IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 310 OF 2017

Solapur Municipal Transport Undertaking,
through its Transport Manager,
41, Budhwar Peth, Solapur. .. Appellant
(Orig. Respondent)

VERSUS

1. Snehal W/o Vishvasrao Pawar,
Age : 29 Years, Occ. Household

2. Ritesh S/o Vishvasrao Pawar,
Age : 9 Years, Occ. Education

3. Shraddha d/o Vishvasrao Pawar,
Age : 9 Years, Occ. Education

4. Dattatraya S/o Dagdu Pawar,
Age : 55 Years, Occ. Agriculture

5. Sou. Kusum W/o Dattatraya Pawar,
Age : 53 Years, Occ. Household
(Respondent No. 2 and 3 are minors under
guardianship of real mother resp. No.1)

All Resident of Malegaon, Tq. Barshi,
At present R/o. Samarth Nagar,
Osmanabad. .. Respondents
(Original claimants)

.....

Shri. Shrikishan S. Shinde Advocate for the Appellant
Shri. V. V. Ingole, Advocate for Respondent Nos. 1 to 5.

.....

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 27th FEBRUARY, 2025

PRONOUNCED ON : 28th APRIL, 2025

JUDGMENT :-

1. The appellant i.e. original respondent, who is the owner of offending bus, has preferred this appeal challenging the judgment and award dated 30.11.2012 passed by the learned Member, Motor Accident Claims Tribunal, Osmanabad, (hereinafter referred to as, “learned Tribunal”) in Motor Accident Claim Petition No. 316 of 2009, mainly on the ground of quantum.

2. Admittedly, the respondents/claimants filed claim petition for getting compensation on account of accidental death of one Vishwas Dattatraya Pawar being his dependents and legal representatives. The learned Tribunal, after conducting the enquiry/ trial, has awarded compensation to the tune of Rs. 27,74,000/- to the respondents/claimants, along with the interest at the rate of 7.5 % per annum, from the date of claim petition till its realization. The aforesaid award also includes the claim under Section 140 of the Motor Vehicle Act.

3. The necessary particulars in respect of the accident, are not seriously disputed. Though the learned counsel for the appellant, besides challenge on the quantum, also tried to argue that the accident had taken place due to sole negligence

of the deceased Vishwas, who had in fact driven his motor-cycle in zigzag manner. However, the concerned investigating machinery, after due investigation, registered the crime in respect of the accident against the driver of offending bus. Moreover, one passenger from the said offending bus had in fact deposed before the Court that he had seen the accident and it was only due to the fault on the part of the driver of the said bus. As such, the ground of sole negligence of the deceased has no force at all.

4. The learned counsel for the appellant/owner pointed out that the evidence on record indicated that last salary drawn by the deceased in the month of August 2009, was only of Rs. 6100/- and therefore, the learned Tribunal committed error in assessing the monthly income of the deceased. However, this submission is also not having any force, since the document on record at Exh.51/8 clearly indicates that the deceased had drawn his last salary for the month of July 2009 to the tune of Rs. 19,444/-. It is to be noted that accident taken place in the month of August 2019 and obviously therefore, the salary of the deceased was calculated only up to the date of accident, which had occurred on 04.08.2009. Thus, there is no force in

the submission made on behalf of the appellant/owner that the compensation was to be assessed on the basis of last drawn salary. Moreover, the order passed by the learned School Tribunal at Exh. 48 clearly indicated that the deceased was reinstated on his post of teacher on 24.07.2008 i.e. much prior to the date of accident, and therefore, there cannot be any dispute in respect of his salary at the time of incident. Moreover, the documents on record clearly indicates that deceased was 30 years old and therefore, the learned Tribunal has applied multiplier of '17' as per the observations of Hon'ble Apex Court in the case of **Sarla Verma (Smt) And Others Vs. Delhi Transport Corporation And Another (2009) 6 Supreme Court Cases 121.**

5. Therefore, *prima facie* there appears no substance in the appeal filed by the owner, as the learned Tribunal has calculated the compensation amount by relying on the guidelines issued by the Hon'ble Apex Court in the case of **Sarla Verma (Smt) And Others Vs. Delhi Transport Corporation and Another** (supra)

6. However, the learned counsel for the respondents/claimants, heavily relied on the judgment of

Hon'ble Apex Court in the case of ***Jitendra Khimshankar Trivedi And Others Vs. Kasam Dadu Kumbhar And Another reported in (2015) 4 Supreme Court Cases 237,*** wherein it has been observed that under Section 168 of the Motor Vehicle Act, the Courts/ Tribunals are required to grant just and fair amount of compensation and even in the case where the claimants could not file any appeal. It has been now settled under the judgments of various High Courts and Hon'ble Apex Court, that the Courts are under obligation to determine just and fair compensation in Motor Vehicle Claims Petitions, even though the claimants could not file any appeal. It is significant to note that the learned Tribunal has calculated the amount of compensation as per guidelines issued by the Hon'ble Apex Court in the case of **Sarla Verma (Smt) And Others Vs. Delhi Transport Corporation and Another** (supra). However, thereafter the Hon'ble Apex Court has modified those guidelines by introducing head under future prospects and also concept of Spousal, parental and filial consortiums in subsequent judgments in the cases of **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 Supreme Court Cases 680**, **Magma**

General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram And Others (2018) 18 Supreme Court Cases 130. It is now settled that the observations in those cases are applicable to the pending claim-petitions and appeals thereof. Therefore, considering the obligation on this Court, to determine just and fair compensation, the compensation has to be re-assessed, on the basis of aforesaid subsequent judgments.

7. The learned Tribunal has taken monthly income of the deceased to the tune of Rs. 18,000/- per month. Further, since he was in permanent employment and below the age of 40 years, future prospect to the extent of 50% is applicable in this case. Therefore, by adding the same, the monthly income of the deceased now comes to Rs. 27,000/-. From this income, 1/4 amount has to be deducted on the ground of personal expenses of the deceased. On such deduction, the amount of monthly dependency comes to Rs. 20, 250/-. If it is multiplied by 12 for the annual dependency and '17' as a multiplicand applicable, then the loss of dependency comes to Rs. 41,31,000/-. (Rs. 20,250x12x17). In this amount, amount of Rs. 3,000/- needs to be added on account of loss of estate and

funeral expenses. Further, as per the observations of Hon'ble Apex Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram And Others (supra)** considering the concept of Spousal, parental and filial consortiums amount of Rs. 2,00,000/- i.e. Rs. 40,000/- for each claimants needs to be added. On such addition, the total compensation for which the respondents/claimants are entitled, comes to Rs. 43,61,000/-. Needless to say, the said amount shall carry the interest at the rate of Rs. 7.5 % per annum from the date of petition till its realization. Thus, in the light of above discussion, the following order is passed.

O R D E R

(I) The appeal is hereby dismissed, however, the appellant shall now pay the total compensation of Rs. 43,61,000/- (Rs. Fourthy Three Lakhs, Sixty One Thousand only) to the respondents/claimants along with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realisation.

(II) The amount, if any, is already deposited by the appellant/ owner before this order, be appropriated in the aforesaid amount of compensation. As such, after deposit of entire amount of compensation, it be paid to all the respondents/claimants in equal proportion along with the accrued interest thereon at the relevant time.

(III) The amounts falling to the shares of Respondent Nos. 2 and 3, be invested in Fixed Deposit Receipt in any Nationalized Bank through respondent No.1 i.e. their mother till they attain the majority and after attaining majority, those amounts be paid to them on necessary verification, without further reference to the order of this Court.

(IV) Deficit Court fees, if any, be paid within a period of four weeks from the date of computation of the same by the office.

(V) The award be drawn up accordingly.

(VI) In above terms the appeal stands disposed of.

(SANDIPKUMAR C. MORE, J.)

ysk