



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

FIRST APPEAL NO. 185 OF 2020

APPELLANT

On R.A. Ori. (Res.)

- : 1. Divisional Controller,
Office at M.S.R.T.C. Sitabuldi,
Railway Station Road, Nagpur

//VERSUS//

RESPONDENTS

On R.A. Ori. (Petitioner)

- : 1. Jyoti Sanjay Bharat,
Aged about 35 years, Occ. Household
2. Master Yash Sanjay Bharat,
Aged about 07 years, Occ.- Student,
3. Master Laksh Sanjay Bharat,
Aged 7 years, Occ. Student
Through their Natural Guardian
Mother Smt. Jyoti Sanjay Bharat
4. Gulab Fandi Bharat,
Aged about 68 years, Occ.-Retired,
All R/o CPWD Coloney, Block No.1,
Quarter No.5, Type-II, Katol Road,
Nagpur

Amendment carried out as
per court order dated
18.04.2022

Mr. Ashish Rajesh Fule, Advocate for appellant.
None for respondent Nos.1 to 4.

CORAM : G. A. SANAP, J.

DATED : 18th MARCH, 2024

ORAL JUDGMENT

Heard finally.

2. In this appeal, filed under Section 173 of the Motor

Vehicles Act, 1988, the appellant-original respondent has challenged the judgment and award dated 16/03/2019 passed by the Motor Accident Claims Tribunal-4, Nagpur, whereby the claim for compensation filed by the respondents is allowed.

3. Background facts:-

The appellant is the owner of S.T. Bus bearing registration No.MH-12-EF-6975 (for short 'the offending bus'). It is the case of the respondents that on 15.11.2015, at about 08.45 hours., the deceased was riding his motorcycle. He was proceeding to his office. At the spot of incident the offending bus came in high speed. The driver was rash and negligent. The driver gave a dash to the deceased. He sustained multiple injuries and succumbed to the injuries on the spot. The driver of the offending bus has been prosecuted. According to the respondents, the deceased was 38 years old on the date of the accident. His monthly salary was Rs.14,500/-. They contended that they are dependents of the deceased. The accident occurred due to the rash and negligent driving of the driver of the offending bus.

4. The appellant opposed the claim. It was contended that the driver of the offending bus was not responsible for the accident. The deceased was driving a motorcycle in high speed and

gave dash to the bus. It was contended that the Insurance Company of the motorcycle was not joined as a party in the accident claim. The appellant denied the age and income of the deceased.

5. The parties adduced the evidence before the Tribunal. Respondent No.1, the wife of the deceased, examined herself as AW-1. The appellant has examined the driver of the offending bus. The learned Member of the Tribunal, on consideration of the evidence allowed the claim. Being aggrieved by the judgment and award passed by the Tribunal, the appellant has come before this Court in appeal.

6. I have heard Mr. Ashish Raj Fule, learned Advocate for the appellant. Learned Advocate for the respondents has failed to appear before the Court.

7. In view of the facts and circumstances following points fall for my determination:-

- i) Whether the driver of the offending bus was rash and negligent in driving the bus and as such, solely responsible for the accident?
- ii) Whether the compensation awarded by the

learned Member of the Tribunal is just, proper and reasonable?

iii) What order?

8. Learned Advocate for the appellant submitted that there is no evidence to prove that on the date of the accident, the deceased was 38 years old. Learned Advocate submitted that, the age of the deceased mentioned in the postmortem report has been made the sole basis to quantify the compensation. Learned Advocate further submitted that the deceased was not a permanent employee and therefore, 50% amount awarded under the head of future prospects is not in accordance with law. Learned Advocate further submitted that the Insurance Company of the Motorcycle was not made a party and as such, the claim filed by the respondents was bad for non-joinder of necessary party.

9. With the assistance of learned Advocate for the appellant, I have gone through the record and proceedings. On going through the documentary and oral evidence, I am satisfied that the learned Member of the Tribunal has not committed any mistake on any aspect sought to be urged before this Court. The wife of the deceased has categorically stated that the deceased was 38 years old on the date of the accident. In the postmortem report,

the age of the deceased was mentioned as 38 years. Perusal of the cross-examination of respondent No.1, conducted on behalf of the appellant, would show that this fact has not been challenged. There is no suggestion that the deceased was not 38 years old on the date of the accident. In view of the evidence placed on record, the appellant was expected to adduce some evidence in rebuttal to fortify this contention. In view of this, the submissions advanced by the learned Advocate for the appellant cannot be accepted.

10. It is the contention of the appellant that the deceased was not a permanent employee of the Municipal Corporation. His salary slip has been produced on record. The salary slip categorically mentions the employee code number, his designation and department in which he was posted. Perusal of the cross-examination of respondent No.1 would show that this aspect has also not been challenged in the cross-examination. It was not even suggested to the respondent No.1, in a cross-examination that the deceased was employed on a contract basis. It was also not suggested that the deceased was not a permanent employee. It is submitted that there is one admission in a cross-examination whereby respondent No.1 has denied that she is receiving a pension of her husband. In my view, even this admission cannot be

made use of by the appellant to substantiate the submissions. On this count the submissions cannot be accepted.

11. The deceased was riding a motorcycle. A finding has been recorded that the driver of the offending vehicle was solely responsible for the accident. He was rash and negligent. In view of this position, the deceased was a third party vis-a-vis the offending vehicle, is concerned. It was not necessary to join the Insurance Company of motorcycle. On this count also there is no substance in the submissions advanced by learned Advocate for the appellant. As such, I record my findings on the above points in the affirmative.

12. Hence, I conclude that there is no substance in the appeal. It deserves to be dismissed.

13. The appeal is accordingly dismissed.

14. The First Appeal stands disposed of. No order as to costs. Pending applications, if any stand disposed of.

(G. A. SANAP, J.)