

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 2119 OF 2005**

THE TRANSPORT MANAGER)
Thane Municipal Transport, Administrative)
Building, Wagle Estate, Road No.27,)
Thane 400 004.)
(The registered owner of the TMT Bus No.)
H-4/G-691 as on 6.7.2002))...APPELLANT

Vs.

1. SMT. REETADEVI SANJAY PANDEY)
Aged 27 years, Residing at Shivmrut)
Bhavan, Kisan Nagar No.2, Wagle Estate)
Thane (W), Thane)
(Widow of the deceased))
)
2. MASTER HARSHID SANJAY PANDEY)
Aged 4 years, Residing as above)
Being minor through his mother and)
next friend i.e. Applicant no.1 above)
named (Son of the deceased))
)
3. SHRI. KAMALESH SHRIPATI PANDEY)
Aged 50 years, Residing as above)
(Father of the deceased))
)
4. SMT. GEETADEVI KAMALESH PANDEY)
Aged 47 years, Residing as above)
(Mother of the deceased))...RESPONDENTS

**WITH
CROSS OBJECTION (ST.) NO. 2186 OF 2012
IN
FIRST APPEAL NO. 2119 OF 2005**

THE TRANSPORT MANAGER)
Thane Municipal Transport, Administrative)
Building, Wagle Estate, Road No.27,)
Thane 400 004.)...APPELLANT

Vs.

1. SMT. REETADEVI SANJAY PANDEY)
Aged 27 years)
2. MASTER HARSHID SANJAY PANDEY)
Aged 4 years)
3. SHRI. KAMALESH SHRIPATI PANDEY)
Aged 50 years)
4. SMT. GEETADEVI KAMALESH PANDEY)
Aged 47 years, All are residing at)
Shivmrut Bhavan, Kisan Nagar No.2.)
Wagle Estate, Thane (West))...RESPONDENTS

CORAM : ABHAY AHUJA, J.
RESERVED ON : 19th AUGUST, 2023
PRONOUNCED ON : 11th JANUARY, 2024

Mr.Ketan Dhavle i/by Mr.Mandar Limaye, Advocate for the Appellant.

Mr.T.J.Mendon a/w. Mr.T.R.Kale, Advocate for the Respondents.

JUDGMENT :

1. This Appeal has been filed under section 173 of the Motor Vehicles Act, 1988 (the “M.V. Act”) challenging the judgment and award dated 25^h February, 2005 passed by the Motor Accident Claims Tribunal, Thane (the “Tribunal”) in Motor Accident Claim Petition No.635 of 2002 allowing the Claim Petition of the Respondents and directing the Appellant to pay a compensation amount of Rs.12,61,944/- (inclusive of no fault liability) to the Respondents along with interest @ 6% p.a. from the date of the application. The Appeal was admitted by an order of this Court dated December 6, 2005.

2. The Respondents have also filed their Cross Objection in the said First Appeal in the year 2012.

3. The brief facts are that on 6th July, 2002 at around 4:25 p.m., Shri Sanjay Kamlesh Pandey, aged 29 years, being the husband of Respondent No.1, the father of Respondent No.2 and the son of Respondents No. 3 and 4, was riding his motorcylce towards Ghodbunder. At that time, the offending bus, owned by the Appellant came from Mira Road direction and dashed against Shri Pandey who died immediately after his admission to the hospital. The police prosecuted the driver of the bus.

4. The deceased aged 29 years at the time of the accident, was a graduate and was getting a salary of Rs.8000/- per month and certain bonus etc. from time to time. The Respondents filed a claim petition seeking compensation of Rs.20,00,000/-. The Appellant opposed the claim, first raising a technical objection of non-joinder of the driver of the offending bus and the insurance company of the deceased's motorcycle. The Appellant also submitted that the deceased was rash and negligent at the time of the accident and it was due to his negligence that the accident took place and not due to the negligence of the driver of the bus.

5. On the issue of whether the deceased died due to the vehicular accident and due to whose negligence the accident took place, the Respondents relied upon the examination of an eye witness who was present in the bus when it met with the accident. This eye witness stated that the bus at the time was going at a fast speed. He said that this bus went on the right side of the road and then collided with an electric pole. The eye witness got down from the bus and saw that the bus had already hit a motorcycle which was lying on the road although in his cross examination, the eyewitness admitted that he did not see the act of the bus hitting the motorcycle. But he said that due to sudden braking the bus skidded and went towards the right side of the road. The Tribunal held that this cross examination at the most established that the offending bus first hit the motorcycle and then hit the electric pole on the right side. On the issue whether the bus driver was negligent, the Tribunal noted that the eye witness had said that the bus was going at a fast speed and it was then that the accident took place. The Tribunal, noting that the bus driver did not come forward to depose and give details as to how the accident took place, held that there was no other alternative but to hold that the Respondent claimants have proved that the bus driver was negligent and caused the accident.

6. On the technical objection raised by the Appellant of non-joinder of parties as the driver of the offending bus and the insurance company of the deceased's motorcycle were not made parties to the claim by the Respondents, the Tribunal held that admittedly the driver was driving the vehicle belonging to the Appellant as part of his duty and it was obvious that the Appellant was vicariously liable for the fault committed by their employee and so the driver was never a necessary party but he could have been a witness for the Appellant's case. The Tribunal further held that the insurance company of the motorcycle of the deceased was also not a necessary party because it is the choice of the Respondent claimants as to against whom they should proceed for seeking compensation and particularly in this case the Respondent claimants had no reason to proceed against the insurance company of the motorcycle because according to them the deceased motorcyclist was not negligent.

7. On the issue of amount of compensation payable to the Respondents, the Tribunal noted that the deceased was about 29 years old and an employee of a private company and was getting a salary of Rs.8000/- and usual perks including the motorcycle he was driving at the time of the accident. The Tribunal held that considering the age and

nature of work the deceased was doing, it was clear that judicial notice could be taken of the fact that he would have made progress in his work and earned more salary in the future. The Tribunal therefore held that the amount of salary should be increased by 20% for calculating loss of income which would come to Rs.9600/- and from this amount 33% should be deducted taking into account personal expenses of the deceased and therefore the amount of Rs.6432/- should be taken into account and this amount should be multiplied by multiplicand of 16 in view of his age at the time of his death. The Tribunal therefore held that the amount of compensation for loss of income came to Rs.12,34,944/-. In addition to this amount, the Tribunal held that the Respondent claimants were entitled to funeral expenses of Rs.2000/-, an amount of Rs.15,000/- towards loss of consortium payable only to Respondent No.1 his wife, and loss of estate of Rs.10,000/-. The Tribunal held that the total compensation payable comes to Rs.12,61,944/- and awarded interest of 6% from the date of application till the amount was deposited in the court.

8. Being aggrieved and dissatisfied by the Impugned Judgment and Award partly allowing the Claim Petition of the Respondents awarding a

compensation amount of Rs.12,61,944/- (along with no fault liability) to the Respondents as against a claim of Rs.20,00,000/-, the Appellant, Thane Municipal Transport, has preferred this Appeal on the grounds : (i) that the Tribunal erred in holding that the Respondents had proved that the deceased died due to the accident caused by the rash and negligent driving of the driver of the offending bus, (ii) that the Tribunal ought to have considered that the eye witness admitted that he had not seen the act of the bus hitting the motorcycle, (iii) that without the evidence of the bus driver, the Tribunal came to the conclusion that the bus driver was negligent and had caused the accident, (iv) that the bus driver was not negligent at all and did not drive the bus rashly and thus the liability could not be imposed on the Appellant, (v) that the Tribunal erred in holding that the deceased was not negligent, (iv) that the petition was bad for non-joinder of necessary parties including the driver of the offending bus and the insurance company of the motorcycle of the deceased, (vii) that the compensation has been wrongly calculated and the multiplier has also been wrongly applied and as such the Respondents are not entitled to the compensation awarded by the Tribunal.

9. Mr. Ketan Dhavle, learned Counsel for the Appellant relying *inter alia* on the decision of the Hon'ble Supreme Court in the case of ***Macchindranath Kernath Kasar v. D.S. Mylarappa and Others***¹ and the decision of this Court in the case of ***New India Assurance Company Ltd. Aurangabad v. Suman Bhaskar Pawar and Others***² emphatically submitted that the Tribunal could not have held negligence on the part of the driver in his absence. Mr. Dhavle submitted that the Tribunal ought to have noted that it was mandatory on its part to issue notice to the driver under Rule 260(1) of the Maharashtra Motor Vehicles Rules, 1989 and despite the provisions being mandatory in nature, the Tribunal did not issue notice to the driver of the offending bus and also erred in holding that he is not a necessary party to the petition. Mr. Dhavle therefore submitted that the Appeal deserves to be allowed and the Judgment and award of the Tribunal ought to be set aside.

10. On the other hand, the Respondents have filed Cross Objection in this Appeal challenging the quantum of compensation awarded by the Tribunal on the grounds (i) that the Tribunal has granted very low compensation to the Respondents without considering the future

1 (2008) 13 SCC 198.

2 2010(2) Mh.L.J. 177.

prospects, promotion and increase in wages, (ii) that the Tribunal ought to have considered the gross salary as income of the deceased while computing compensation, (iii) that 50% of the income be added while calculating compensation as per the judgment of the Hon'ble Supreme Court in the case of ***Sarla Verma v. Delhi Transport Corporation***³, (iv) that the Tribunal erred in adopting the low multiplier and the same ought to be 17 considering the age of the deceased, (v) that the Tribunal ought to have deducted 1/4th and not 33% from the income towards personal expenses considering the number of dependents on the income of the deceased, (vi) that the rate of interest is low and ought to be enhanced and (vii) that the Respondents are entitled to make a claim for just and reasonable compensation.

11. Mr.T.J. Mendon, learned Counsel for the Respondents, submitted that pursuant to Section 168 of the M.V. Act, it is mandated that the compensation must be just, reasonable and proper to the claimants and has tendered across the Bar a table containing a computation of enhancement of claim containing the following computation as per *Sarla Verma v. Delhi Transport Corporation (supra)* and ***National Insurance***

3 2009 ACJ 1298 (Supreme Court).

Company Limited v Pranay Sethi and Ors.⁴ : Income per month to be taken as Rs.8000/- per month, future prospects to be taken at 50% of the monthly income and not 20% as held by the Tribunal, personal expenses of 1/4th to be deducted, therefore dependency to be Rs.9000/- per month, multiplier to be applied to be 17 and not 16 as applied by the Tribunal, total calculation of dependency to be Rs.18,36,000/- (Rs.9000 x 12 x 17), loss of estate to be enhanced from Rs.10,000/- to Rs.16,500/-, to add loss of consortium of Rs.44,000/- per claimant and not Rs.15,000/- payable only to Respondent No.1 as determined by the Tribunal, to enhance funeral expenses from Rs.2000/- to Rs.16,500/- and to enhance the rate of interest from 6% p.a. to 9 % p.a.

12. I have heard Mr. Dhavle, learned Counsel for the Appellant and Mr. Mendon, learned Counsel for the Respondents and with their able assistance I have also perused the papers and proceedings in the matter and considered the submissions.

4 2017 (16) SCC 680.

13. On the first issue before this Court whether the deceased died due to the vehicular accident and due to whose negligence the accident took place, the Tribunal has in its judgment relied on the deposition of an eye witness who was present in the offending bus when it met with the accident. This eye witness has stated that at the time of the accident, the bus was going at a fast speed and it went on the right side of the road and then collided with an electric pole. The eye witness then got down from the bus and saw that the bus had already hit a motorcycle which was lying on the road. Although in his cross examination the eyewitness has admitted that he did not see the act of the bus hitting the motorcycle and that due to sudden braking, the bus skidded and went towards the right side of the road, it can, in the absence of any contrary evidence, be reasonably concluded that the motorcycle was hit by the offending bus and then hit the electric pole causing the accident. The preponderance of probabilities in view of the eye witness account clearly indicates that the accident was caused due to the negligence of the bus driver of the Appellant resulting in the death of the motorcyclist. No fault can therefore be found with the finding of the Tribunal.

14. I also agree with the Tribunal that the driver of the offending vehicle was not a necessary party as the driver was driving the vehicle belonging to the Appellant as part of his duty and the Appellant was vicariously liable and the submission of the learned Counsel for the Appellant that the Tribunal could not have held negligence on the part of the driver in his absence cannot be countenanced, more so, as it was the Appellant's duty to examine the driver, which it has failed to do and now it cannot turn around and say that since the driver has not been examined the Appellant cannot be held liable for negligence.

15. Moreover, a claimant cannot be made to suffer the consequences of non-impleadment as the claimant is under no obligation to implead any party as the opponent to the claim petition. This Court has also held that even where the ground of non-joinder or no notice to the driver is raised in the written statement, the owner or the insurer cannot be permitted to take advantage thereof if the said ground was not effectively pursued.

16. The non-joinder of the insurance company of the motorcycle of the deceased is also not relevant to the proceedings as there is no case of negligence made out or established against the deceased. Therefore the

Tribunal's finding that the bus driver was negligent and caused the accident is correct in the facts and circumstances of the present case.

17. On the issue of the quantum of compensation, the Appellant has submitted that the Tribunal has wrongly calculated the income for loss of compensation and wrongly awarded Rs.12,61,944/- (inclusive of no fault liability) and that it has totally miscalculated the compensation in respect of loss of income to the deceased and that the Respondents are not entitled to the compensation as awarded. Except these bald claims it has not been specifically pointed out as to how the compensation for loss of income is wrong or how the miscalculation has been done. There is no contra evidence with respect to the finding of the Tribunal that the deceased was an employee of a private company getting a salary of Rs.8000/- per month plus usual perks including the motorcycle he was driving at the time of the accident. No contrary evidence has been brought before this Court.

18. The Hon'ble Supreme Court in the case of *National Insurance Company Limited v Pranay Sethi and Ors. (supra)* has clearly laid down the law with respect to future prospects and held that while determining

the income, an addition of 50% of actual salary to the income of the deceased towards future prospects where the deceased had a permanent job and was below the age of 40 years, should be made, and therefore in the present case, considering the age of the deceased and that the deceased was working in a private company and would have made progress in his work and earned more salary in the future, an addition of 50% should be made towards future prospects as opposed to 20% as granted by the Tribunal. Also, as per the decision of the Hon'ble Supreme Court in the case of *Sarla Verma v. Delhi Transport Corporation and others (supra)*, the deduction towards personal and living expenses should be 1/4th. Also, considering the above decision, the multiplier as per the age of the deceased should be 17 and not 16. It is to be remembered that under Section 168 of the M.V.Act the claimants are entitled to just and reasonable compensation. Therefore, considering that Rs.8000/- was the income of the deceased per month, the total dependency compensation would be Rs.18,36,000/-. Further, as mandated by the Hon'ble Supreme Court in the case of *National Insurance Company Limited v Pranay Sethi and Ors. (supra)*, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively and the aforesaid amounts should be enhanced at the rate of 10% in every three years. Therefore loss of estate to be Rs.16,500/-, loss of consortium to be Rs.44,000/- per dependent (and not

Rs.15,000/- payable only to Respondent No.1 but to the Respondents No.2, 3 and 4 as well) as per the principles laid down in the aforementioned decisions as well as the decision in *Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram & Others*⁵ and funeral expenses to be Rs.16,500/- and not Rs.2000/- as held by the Tribunal.

19. Therefore, in the light of the principles settled in the above quoted decision of the Hon'ble Supreme Court, this Court is of the view that the Respondents are entitled to compensation as per the following computation:

Sr. No.	Particulars	Amount
1.	Per month salary	Rs.8000/-
2.	Add future prospects 50%	Rs.4000/-
3.	Less 25% personal expenses of deceased	Rs.3000/-
4.	Total (1+2-3) per month	Rs.9000/-
5.	Multiplier	17
6.	Total dependency calculation (9000 x 12 x 17)	Rs.18,36,000/-
7.	Loss of consortium Rs.44,000/- for 4 claimants	Rs.1,76,000/-

5 2018 ACJ 2782 (SC)

8.	Funeral expenses	Rs.16,500/-
9.	Loss of estate	Rs.16,500/-
10.	Total Compensation (6+7+8+9)	Rs.20,45,000/-

20. Ergo, the Appellants are entitled to a total compensation of Rs.20,45,000/- inclusive of amount of compensation under 'no-fault' liability along with interest thereon at the rate of 6% per annum to be paid by the Appellant from the date of filing of the petition till realization, to be distributed amongst the Respondents in the manner and proportion as mentioned in the judgment and award dated 25th February, 2005 of the Motor Accident Claims Tribunal, Thane in Motor Accident Claim Petition No.635 of 2002 less the amount already withdrawn, if any.

21. The Appeal is hereby dismissed and the cross objection is allowed as above. The judgment and award dated 25th February, 2005 of the Motor Accident Claims Tribunal, Thane in Motor Accident Claim Petition No.635 of 2002 be modified to the above extent.

22. No order as to costs.

(ABHAY AHUJA, J.)