

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

FIRST APPEAL NO. 141 OF 2014

The General Manager,	}	
Karnataka State Road Transport	}	(Org.
Corporation, Central Office, Shanti Nagar,	}	Opponent)
Bangalore-27, Karnataka.	}	...Appellant

Versus

1. Shri.Hansraj Thuduram Malhotra	}	
Age-56 years, Father of the deceased	}	

2. Mrs.Asharani Hansraj Malhotra	}	
Age-47 years, Mother of the deceased	}	

3. Miss.Sangeeta Hansraj Malhotra	}	
Age-24 years, Sister of the deceased	}	

4. Miss Rajani Hansraj Malhotra	}	
Age-23 years, Sister of deceased	}	

5. Shri.Rajesh Hansraj Malhotra	}	
Age-22 years, Brother of the deceased	}	

All R/at Chawl No.12, Room No.D-204,	}	
FMH-43/1/3, CTS Nagar, Punjabi Camp,	}	(Org.
Sion-Koliwada, Mumbai-400 037.	}	Applicants)
	}	...Respondents

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

Mr.Tejpall S. Ingle, for Respondent Nos.2 and 5.

CORAM : SHIVKUMAR DIGE, J.

DATE : 17th APRIL 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal are accident occurred due to sole negligence of the deceased and deduction of the amount for personal expenses.

2. It is contention of the learned counsel for the Appellant-Corporation that the bus was proceeding on the road, and the bus driver took right turn, at that time the deceased was proceeding on motorcycle. While driving motorcycle he was talking on mobile phone. He did not notice that bus was taking turn and he gave dash to the bus. Due to said dash he got injured and succumbed to the injuries, but this fact is not considered by the Tribunal. The learned counsel further submitted that deceased was unmarried, but Tribunal has considered 1/3rd amount for personal expenses, it should be ½. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the

Respondent-Claimant that, offence was registered against the driver of the bus. To prove the negligence of the deceased driver of the offending bus did not step into witness box. The Police papers produced on record shows negligence of the driver of the offending bus. The learned counsel further submitted that at the time of the accident deceased was 26 years old, so proper multiplier is 17, but Tribunal has considered the multiplier of 11, as per age of the parents of deceased, which is erroneous. The learned counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded. Hence requested to dismiss the Appeal.

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

5. It is Claimant's case that on 21st December 2005 at about 8.10 p.m. the deceased was going on his motorcycle at that relevant time offending bus bearing No.KA-23-F-273 came from Sion side in high speed and took sudden right turn in the gate of S.T. Depot. The driver of offending bus did not give any signal

before taking turn due to which bus gave dash to motorcycle of the deceased. Due to the dash the deceased sustained fatal injuries and he died while taking treatment. The offence was registered against the driver of the offending bus. To prove the negligence of the deceased the Claimant's have relied on Police papers. The driver of the offending bus did not step into witness box, to prove the negligence of the deceased.

6. While dealing with the issue of the negligence the Tribunal has observed that the offence was registered against the driver of the offending bus. The spot panchnamma does not show the presence of cell phone near the motorcycle of the deceased the Appellant has not examined any witness to show that at the time of accident the deceased was talking on cell phone. The driver of the offending bus was the best witness to prove that deceased was talking on the cell phone but he did not step into witness box even a suggestion was not given to Claimant No.2 that her son was talking on the cell phone at the time of accident. Therefore the Tribunal has considered that accident occurred due to sole negligence of the driver. I do not find

infirmity in it.

7. In my view, to prove the defence the Corporation has not examined any witness nor the driver of offending bus entered into witness box. Hence, I do not see merit in the contention that accident occurred due to negligence of the deceased. At the time of the accident deceased was unmarried. While calculating compensation the Tribunal has deducted 1/3rd amount for personal expenses, in my view, it should be ½. Hence, I am considering ½ amount for personal expenses. The Tribunal has applied multiplier of 11 as per the age of the parents of the deceased. It is settled principle of law that multiplier shall be applied as per the age of the deceased. Hence I am considering multiplier of 17, as at the time of the accident deceased was 27 years old. The Tribunal has awarded Rs.10,000/- for loss of estate and Rs.5,000/- for funeral expenses. 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

1 2018 ACJ 2782 (SC)

Rs.18,000/- for loss of estate. Considering this calculation the Claimants are entitled for following compensation.

Particulars	Amount
Monthly Income	Rs.4,000.00
Annual Income (Notional Income X 12 months)	Rs.48,000.00
(-) Personal Expenses (½ amount)	Rs.24,000.00
Net Annual Loss of Income	Rs.24,000.00
Multiplier 17	Rs.4,08,000.00
Total Loss of Income	
Consortium (Rs.48,000 x 2)	Rs.96,000.00
Loss of Estate	Rs.18,000.00
Funeral Expenses	Rs.18,000.00
Total Just Compensation Payable	Rs.5,40,000.00
Less : Already Awarded	Rs.3,67,000.00
Enhanced Compensation	Rs.1,73,000.00

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

ORDER

(i) The Appeal is partly allowed.

(ii) The Claimant's are entitled for enhanced amount of Rs.1,73,000/- @ 7.5% per annum from date of the filing of the Claim Petition till realization

of the amount. Out of this amount Rs.1,32,000/- is consortium amount, the Claimant's are entitled @ 7.5% interest on it from 1st November 2017, till realization of the amount.

(iii) The Appellant-Karnataka State Road Transport Corporation shall deposit compensation amount along with accrued interest thereon, within eight weeks from the receipt of this order.

(iv) The Claimants are permitted to withdraw the deposited amount alongwith interest.

(v) The statutory amount of Rs.25,000/- along with accrued interest be transferred to the Motor Accident Claims Tribunal, Mumbai.

(vi) The Claimants shall pay Deficit Court Fees on enhanced amount, if any, as per Rule.

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

(SHIVKUMAR DIGE, J.)