

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

FIRST APPEAL NO. 306 OF 2017

The Municipal Corporation of Gr. Mumbai,	}	
Thr. The General Manager (BEST Undertaking)	}	
Electric House, Colaba, Mumbai-400 005.	}	Appellant
<i>Versus</i>		
1. Smt.Sunita Ramesh Tiwari	}	
Age-24 years, Widow of the deceased	}	
2. Master. Abhishek Ramesh Tiwari	}	
Age-3 years, Minor son of the deceased	}	
3. Master. Sanket Ramesh Tiwari	}	
Age-2 years, Minor Son of the deceased	}	
4. Shri.Chedi Jatha Tiwari	}	
Age-62 years, Father of the deceased	}	
5. Smt.Sungatadevi Chedi Tiwari	}	
Age-50 years, mother of the deceased	}	
	}	
Applicant Nos.2 and 3 are minors, Through	}	
their mother and next friend.	}	
	}	
Applicant No.1 All R/at B-39, Jijamata Nagar,	}	
Neevdani Sava Mandal, Parel Tank Road, G.D.	}	
Ambedkar Marg, Kalachowki, Mumbai-400 033	}	
	}	(Org. Applicants)
		Respondents

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Mr.Hemal i/b Navdeep Vora & Associates, for the Appellant.

Mr.Devendranath Joshi a/w Mr.Pradyumna Thakurdesai, for the Respondents.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 20th FEBRUARY, 2024.

ORAL JUDGMENT :-

1. The Appellant-Corporation has preferred this Appeal against the judgment and order passed by the Motor Accident Claims Tribunal ('the Tribunal' for short), Mumbai. The Respondent-Claimant's have also filed Cross Objection for enhancement of compensation, as Appeal and Cross-objection are against same judgment and order. I am deciding it by this common judgment.

2. It is contention of the learned counsel for the Appellant-Corporation that, at the time of the accident deceased was standing on rear door foot board of the offending bus and he tried to alight from the bus without waiting to stop the said bus and got injured and died. The accident occurred due to sole negligence of the deceased but the Tribunal has fixed liability on the driver of the offending bus, which is erroneous. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant's that, the deceased was fruit vendor and he was also doing

night watchman ship and he was earning Rs.6,000/- per month. But Tribunal has considered his monthly income at Rs.3,500/-, which is on lower side. The learned counsel further submitted that, the Tribunal has not awarded future prospects. The multiplier is considered on lower side. It should be 18 and consortium amount is awarded on lower side. Hence, requested to allow the Cross-Objection and dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Tribunal.

5. It is Claimant's case that, on 15th July 2006 at about 11.15 a.m., the deceased Ramesh was passenger in bus belonging to Appellant having registration No.MH-01-9911 at route No.67. The bus was driven in high speed. Ramesh was to alight from that bus at Gamdevi. He therefore approached towards Exit door. When Ramesh was near exist door of the bus, driver of the bus suddenly applied brakes to the speeding bus. Because of the sudden application of the brakes, the deceased was thrown out of the exist door. He sustained severe head injuries and succumbed to the injuries. The offence was registered against the driver of the bus. To prove the negligence of the driver of

the bus, the Claimant has relied on police papers. To prove its defence the Appellant-Corporation examined driver of bus DW-1 Suresh. He has stated that, he stopped the bus when conductor gave the bell, before he reached the bus stop but he was not aware that what has happened. He further stated that later on he came to know that a passenger standing near rear door fell down from the bus.

6. While dealing with issue of the negligence, the Tribunal has observed that the Appellant has not examined conductor of the bus who is proper witness of the incident. The deceased was traveling in the public carrier belonging to the Appellant. If it is assumed that, the deceased was standing at the rear door loosely holding the bar, he would not have thrown out of the bus in normal circumstances. It is admitted fact that, the bus was required to take turn from signal post to reach the bus stop. Considering evidence on record the Tribunal has observed that, accident occurred as a result of the jerk to the offending bus. I do not find infirmity in it.

7. In my view, it has come on record that, the deceased was thrown out of the bus. It shows that he was thrown due to jerk or stoppage of the bus. Though the defence is taken by the Appellant-

Corporation that the deceased had tried to alight from the running bus, but no evidence is produced on record in that regard. As observed earlier, the conductor of the bus was not examined as a witness, who would have been the proper witness to say the real fact. Hence, I do not see merit, in the contention that, the accident occurred due to contributory negligence of the deceased.

8. The Tribunal has considered monthly income of deceased at Rs.3,500/-. I do not find infirmity in it.

9. While awarding the compensation the Tribunal has not awarded future prospects as per view of the Hon'ble Apex Court in the case of *National Insurance Co. Ltd. V/s. Pranay Sethi*¹. The Tribunal has applied multiplier of 17. At the time of the accident the deceased was 25 years old. So proper multiplier is 18. The Tribunal awarded consortium of on lower side. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*², 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. Considering these calculations the Claimants are entitled for following

1 2017 ACJ 2700 (SC)

2 2018 ACJ 2782 (SC)

compensation.

Particulars	Amount
Monthly Income	Rs.3,500.00
Annual Income (Notional Income X 12 months)	Rs.42,000.00
(+) Future Prospects (50%)	Rs.21,000.00
Annual Income After Future Prospects	Rs.63,000.00
(-) Personal Expenses (1/4th amount) (5 Dependents)	Rs.15,750.00
Net Dependency	Rs.47,250.00
Multiplier 18	
Less of Future Income	Rs.8,50,500.00
Consortium (Rs.48,000 x 5)	Rs.2,40,000.00
Loss of Estate	Rs.18,000.00
Funeral Expenses	Rs.18,000.00
Total Just Compensation Payable	Rs.11,26,500.00
Compensation granted by Tribunal	Rs.5,55,500.00
Enhancement	Rs.5,71,000.00

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

ORDER

- (i) The Appeal is dismissed.
- (ii) The Cross Objection is allowed.

(iii) The Claimant's are entitled for enhanced amount of Rs.5,71,000/- @ 7.5% per annum from the date of the filing of the Claim Petition till realization of the amount. Out of this amount Rs.2,75,000/- is consortium amount the Claimant's are entitled for 7.5% per annum interest on this amount from 1st November 2017 till realization of the amount.

(iv) The Appellant-Corporation shall deposit enhanced amount along with accrued interest thereon within eight weeks from the receipt of the order.

(v) The Claimant's are permitted to withdraw deposited amount along with accrued interest.

(vi) The statutory amount along with interest in Appeal No.308 of 2017 be transmitted to the Tribunal. Parties are at liberty to withdraw it, as per Rule.

(vii) Pending Civil/Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)