

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

FIRST APPEAL NO. 624 OF 2009

Maharashtra State Road)
Transport Corporation)
Vahatuk Bhavan, Dr. A. Nair Marg,)
Bellasis Road, Bombay Central,)....Appellant
Dr. A. Nair Marg, Bombay-400 008)..(Org.Opponent)

Versus

1. Mr. Chetana Chandrakant Vaze)
age: 35 years, Occu: Household)
2. Chandan Chandrakant Vaze)
Age: 12 years, Occu: Student)
3. Dalvik Chandrakant Vaze)
Age: 5 years, Occu: Service)
4. Kasubai Narayan Vaze,)
Age: 65 years, Occu: Household,)
(The Applicant Nos. 2 & 3 are minor)
represented Through their mother)
i.e. Applicant No.1))

All are residing at Sakhare, Post Dahisar,)
(Via- manor), Tal. Palghar, Dist. Thane)....Respondents

(Org. Claimants)

Ms. Pinky M. Bhansali a/w Ms. Rajlaxmi Punjabi i/b Mr. G. S. Hegde
& Associates, Advocate for the Appellant.

Mr. Shirshak R. Chavanke, Advocate for the Respondent Nos. 1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th FEBRUARY, 2024.

Oral Judgment. :

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

2. It is contention of learned counsel for the Appellant/Corporation that there was contributory negligence of the deceased in the accident as, deceased suddenly came across the bus therefore there was dash of the said bus to the deceased. Due to dash deceased died on the spot, but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has considered monthly income of deceased at Rs.12,700/-, which is on higher side. No evidence was produced on record to prove the income of deceased. Learned counsel further submitted that interest on

compensation amount is awarded at 9%, which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that deceased was standing on Kaccha road, the offending bus came in high speed and gave dash to him. The accident occurred due to sole negligence of the offending bus driver. Learned counsel further submitted that deceased was serving as a teacher in Vikranmgad High School and he was getting salary at Rs.12,744/- per month. Salary slip was produced on record and employer was examined. On that basis, the tribunal has considered salary of the deceased, which is proper. While passing order tribunal has considered all the aspects and no interference is required in it.

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

5. It is claimant's case that on 25th September 2006 at about 11:00 a.m the deceased Chandrakant Vaze was standing in front of

the gate of Panchayat Samiti Vikramgad. At the relevant time, one S.T. bus bearing registration no MH-20-B-7747 came from Jawhar side and it was being driven in high speed and gave dash to Chandrakant, he sustained injuries and died on the spot. Offence was registered against the driver of offending bus.

6. It is contention of learned counsel for the Appellant/Corporation that accident occurred due to negligence of the deceased. To prove the defense the Appellant examined driver of offending bus. He has stated that accident occurred due to negligence of the deceased. While dealing with the issue of negligence, the tribunal has observed that driver of offending bus did not apply brakes after seeing the deceased. The Tribunal has observed that accident occurred due to negligence of bus driver. I do not find infirmity in it. The spot panchanama is at Exhibit-18 and FIR is at Exhibit-17. These documents shows that deceased was walking on the left side of the road, he was walking on Kaccha road and the offending bus gave dash to him on kaccha road. It shows accident occurred due to sole negligence of the driver of offending bus. I do not see merit in the contention that there was contributory negligence

of the deceased in the said accident. To prove the income of deceased, the Claimants have examined the Claimant no.1 Chetna Vaze at Exhibit-13. She has stated that deceased was working as a teacher and he was drawing salary of Rs.15,000/- per month. In support of her evidence, the claimants have examined employer Kantikumar Thakre, Headmaster of Vikramgad High School at Exhibit-22. He has stated that the deceased Chandrakant was working as assistant teacher in their high school and his total salary was Rs.16,266/- per month.

7. Considering the evidence on record, and after deduction of taxes the tribunal has considered monthly income of deceased at Rs. 12,700/-, I do not find infirmity in it. While calculating the compensation 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 Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782(SC)***, each claimant is entitled for Rs.48,000/- as consortium amount and Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. There are four claimants that total comes to Rs.2,28,000/-. The claimants are entitled for enhanced amount of Rs.2,28,000/-.

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

ORDER

- i. Appeal is dismissed.
 - ii. The claimants are entitled for enhanced amount of Rs.2,28,000/- @ 7.5% interest per annum from the date of 1st November, 2017 till realization of the amount.
 - iii. The Appellant/Corporation shall deposit the enhanced amount along with accrued interest thereon, within six weeks after receipt of the order.
 - iv. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - v. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
9. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)