation, }
Thr. Its Divisional Controller, Divisional }
Office, Ramwadi, Taluka-Pen, District- }
Raigad. }** **...Appellant**

Versus

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**1. Gaffar Shabbir Ansari }
Age-52 years, Occ : Labour Work }**

**2. Aashida Gaffar Ansari }
Age-50 years, Occ : Household }**

**3. Nargis A Gaffar Ansari }
Age-18 years, Occ : Education }**

**4. Aanam A. Gaffar Ansari }
Age-16 years, Occ: Education }
All R/o. New Maharashtra Bakery, Shiste, }
Borli, Panchatan, Taluka-Shriwardhan, }
District-Raigad, Ori. R/o Bukhara, }
Mukharpur Khema, Gram-Khed, Faridapur }
Khema, District-Bijnaur, Uttar Pradesh }** **...Respondents**

Mr.N.V. Bhutekar a/w Mr.Aniket Nangare, for the Appellant.
Ms.Neha Nagotanekar, for Respondent Nos.1 and 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th MARCH 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal is accident occurred due to sole negligence of the deceased.

2. It is contention of the learned counsel for the Appellant-Corporation that, the accident occurred due to sole negligence of the deceased as he gave dash to the offending bus from front side, 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 Respondent-Claimant that, the driver of the offending bus was driving bus in high and excessive speed. He could not control the speed of the bus and gave dash to the motorcycle of the deceased. The Tribunal has considered all the aspects while passing the judgment and order. Hence, no interference is required in it. The learned counsel further submitted that, the Tribunal has not awarded consortium, it be awarded.

4. I have heard both learned counsel. Perused judgment

and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Mangaon, District-Raigad.

5. It is Claimant's case that on 6th July 2014 at about 10.30 a.m. deceased Gaffar was proceeding on M-80 motorcycle bearing No.MH-06/N-0607 from Shriwardhan to Shiste Borlipanchatan. At that time, ST bus bearing No.MH-20/D-7314 dashed to his motorcycle. It was driven in a rash and negligent manner without following the traffic rules and without observing the traffic on the road. Due to dash Gaffar sustained grievous injuries and died while taking treatment. Offence was registered against the driver of the ST bus. To prove the negligence the driver of ST bus, the Claimant's relied on police papers.

6. To prove its defence the Appellant-Corporation examined driver of the offending bus Sadanand Shelar as DW-1 at Exhibit-24. He has stated that on the day of accident when he was proceeding on the road, deceased came on motorcycle along with bakery products tied on his motorcycle, the said motorcycle was in high and excessive speed. As motorcycle of the deceased

was in high and excessive speed, he took his bus on left side of the road, at that time deceased gave dash to his bus. He further stated that the accident occurred due to sole negligence of the deceased. In cross-examination he admitted that after the accident he was sent for training and no driving duty was given him for some days.

7. While dealing with the issue of negligence the Tribunal has observed that on the perusal of the FIR, it clearly shows that ST bus driver was in a position to notice the motorcycle of the deceased, he could have avoided the accident. The Tribunal has further observed that from the contents of the FIR and spot panchnamma, it appears that after the accident bus did not stop immediately but he stopped by going ahead. It shows that the bus was in high and excessive speed. The documentary evidence produced on record supports the Claimant's case on that ground the Tribunal has fixed negligence on the driver of the offending bus. I do not find infirmity in it.

8. In my view, the DW-1 driver of the offending bus in his evidence has stated that after seeing motorcycle of the

deceased he took the bus on the left side of the road and thereafter, deceased gave dash to his bus, but spot panchnamma falsifies his evidence, in spot panchnmma it mentioned that bus was stopped 40 feet ahead of the accident spot. It shows that offending bus was in high and excessive speed. It appears from FIR and spot panchnamma that driver of offending bus had opportunity to avoid the accident but he had dashed the motorcycle of the deceased and at the time of the accident the bus was in high and excessive speed. I do not see merit in the contention that accident occurred due to sole negligence of the deceased.

9. While awarding compensation the Tribunal has not awarded consortium amount. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*¹, each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. There are four Claimant's. The total amounts comes to Rs.1,92,000/-. It is contention of the learned counsel for the

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Appellant that the Tribunal has awarded interest at 8% on compensation amount interest, it is higher side. Considering his submission, I am considering interest rate on compensation amount as 7.5%.

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

ORDER

- (i) The Appeal is partly allowed.
- (ii) The Claimant's are entitled for compensation amount as fixed by the Tribunal @ 7.5% from the date of the filing of the Claim Petition, till realization of the amount.
- (iii) The Claimant's are entitled enhanced amount of Rs.1,92,000/- @ 7.5% interest per annum from 1st November 2017 till realization of the amount.
- (iv) The Appellant is permitted to withdraw the excess amount of interest of 0.5%.
- (v) The claimant's are permitted to withdraw deposited amount along with interest.
- (vi) The statutory amount alongwith interest be

transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(vii) The Claimant's shall pay Deficit Court Fees, on enhanced amount, as per Rules.

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

(SHIVKUMAR DIGE, J.)