

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

FIRST APPEAL NO. 596 OF 2011

Maharashtra State Road Transport)
Corporation, having its office at)
Vahatuk Bhavan, Dr. Anandrao Nair Marg,)
Bellasis Road, Bombay Central,)
Bombay – 400 008.)....Appellant
(Orig. Opponents)

Versus

1. Laxmibai Bhanudas Devkar)
Age about 36 years)
Occupation – Housewife)
(Widow of the deceased))
2. Nitin Bhanudas Devkar)
Aged about 16 years)
(minor son of the deceased))
3. Anu Bhanudas Devkar)
Age: 13 years,)
(minor daughter of the deceased))
4. Amol Bhanudas Devkar)

- Age about: 10 years,)
 (Minor son of the deceased))
5. Bharti Bhanudas Devkar)
 Aged about : 7 years)
 (Minor daughter of the deceased))
 All are residing at Sanjay Nagar)
 Zopadpatii, Manpada Road,)
 Dombivali (East), District Thane,)
 (Applicant Nos.2 to 5 through their Next)
 Friend & Natural Guardian)
 Smt. Laxmibai Bhanudas Devkar)
6. Mirza Saleem Balo)
 Residing at K. B. M. College) As per Courts
 Bilaibad, District : Gulbarga) order dated
 Karnataka State) 02/05/2018
 (Owner of the M/Truck No.) passed by Regs.
 KA-25-3146) Judicial-II FA
) stand dismissed
)Against Res. No.6
7. The Oriental Insurance Co. Ltd.)
 Thane Divisional Office) Respondents
 Arjun Towers, Gokhale Road,) Nos. 1 to 5 Org.
 Naupada Thane) Claimants and

(Insurer of the M/Track
No. KA-25-3136)

) Res. Nos. 6 to 7
) Orig. Opponents
....Respondents

**WITH
FIRST APPEAL (ST) NO. 8284 OF 2022**

1. Laxmibai Bhanudas Devkar,)
age about 56 years Occupation-)
Housewife, {Widow of the deceased})
 2. Nitin Bhanudas Devkar,)
Age: 35 years, Occupation Service,)
son of the deceased.)
 3. Anu Bhanudas Devkar,)
age: 32 years, Occupation: Nil,)
daughter of the deceased.)
 4. Amol Bhanudas Devkar,)
age: 29 years, Occupation: Service,)
son of the deceased.)
 5. Bharti Bhanudas Devkar,)
age: 26 years, Occupation: Nil,)
daughter of the deceased.)
- All appellants are residing at)
(Old Address: Sanjay Nagar)
Zopadpatti, Manpada Road,)
Dombivali East, Dist. Thane.)

New address: Jay Bhavani Housing)
 Society Ltd., near Sangola Naka, Shaniwar)
 Peth, Mangalwedha, Solapur, Dist. Solapur.)
 PIN:413305, Maharashtra.)

Versus

Maharashtra State Road Transport)
 Corporation,)
 (Old address: Thane Divisional Office,)
 opposite Vandana Cinema, Thane West.)

New Address:)
 At Vahatuk Bhavan, Dr. Anandrao Nair Marg,)
 Bellasis Road, Bombay Central, Bombay)
 4000008.)
 (Owner of S. T. Bus. No. MH-12-AQ-8087).) Org. Opp.
 No.1

2. Mirza Saleem Balo,)
 Residing at K.B.M. College, Bilaibad,)
 District Gulbarga, Karnataka State.)
 (Owner of Motor Truck No. KA-25-3146).) Org. Opp.
 No.2

3. The Oriental Insurance Co. Ltd.)
 (Old address: Thane Divisional Officer,)

Arjun Towers, Gokhale Road, Naupada,)
Thane.)

New Address:)
3rd Floor, Saraswati Mandir,)
Marathi Granth Sangrahalaya, Subhsh Road,)
Thane West, PIN: 400601, (Insurer of Motor)
Truck No. KA-2503146, Policy No.8690/2003,)
Validity period 06.02.2003 to 05.02.2004.)) Org. Opp. No.3
....Respondents

Ms. Pinky M. Bhansali, Advocate for the Appellant/s.
Ms. Rina Kundu, Advocate for the Respondent Nos.1 to 5.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th MARCH, 2024.

Oral Judgment. :

1. The Appellant/Corporation has preferred the appeal against the judgment and order passed by the Motor Accident Claims Tribunal , Thane (for short “the Tribunal”).

2. The Respondents/Claimants have also preferred appeal for

enhancement of compensation amount. As appeal and cross appeal are against the same judgment and order, I am deciding it by this common judgment.

3. It is contention of learned counsel for the Appellant/Corporation that accident occurred due to negligence of the driver of offending truck but, this fact is not considered by the Tribunal. Learned counsel further submitted that there was collision between two trucks and offending bus but the Tribunal has considered negligence of driver of offending bus, which is erroneous. The Tribunal should have considered contributory negligence of the truck driver. Learned counsel further submitted that while calculating compensation, the Tribunal has applied multiplier of 15, it should be 14. Hence, requested to allow the Appeal.

4. It is contention of learned counsel for the Respondents/Claimants that deceased was passenger in the offending bus and driver of offending bus gave dash to the truck from the backside, which was going ahead of the bus. Due to dash, the deceased sustained injuries and succumbed the injuries. The offence was registered against the driver of offending bus. Learned counsel further submitted that there was no negligence of the driver

of the truck. Learned counsel further submitted that the Tribunal has not awarded future prospects and consortium amount is awarded on lower side, it be awarded. Hence, requested to allow the cross-appeal and dismiss the appeal filed by the Corporation.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short “the Tribunal”).

6. It is Claimants’ case that on 11th February, 2003 at 2:30 a.m. Deceased Bhanudas was proceeding towards Pune in S. T. bus bearing registration No. MH-12-AQ-8037 by Pune-Solapur road. The driver of the bus was driving bus in high an excessive speed, he was driving it rashly and negligently. When the bus reached near Shewalwadi Octroi Naka, the driver of the bus made attempt to overtake the truck bearing registration No. KA-25-3146, which was ahead of the bus. During that process he dashed the said truck from backside. In the accident Bhanudas sustained serious injuries and succumbed to the injuries. The offence was registered against the driver of offending bus. To prove the negligence of the driver of offending bus, the Claimants have examined Claimant No.1 Laxmibai Devkar, wife of deceased at Exhibit-22 but, she was not eye witness

to the incident hence, I am not considering her evidence. The Appellant/Corporation has not examined driver of the offending bus to prove the negligence of the truck driver. While dealing with the issue of negligence, the Tribunal has observed that the police papers i.e. copy of FIR at Exhibit-25, complaint at Exhibit-30, spot panchanama at Exhibit-26, supports the contentions of the claimant that accident occurred due to negligence of the driver of the offending bus. The Tribunal has further observed that after making enquiry, the police has registered the offence against the driver of offending bus. Considering these facts, the Tribunal has held that the accident occurred due to sole negligence of the driver of offending bus. I do not find infirmity in it. In my view, admittedly, the offence was registered against the driver of offending bus. The driver had given dash to the truck from backside and to prove the negligence of the driver of the truck, the driver of offending bus did not enter into witness box. Hence, I do not see merit in the contention that there was contributory negligence of the driver of offending truck in the said accident.

8. It is contention of learned counsel for the Appellant/Corporation that Appellant be permitted to file

appropriate proceedings against the driver of offending truck. In my view, no question of permission for filing the proceedings arises. The appellant can file proceedings as per the provisions of law. This Court cannot grant permission to file any proceedings. The Tribunal has considered monthly income of the deceased at Rs.12,000/- per month but, the Tribunal has not awarded future prospects. As per the view of Hon'ble Apex Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and Ors. (2017) 16 SCC 680***, the claimants are entitled for 30% future prospects. 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 Company vs. Nanu Ram (2018 SCC 1546)***, each claimant is entitled to Rs.48,000/- for consortium amount and Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses. The Tribunal has applied the multiplier of 15, it should be 14, as deceased was 42 years old at the time of accident.

9. Considering the above calculations, the claimants are entitled for following compensation.

Monthly income	Rs.12,000/-
Add. 30% future prospects	Rs.3,600/-

Total income	Rs.15,600/-
Deduction for Personal Expenses	Rs.3,900/-
Total	Rs.11,700/-
Annual Income (Rs.11,700/- X 12)	Rs.1,40,400/-
Multiplier 14	Rs.19,65,600/-
Consortium amount Rs.48,000/- X 5(Claimants)	Rs.2,40,000/-
Loss of estate	Rs.18,000/-
Funeral Expenses	Rs.18,000/-
Total compensation	Rs.22,41,600/-
Less awarded by the Tribunal	Rs.14,52,000/-
Enhanced amount	Rs.7,89,600/-

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

ORDER

- i. Cross appeal is partly allowed.
- ii. The claimants are entitled for enhanced amount of Rs.7,89,600/- from the date of filing claim petition till realisation of the amount. Out of this amount Rs.2,75,000/- is consortium amount, the claimants are entitled @ 7.5% interest per annum from 1st November, 2017 till realisation of the amount.
- iii. The date of award is 6th May, 2009 and cross appeal is filed on 1st April, 2022.
- iv. The Claimants are not entitled interest on enhanced amount for delayed period of 12 years

240 days.

- v. The Appellant/Corporation shall deposit the enhanced amount along with accrued interest as referred above, within a period of six weeks after receipt of the order.
 - vi. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - vii. The statutory amount in appeal No. 596 of 2011 along with accrued interest be transferred to the Tribunal. The parties are at liberty to withdraw it, as per rule.
 - viii. The delay for filing the cross appeal is condoned. The Cross Appeal be registered for the statistical purpose.
 - ix. The Claimant shall pay Court fees on enhanced amount as per Rule.
11. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)