

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.155 OF 2010

	Maharashtra State Road Transport Corporation, ... Vahatuk Bhavan, Dr. A. Nair Marg, Bellasis Road, Bombay Central, Dr. A. Nair Marg, Bombay – 400 008.		Appellant
	versus		
1	Bhogilal Babaldas Panchal Age 44 years, Occu. Household.		
2	Anandiben Bhogilal Panchal Age 36 years, Occu. Household		
3	Hitesh Bhogilal Panchal Age 18 years, Occu. Student All residing at Room No.14, Laxmi Bhavan No.1, First Floor, Kisan Nagar No.1, Wagle Estate, Thane.		Respondents (Org. Claimants)

Ms. P. M. Bhansali i/b. G. S. Hegde and Associates, Advocate for the Appellant.

Mr. T. J. Mendon, Advocate for Respondent Nos.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 27th FEBRUARY, 2024.

Oral Judgment :

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

2. It is contention of learned counsel for the appellant-Corporation that the deceased was riding on bicycle on highway and he was dashed by the offending bus. While riding on the bicycle on highway, the

deceased did not take proper care. The accident occurred, due to sole negligence of the deceased but this fact is not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondents/ claimants that the deceased was riding on the bicycle on extreme left side of the road and the said road was four lane road. The offending bus was supposed to drive on the first lane but the driver of the offending bus came in the fourth lane and gave dash to the bicycle of the deceased and ran away. An offence was registered against the bus driver. Learned counsel further submitted that while awarding compensation, the Tribunal has applied wrong multiplier. The Tribunal has considered all the aspects while passing the order. Hence, no interference is required in it.

4. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal, Thane, (for short "the Tribunal").

5. It is the claimants' case that on 12th April 2003 at about 6.30 a.m., deceased – Prakashkumar was proceeding to his factory on his bicycle. When he reached near gate of Godrej Company, a S.T.bus bearing registration No.MH-20-5235 came from Thane side in a high and excessive speed in a rash and negligent manner and gave dash to the bicycle of the deceased. Due to said dash, the deceased sustained injuries and succumbed to the injuries. An offence was registered against the driver of the S.T.bus. To prove the negligence of the driver of the

offending bus, the claimants have examined claimant No.1-Bhogilal Panchal, father of the deceased. The Tribunal has not considered his evidence as he was not the eye-witness to the incident.

5.1. To prove their defense, the appellant – Corporation has examined the driver of the offending bus – Gurakh Shelar at Exhibit-36. He has stated that the deceased gave dash to the bus towards the conductor side. He has stated that he came to know about the accident when the police stopped his bus 15 kilometers away from the place of the accident. He stated that the accident occurred due to negligence of the deceased. While dealing with the issue of negligence, the Tribunal has observed that DW1-driver of the offending bus was not deposing the truth. The Tribunal further observed from his testimony that it appears that he had realised about the accident but he did not stop his bus and he ran 15 kilometers away from the incident spot. The Tribunal has observed that this witness was having guilty mind, therefore, he did not stop his vehicle immediately, it indicates that he was responsible for the accident. The Tribunal further observed that, on going through the FIR and spot-panchanama, it is crystal clear that the accident took place when the deceased was proceeding towards his company gate by riding the bicycle on the left side of the road. I do not find infirmity in the observations of the Tribunal.

5.2. In my view, the spot-panchanama produced on record, shows that the accident occurred on the left side of the road. Moreover, in spite

of having knowledge of the accident, the driver of the offending bus ran away from the incident spot. The police had chased his bus and arrested him. From the evidence produced on record, it proves that the accident occurred due to sole negligence of the driver of the offending bus. Hence, I do not find merit in the contention that there was contributory negligence of the deceased in the said accident.

5.3. At the time of the accident, the deceased was 21 year old. While calculating the compensation, the Tribunal has applied multiplier of 13, it should be 18. Hence, I am considering multiplier of 18.

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.

In view of above, the claimants are entitled for following compensation :

Particulars	Rs.	Amount
Annual Income of the deceased (Rs.5568/- pm x 12)	Rs.	66816.00
1/2th deductions towards personal expenses	Rs.	33408.00
Rs.33408/- x 18(multiplier)	Rs.	601344.00
Consortium (Rs.48000/- x 3 claimants)	Rs.	144000.00
Loss of Estate	Rs.	18000.00
Funeral Expenses	Rs.	18000.00
Total Compensation.		781344.00

The Tribunal has awarded Rs.5,27,000/-, if this amount is deducted from the amount of Rs.7,81,816/- considered by this Court, it comes to Rs.2,54,344/-. The claimants are entitled for this amount.

6. In view of above, I pass the following order :

ORDER

1. The appeal is dismissed. No order as to costs.
2. The claimants are entitled for enhanced compensation of Rs. 2,54,344/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.1,80,000/- is consortium amount, the claimants are entitled for 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.
3. The appellant-Corporation shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.
4. The claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.
5. The claimants shall pay court fees on deficit amount as per Rules.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)