

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1089 OF 2022

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| <ol style="list-style-type: none"> 1 Supriya Santosh Kaduskar
Age : 25 years, Occupation : Household
R/at : Sakore (Gadepatti)
Tal : Ambegaon, Dist : Pune 2 Shravani Santosh Kaduskar
Age – 6 years, Occu : Education
R/at : Sakore (Gadepatti)
Tal : Ambegaon, Dist : Pune 3 Sainath Santosh Kaduskar
Age – 3 years, Occu : Education
R/at : Sakore (Gadepatti)
Tal : Ambegaon, Dist : Pune
Applicant No. 2 and 3 since minor through
Applicant No.1. | ... Appellants |
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Versus

- | | |
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| <ol style="list-style-type: none"> 1 Divisional Controller
M.S.R.T.C.
Office at – Shankarseth road, Near fly over bridge,
Swargate, Pune- 411037 2 Narayan Bhikaji Kaduskar
Age – 64 years, Occu : Agriculturist
R/at : Sakore (Gadepatti)
Tal : Ambegaon, Dist : Pune | ... Respondents |
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Mr. Yuvraj Narvankar, Advocate for the Appellants.

Mr. Amit A. Gharte, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 23rd APRIL, 2024**ORAL JUDGMENT :**

1. This appeal is preferred by the appellants /claimants against the dismissal of the claim petition.

2. It is contention of learned counsel for the appellants that accident occurred due to sole negligence of the driver of offending bus. The offence was registered against the driver of the offending bus but the Tribunal has not considered this fact. He further submitted that the Tribunal has calculated the compensation but the Tribunal has held that accident occurred due to negligence of the deceased and dismissed the claim petition, which is erroneous. hence requested to allow the appeal.

3. Learned counsel for the respondent No.1 vehemently submitted that the person who lodged FIR was not present at the time of accident, on hearsay information he lodged complaint against the S.T. driver stating that S.T. driver gave dash to the motorcycle of the deceased from front side. Learned counsel further submitted that the S.T. driver has examined himself to prove the negligence of the deceased and he has stated that accident occurred due to sole negligence of the deceased. The Tribunal has considered all the aspects while passing Judgment and Order. Learned counsel further submitted that police papers produced on record shows negligence of the deceased, hence requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Pune (for short **“the Tribunal”**). It is claimant’s case that on 31.08.2017 the deceased was proceeding from Kalamb to Manchar on his motorcycle. He was riding

motorcycle in moderate speed by following all the rules and regulations. When his motorcycle came in front of Indraprasth Hotel, one S.T. bus No. MH 14 BT 4804 came from opposite direction i.e. from Manchar in high and excessive speed. The driver of the bus was driving the bus in rash and negligent manner. The S.T. driver did not give any signal and tried to overtake one vehicle which was ahead of it. The S.T. driver lost control over the S.T. bus and by coming wrong side of the road gave heavy dash to the motorcycle of the deceased. The deceased sustained multiple injuries to his head and other parts of the body. The deceased died while taking treatment. The offence was registered against the driver of S.T. bus. To prove the negligence of the driver of S.T. bus claimant No.1 has examined herself. She was not present at the time of accident hence I am not considering her evidence. The claimants have relied on police papers. To prove his defence the driver of offending bus Santosh Gangurde examined himself as DW-1. He has stated that on 31.08.2017 he was proceeding from Pune to Nashik by driving the bus. The bus was having no conductor. He further stated that at 3:30 p.m. the bus took stop at Lavhate, Indraprasth Hotel because M.S.R.T.C. has authorised the stoppage at this hotel. He further submitted that bus driven by him was coming out from the Indraprasth Hotel. Its speed was around 20-30 km per hour and he was driving it from the left side of the road. He further

stated that one motorcycle rider came from opposite direction and gave dash to the left side of the S.T. bus. The motorcycle rider was riding it in fast speed. He had not worn helmet. He further stated that because of dash motorcycle rider came under the left side tyre of the S.T. bus. He further stated that accident occurred due to negligence of the motorcycle rider. In cross examination he has admitted that accident occurred on the left side of Sangamner to Pune Road. While dealing with the issue of negligence on relying the evidence of the driver of S.T. bus and the deceased was riding motorcycle without helmet and driving licence the Tribunal has considered accident occurred due to negligence of the deceased and on that ground claim petition has been dismissed. I am unable to understand the observations of the Tribunal as FIR in respect of accident is registered against the driver of S.T. Bus. In FIR it is mentioned that the bus driver gave dash to the motorcycle, whereas ST bus driver has deposed that deceased gave dash to his S.T. Bus from front side. The spot panchanama which is at Exhibit-20 shows there was damage to the motorcycle from backside. There was no damage to the front side of motorcycle. It shows that driver of S.T. bus had given dash to the motorcycle from back side and to avoid the liability, the S.T. bus driver has stated that accident occurred due to negligence of the deceased. The police papers produced on record shows that the accident occurred due to

negligence of the S.T. driver. Mere non wearing helmet cannot be a ground to hold that accident occurred due to sole negligence of the deceased. No evidence is produced on record by the Corporation regarding driving licence of the deceased. The Tribunal should have considered these facts. Considering evidence on record, I hold that accident occurred due to contributory negligence of the deceased and S.T. bus driver and the driver of S.T. Bus is 80% responsible for the accident and 20% negligence of the deceased. The Tribunal has considered monthly income of the deceased at Rs.7,000/- which is proper. 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 for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- loss of estate. There are 4 claimants. Total comes to Rs.1,92,000/-. The claimants are entitled for 40% future prospects. It is contention of learned counsel for the respondent No.1-Corporation that the Tribunal has applied multiplier of 18 it should be 17. At the time of accident deceased was 29 year old so proper multiplier is 17. The Tribunal has deducted 1/3rd amount for personal expenses. There are 4 dependents. Hence, I am considering 1/4th amount for personal expenses.

5. Considering the above calculations, the claimants are entitled

for following compensation:

Particulars	Rs.	Entitlement
Monthly Income	Rs.	7,000.00
Future prospects 40%	Rs.	2,800.00
1/4th deduction towards personal income	Rs.	7,350.00
Multiplier 17	Rs.	14,99,400.00 15,00,000.00 (rounded)
Consortium (Rs.48,000/- X 4 claimants)	Rs.	1,92,000.00
Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
Total	Rs.	17,28,000.00
20% deduction	Rs.	3,45,600.00
Total	Rs.	13,82,400.00

6. In view of above, I pass following Order.

ORDER

- i. The appeal is allowed.
- ii. The claimants are entitled for the amount of Rs.13,82,400/- @ 7.5% interest per annum from date of filing claim petition till realisation. Out of this amount, Rs.2,28,000/- is consortium amount, the claimants are entitled for interest at 7.5% per annum on this amount from 1st November 2017 till realisation of the amount.
- iii. The respondent No.1-Corporation shall deposit

the compensation amount along with accrued interest thereon with eight weeks.

- iv. The claimants are permitted to withdraw the amount deposited by the respondent No.1- Insurance Company along with accrued interest thereon.
- v. The claimants shall deposit the deficit Court fees on enhanced amount as per rule.

7. The Appeal is disposed of. All pending applications, if any are also disposed of.

(SHIVKUMAR DIGE, J.)

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by SONALI
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