

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 2534 OF 2011

The General Manager, Bombay Electric Supply And Transport Undertaking, Municipal Corporation Greater Mumbai, electric House, Colaba Mumbai – 400 001.	...	Appellant (Orig. Opp. Party)
versus		
1. Kavidas Manohar Mandal, Aged: 47 years, father of the deceased 2. Anjali Kavidas Mandal, Aged: 36 years, mother of the deceased 3. Balaram Kavidas Mandal, Aged: 20 years, brother of the deceased, All residing at Punam Building, 2 nd Floor, Room No. 102, Opp. Ganesh Naik Office, Bonkode, Navi Mumbai		Respondents (Orig. Applicants)

Ms. Karishma Jhaveri i/b Navdeep Vora & Associates , Advocate for the Appellant.

Mr. Rohan Darandale, Advocate for the Respondent Nos.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th MARCH, 2024.

Oral Judgment. :

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

2. It is contention of learned counsel for the appellant-Corporation that the accident occurred due to sole negligence of the deceased. The offending bus was standing at the bus stop. There was no contact with the motorcycle of the deceased and the offending bus. The deceased sustained injuries as his motorcycle slipped on the road but this fact is not considered by the Tribunal. Learned counsel further submitted that, at the most, the Tribunal should have considered contributory negligence of the deceased. Learned counsel further submitted that the Tribunal has considered monthly income of the deceased at Rs.10,000/ without any evidence on record, which is on higher side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent Nos. 1 to 3/claimants that the motorcycle of the deceased was dashed by the driver of the offending bus from backside. Due to said dash, the deceased sustained injuries and succumbed to the injuries. An FIR was lodged against the driver of the offending bus. Learned counsel further submitted that the deceased was a Lab Technician and Hospital Assistant. He was qualified as D.M.N. and was earning Rs.10,000/- per month as salary. A witness was examined to prove the income of the deceased. The Tribunal has considered all the aspects while passing the judgment and order. 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 26th February 2009 at about 10.45 am, the deceased was proceeding from Koparkhairane towards Turbe on his motorcycle at moderate speed with care and caution and by observing traffic rules by the left side of the road. When he reached at Sanpada Koparigaon road near Backing Complex, Gate No.3, the offending bus bearing No.MH-01-LA-6404 came in rash and negligent manner. The said bus was in high and excessive speed and gave dash from backside to the motorcycle of the deceased. Due to said dash, the deceased sustained injuries, he succumbed to injuries.

5.1. To prove the negligence of the driver of the offending bus, the claimants have relied on police papers i.e. FIR and spot-panchanama. To prove its defense, the appellant-Corporation has examined Pravin Valkund, driver of the offending bus. He has stated that, at the time of the accident, the deceased was heading on his motorcycle. His motorcycle was in high and excessive speed and he was driving it in rash and negligent manner. The deceased could not control his motorcycle, so the motorcycle slipped on the road and the deceased fell down on the road, 15 feet away and came near standing bus. His bus did not come in contact with the deceased or his motorcycle. This witness further stated

that the accident occurred due to sole negligence of the deceased. The deceased sustained injuries when he fell down on the road. In cross-examination, he admitted that offence was registered against him in respect of the said accident and charge-sheet was filed against him. He did not file complaint in writing to the superior police officer against wrongly registration of the offence against him.

5.2. While dealing with the issue of negligence, the Tribunal has observed that the police registered offence against the driver of the offending bus after making enquiry and there was damage to the backside portion of the motorcycle. The FIR and spot panchanama at Exhibit-22 supports the claimants' case, on that basis, the Tribunal has considered that the accident occurred due to sole negligence of the driver of the offending bus. I do not find infirmity in it. In my view, DW1-driver of the offending bus has stated that, at the time of the accident, the said bus was standing at the bus stop but the spot-panchanama falsifies his evidence, as in the spot panchanama, it is mentioned that the brake marks of the bus appeared on the road. It shows that, at the time of the accident, the bus was running and after dash to the motorcycle of the deceased, the driver had applied brake. It proves the claimants' case. Only to avoid the liability, the driver of the offending bus has stated that the accident occurred due to rash and negligent driving of the deceased. I do not find merit in it.

5.3. To prove the income of the deceased, the claimants have examined claimant No.1-Kavidas. He has stated that the deceased was working as Lab Technician in Savi Pathology Lab and he was getting salary of Rs.10,000/- per month. In support of the evidence of PW1, the claimants have examined PW2-Pravin Shinde, the owner of the pathology lab. He has stated that the deceased was working in their laboratory as Lab Technician and Hospital Assistant, the deceased was qualified as D.M.N. and he was paying Rs.10,000/- per month as salary to the deceased. Nothing elicited in cross-examination of this witness.

5.4. On the basis of the evidence on record, the Tribunal has considered monthly income of the deceased at Rs.10,000/- per month. I do not find infirmity in it.

5.5. While awarding compensation, the Tribunal has not awarded the consortium amount and the Tribunal has awarded Rs.5000/- for funeral expenses and Rs.5,000/- towards loss of estate, it is 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, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. There are three claimants, the total comes to Rs. 1,80,000/-. If Rs.10,000/- granted by the Tribunal is deducted from this amount, it comes to Rs.1,70,000/-. The claimants are entitled for this amount.

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

O R D E R

1. The appeal is dismissed. No order as to cost.
 2. Respondent Nos.1 to 3/claimants are entitled for enhanced compensation of Rs.1,70,000/- @ 7.5% interest per annum from 1st November 2017 till realisation of the amount.
 3. The appellant-Corporation shall deposit the enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.
 4. The claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.
 5. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
 6. The claimants shall pay court fees on enhanced amount as per Rules.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)