

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

FIRST APPEAL NO. 1511 OF 2011

The Brihan Mumbai Municipal Corporation, a Statutory Authority duly constituted under the provisions of the Mumbai Municipal Corporation Act, 1888, Thr. General Manager, Brihan Mumbai Electric Supply and Transport Undertaking, having Office at BEST Bhavan, BEST Marg, Mumbai-400 001. } **....Appellant**

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V/s.

1. Smt.Surekha Ranba Gund	}	
Aged-40 years, Widow of the deceased	}	
	}	
2. Shri.Sachin Ranba Gund	}	
Aged-20 years, Son of the deceased	}	
	}	
3. Miss.Priyanka Ranba Gund	}	
Aged 13 years, daughter of the deceased	}	
	}	
All R/at Vithal Mandir, Vasahat Behind,	}	Respondents (Original Applicants)
T.B. Hospital, Annabhau Sathe Nagar,	}	
Jhopadpatti, Jerbai Wadia Road, Bhoiwada,	}	
Mumbai-400 012.	}	

Ms.Karishma Jhaveri i/b Navdeep Vora & Associates, for the Appellant.

Mr.T.J. Mendon, for the Respondent No.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th JANUARY 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal are negligence of the deceased and income of deceased is considered on higher side.

2. It is contention of the learned counsel for the Applicant, that the Tribunal has considered monthly income of deceased at Rs.9,801/- per month, without any evidence on record, which is on higher side. The learned counsel further submitted that, accident occurred due to sole negligence of the deceased as he suddenly came before the offending bus, but these facts are not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent/Claimants that, the deceased was working in KEM Hospital, of Mumbai Municipal Corporation and he was getting salary of Rs.9,526/-, on that basis Tribunal has considered monthly income of deceased, which is proper. The learned counsel further submitted that, the offence was registered against

the driver of the offending bus. The Police papers shows that, there was negligence of the driver of the offending bus. The learned counsel further submitted that consortium amount considered by the Tribunal is on lower side, 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), Mumbai.

5. It is Claimant's case that on 3rd July 2006, the deceased was walking on road at Dadar. He was walking on the extreme corner of the road observing the Rules of the traffic. When the deceased reached near Chintamani Building, Dadar at the relevant time offending bus bearing No.MH-01-L-9796 came in high speed and it was driven in rash and negligent manner and from his behind, it has given dash to the deceased. Due to dash deceased sustained injuries and succumbed to injuries.

6. To prove the defence the Corporation has examined driver of the offending bus as DW-1, he has stated that the accident was not caused due to his negligence. In cross-examination he admitted that, charge-sheet was filed against him

by Police, in respect of the said accident. At the time of the accident, there was heavy traffic on the road, he came to know about accident, when public shouted from the spot of the accident then he stopped the bus.

7. While dealing with issue of negligence the Tribunal has observed that, offence was registered against bus driver and the driver of the offending bus was not aware about happening of the accident. The Tribunal has held that accident occurred due to sole negligence of the offending bus driver. I do not find infirmity in it.

8. In my view, in the cross-examination, offending bus driver has admitted that, at the time of the accident there was heavy traffic on the road. There was traffic jam. He came to know about the accident when public shouted. It shows that, he had given dash to the deceased from backside, but he was not aware about it.

9. To prove the income of deceased the Claimant's have examined Claimant No.1, she has stated that, the deceased was working in KEM Hospital of BMC and getting salary of

Rs.15,198/-. The Tribunal has considered monthly income of deceased as per salary. I do not find infirmity in it.

10. The Tribunal has awarded consortium amount of Rs.32,400/-, it is on lower side. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram¹*, 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 three Claimants it comes to Rs.1,80,000/-, if this amounts deducts from amount awarded by the Tribunal Rs.32,400/- it comes to Rs.1,48,000/-. The Claimant's are entitled for this amount.

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

ORDER

- (i) The Appeal is dismissed.
- (ii) The Claimants are entitled for enhanced amount of Rs.1,48,000/- @ 7.5% per annum from 1st November 2017, till realization of the amount.

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(iii) The Appellant-Corporation shall deposit enhanced amount alongwith interest within six weeks after receipt of the order.

(iv) The statutory amount along with interest be transferred to the Tribunal. Parties are at liberty to withdraw it.

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

(SHIVKUMAR DIGE, J.)