



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD.**

**FIRST APPEAL NO. 116 OF 2017**

Secretary, Maharashtra State  
Road Transport Corporation  
(ST Central Workshop, Chikallthana)  
Through its Divisional Controller,  
S.T. Division, Aurangabad.

**...Appellant**  
[Orig. Respondent No.2]

**Versus**

1. Shri. Baliram Nagorao Totewad,  
Age : 58 yrs., Occu. Service,
2. Sau. Savita Baliram Tatewad,  
Age : 48 years, Occ. Household,
3. Ku. Meena d/o Baliram Tatewad,  
Age : 33 years, Occ. Service,
4. Ku. Savita d/o Baliram Tatewad,  
Age : 33 years, Occ. Education,
5. Ku. Jayashree d/o Baliram Tatewad,  
Age : 23 years, Occ. Service

All R/o. Mangalsangvi, Tq. Kandhar,  
Dist. Nanded.

**...Respondent Nos. 1 to 5**  
[Original Claimant No. 1 to 5]

6. Chhotusingh s/o Sandusingh Rajput,  
Age : Major, Occ. Driving,  
R/o. Balkeda, Tq. Kannad,  
Dist. Aurangabad.

**....Respondent**  
[Original Respondent No. 1]

.....

Mrs. Ranjana D. Reddy – Advocate for the Appellant  
Mr. Vikas S. Bhale – Advocate for Respondent Nos. 1 to 5  
Mr. A. V. Sagar h/f Mrs. N. K. Helkute – Advocate for Respondent No.6

.....

**CORAM : NEERAJ P. DHOTE, J.**

JUDGMENT RESERVED ON : 12.03.2025  
JUDGMENT PRONOUNCED ON : 25.03.2025

**JUDGMENT : -**

1. This Appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'M.V. Act') is filed by the Maharashtra State Road Transport Corporation (hereinafter referred to as 'MSRTC') assailing the Judgment and Order/Award dated 02.09.2016 passed by the Motor Accident Claims Tribunal, Aurangabad, in M.A.C.P. No. 740 of 2011, granting compensation to the tune of Rs. 44,49,000/- [Rupees Forty Four Lakh Forty Nine Thousand] to Respondent Nos. 1 to 5 (Claimants) with statutory benefits.

2. The facts giving rise to the present Appeal are as follows :-

(a) Late Pratibha Baliram Totewad [hereinafter referred as 'Deceased'], who was the daughter of Respondent Nos. 1 and 2 and sister of Respondent Nos. 3 to 5, was working as a Shikshan Sevak at the Zilla Parishad School, Lihakhedi, within the jurisdiction of the Block Education Officer, Sillod. The income of the Deceased was Rs. 3,000/- per month for first three years and thereafter it would be Rs. 21,000/- on becoming permanent. On 30.06.2011, at about 15:30 hours, when the Deceased was travelling in the State Transport Bus belonging to the Appellant, the said bus met with an accident

due to rash and negligent driving of the driver. Due to the injuries suffered in the accident, Deceased died.

- (b) The accident was reported to the Wadod-Bazar Police Station and Crime came to be registered against the driver of the S.T. Bus for the offence punishable under Sections 304, 337, 338, 427, 429 of the Indian Penal Code and Section 134 r/w 177 of the Motor Vehicles Act. The investigation proceeded and the Report came to be filed before the Competent Court.
- (c) Respondent Nos. 1 to 5 approached the learned Tribunal with the Claim Petition for compensation to the tune of Rs. 1.00 Crore against the Appellant and the driver of the S.T. Bus. The Claim Petition came to be contested by the Appellant by filing written statement at Exh. 19B. The Appellant denied the claim and urged for dismissal of the Claim Petition. The Issues framed at Exh. 21 and findings recorded thereon, are reproduced below : -

|    | ISSUES                                                                                                                                                                                                                                                                                                  | FINDINGS               |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| 1. | <i>Whether the petitioners proved that on 30.6.2011, at about 15.30 hours, on Aurangabad-Sillod road, at Bankinhola Shivar, Deceased Pratibha Baliram Tatewad died in a Motor Vehicular accident due to rash and negligent driving of the driver of S.T. bus bearing registration No. MH-20-D-8159?</i> | <i>....Affirmative</i> |

|    |                                                                                              |                                                                   |
|----|----------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 2. | <i>Whether the petitioners are entitled for compenation, if yes, how much and from whom?</i> | <i>.....Yes, from both the respondents jointly and severally.</i> |
| 3. | <i>What order and award?</i>                                                                 | <i>....Petition is partly allowed as per final order.</i>         |

3. In support of the Claim Petition, Respondent No.1 examined himself at Exh.22, examined the Cluster Head of the School where the Deceased was working at Exh. 33, examined the Sister of Deceased at Exh. 39 and examined the Block Education Officer, Sillod, at Exh. 44. The claimants brought on record the Police Papers and service documents of the Deceased. No evidence was adduced by the Appellant. Appreciating the material available on record, the learned Tribunal passed the impugned Judgment and Award/Order.

4. Heard learned Advocate for the Appellant – MSRTC and the learned Advocate for Respondent Nos. 1 to 5. None for Respondent No.6 / driver of the Bus.

5. Learned Advocate for the Appellant submitted that the impugned Judgment and Award/Order is challenged only on the aspect of compensation. Though the evidence on record show the monthly salary of the Deceased to the tune of Rs.3,000/-, the learned Tribunal considered monthly income of the Deceased to the extent of

Rs. 27,000/-, without there being any evidence. Learned Tribunal considered the higher income on the basis of the assumptions. Though the Deceased was temporary in service, the income considered by the learned Tribunal was that of permanent employee. The compensation in respect of future prospects was wrongly considered as 50% and it should have been 40% as Deceased was temporary in the service. As Claimant No. 1 was the father and Claimant Nos. 3 to 5 were the Sisters of the Deceased, they cannot be the dependents. The learned Tribunal erred in granting huge compensation without any basis. The Appeal be allowed. In support of her submission, she relied on the following Judgments :-

[i] ***Harpreet Kaur Versus Mohinder Yadav, LAWS(SC) 2022 12 53***

[ii] ***Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., 2009 AIR(SC) 3104***

[iii] ***National Insurance Company Limited Versus Pranay Sethi and others, (2017) 16 SCC 680***

[iii] ***Maharashtra State Road Transport Corporation through Divisional Controller, Aurangabad Versus Shalini Rajendra Lavale and others [First Appeal No. 730 of 2014, decided on 01.10.2021].***

6. It is submitted by the learned Advocate for Respondent Nos. 1 to 5 Claimants that, the post on which the Deceased was working was the Permanent Post and, therefore, the learned Tribunal has rightly considered the per month salary of the deceased, which is payable to the Permanent Teacher. There was sufficient material before the learned Tribunal in support of the impugned Judgment and Award/Order. He

submitted that there is no merit in the Appeal and same be dismissed. In support of his submission, he cited the following Judgments of this Court.

*[i] National Insurance Company Ltd. Versus Santosh Banshi Kudale and another [First Appeal No. 2369 of 2018, decided on 04.10.2024].*

*[ii] Shriram General Insurance Company Ltd., Versus Rahimabi wd/o Ayyub Khan and others [First Appeal No. 1252 of 2016, decided on 17.04.2017 (Nagpur Bench)].*

7. On hearing both the sides, following points arise for my consideration.

[i] Whether the learned Tribunal has rightly considered the income of Deceased?

[ii] Whether the impugned Judgment and Order/Award requires interference?

8. There is no dispute on the aspect that, Deceased who was the daughter of Respondent Nos. 1 and 2 died due to the motor vehicular accident while she was travelling in the S.T. Bus bearing No. MH-20/D-8159 on 30.06.2011, on Aurangabad – Sillod road within Bankinhola Shivar. In support of the Claim Petition, Respondent No. 1 filed evidence affidavit at Exh. 22. The Cluster Head of Central Primary School, Palod, was examined as Witness No. 2 at Exh. 33. The Block Education Officer, Sillod, was examined as PW4 at Exh. 44. Their evidence shows that Deceased was appointed as a Shikshan Sevak on

temporary basis from 30.12.2010 for the period of three years and she was getting fixed salary of Rs. 3000/- per month without any allowance. There is no dispute on the aspect that Deceased was working as the Shikshan Sevak and was on probation period. The evidence of PW2 shows that, after verifying the records, Shikshan Sevaks are generally made permanent, and the six month's tenure of the Deceased was satisfactory. Whether to make Shikshan Sevak permanent or not was the decision to be taken by the Government as per the Rules. The evidence of PW4 shows that he was a Public Servant and was looking after the salary of employees at the relevant time. There is positive evidence of this witness that the other Shikshan Sevaks appointed on the same day along with the Deceased were made permanent on 30.12.2013 and after becoming permanent, their basic pay was Rs.9260/-, Grade Pay Rs. 2800/-, DA Rs. 13628/-, Conveyance Rs.400/- and HRA Rs. 1363/-. He deposed that, had the Deceased been alive, she would have received the above salary, and her work was satisfactory and he had personally verified the record of Deceased. Nothing has come in their evidence to discard their said testimony. The relevant documents showing the salary of Shikshan Sevaks who became permanent and the calculation of the salary of Deceased had she been alive and working on the said post, is brought on record, at Exh. 53 and 54.

9. In the case of Sarla Verma (*supra*), the contention made therein on behalf of the Claimants that, the actual future Pay Revisions

should be taken into account for the purpose of calculating the income was held not to be sound. In the case at hand, the learned Tribunal has not taken into consideration the future Revision in the pay scale of the Deceased. What is considered is the salary which the Deceased would have received on the post she was working on completion of her probation period as Shikshan Sevak.

10. In **National Insurance Company Ltd. Versus Santosh Banshi Kudale, First Appeal No. 2369/2018** (supra), which was the Appeal against the Judgment and Award passed by the Tribunal under the Motor Vehicles Act, this Court had considered the very aspect. The claimant therein who was working as a Shikshan Sevak had filed the Claim Petition claiming compensation towards his injuries. The relevant observations from the said Judgment are reproduced below : -

*“12. Claimant has brought evidence on record to show that he has completed. M.A., B.Ed. and was appointed as Shikshan Sevak in Vagheshwar Vidyadham of Shirur Shikshan Prasarak Mandal, Mandavgan Farata, Tal. Shirur, District Pune, just before few days of accident and he was getting Rs.8,000/- per month by way of salary. After completing three years service as Shikshan Sevak, he would have been appointed as full time teacher in High School and would have earned salary upto Rs.35,000/- to Rs.40,000/- per month. In future he could have got promotion and his salary would have been increased many times.*

*13. Sub-section (2A) of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act (3 of 1978), provides that,*

*“(2A) Subject to the provisions of sub-sections (3) and*

*(4), Shikshan Sevak shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.”*

*14. In the light of aforesaid provision and considering the claimant’s salary certificate placed on record (Exhibit-36), no fault can be found with the assessment of monthly income of claimant at Rs.35,000/-.”*

**11.** In **Shriram General Insurance Company Ltd.**, (supra), which was the Appeal by the Insurance Company against the Award of compensation granted towards the accidental death of Deceased therein who was working as Shikshan Sevak, had completed his three years as a Shikshan Sevak prior to his accidental death, however, he was drawing salary of Rs. 3,000/- per month. Considering the evidence on record, it was noted that there was enough material on record that, immediately after the completion of period of three years as Shikshan Sevak, Deceased was entitled to full salary.

**12.** The case at hand is more or less similar with the above referred Judgments relied upon by the learned Advocate for the Respondents / Claimants on the point of employment as Shikshan Sevaks. Therefore, the consideration and determination of the monthly income of the Deceased by the learned Tribunal cannot be faulted.

**13.** As regards the contention of learned Advocate for the Appellant that 50% addition considered by the learned Tribunal for

future prospects needs to be brought down to 40% in view of the judgment in the case of *Pranay Sethi (supra)*, as discussed above, the employment of the Deceased as Shikshan Sevak was on permanent post and there was positive evidence on record that Shikshan Sevaks who joined the services with Deceased had become permanent. It is nobody's case that the post of Shikshan Sevak on which the Deceased was appointed and working at the time of accidental death was a temporary post. There is no dispute on the aspect that Deceased was below the age of 40 years at the time of accidental death. Therefore, addition of 50% towards the future prospects considered and granted by the learned Tribunal cannot be faulted as the aforesaid Judgment provides for the same where Deceased was working on the permanent job.

14. As regards the contention of the learned Advocate for the Appellant that the siblings were not the dependent is concerned, they were the Applicants in the Claim Petition along with their parents. The provisions of Section 166(C) of the M.V. Act permits filing of the Application for compensation by all or any of the legal representatives of the Deceased..... Hence, there is no merit in the said contention.

15. In view of the above discussion, no case exists for interference in the impugned Judgment and Order/Award passed by the learned Tribunal. The Appeal fails and hence, the following order.

**ORDER**

- [i] The Appeal is dismissed.
- [ii] The Record & Proceedings be sent back to the learned Tribunal.
- [iii] The amount deposited by the Appellant, if any, shall be disbursed to the Respondents/Claimants in accordance with the Judgment and Award/Order passed by the learned Tribunal.

**[NEERAJ P DHOTE]**  
**JUDGE**

SG Punde