IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 29 of 2024
with
CROSS OBJECTION STAMP NO.7805 OF 2023

Maharashtra State Road Transport Corporation, through the Divisional Controller Sindhudurg Divison, At Kankavli, Near Gad Bridge. … Appellant/s

versus

1. Lalita Bharat Gaikwad,
   Age 32 years, Occu.Nil.

2. Babu Soummya Bharat Gaikwad,
   Age 4 years.

   All residing at 303 Brahma Putra Co-op. Housing Society, Dattatray Nagar, Boisar, Taluka Palghar, Dist. Thane.

3. ~~Sitaram Somuji Gaidwad (deleted)~~ as pe Court's order dated 18th April 2023.

3a. Manisha Baliram Kamble (daughter)
   Age : 42 years, Occ: Housewife,
   Residing at Amarande Bldg. No.8,
   Flat No.1501, Kalamboli, Sector No.9,
   East, Raigad – 410 218.

4. Kusum Sitaram Gaikwad

   Both residing at 1494, Hudco Colony,
   At and Post Shirpur, Tal. Shirpur,
   District Pune. …. Respondent/s

Ms. Pinky M. Bhansali, Advocate for the Appellant/MSRTC.
Ms. Rina Kundu, Advocate for Respondent Nos.1 and 2/original claimants

CORAM : R. M. JOSHI, J.

DATE : 8th DECEMBER, 2025.

<u>Oral Judgment :</u>

1. By consent of both sides, the first appeal and cross-examination are heard finally at the stage of admission.

2. MSRTC takes exception to the judgment and award dated 27th July 2012 passed in MACP No.8 of 2010, in which, compensation of Rs.35,21,508/- came to be granted to the claimants.

3. It is the case of the claimants before the Tribunal that on 10th December 2009, the deceased was commuting on motorcycle towards Ostwal Empire. It is claimed that he was driving the motorcycle carefully and from the left side of the road in moderate speed. When the deceased reached at the spot of the accident, one S.T.Bus bearing registration No.MH-12-8492 came from opposite direction and gave dash to the motorcycle. In the said accident, the deceased died on the spot. An offence initially came to be registered against driver of unknown vehicle. However, later on the charge-sheet came to be registered against the driver of the State Transport Bus.

4. The claim of the claimant before the Tribunal is resisted by MSRTC by filing written statement at Exhibit-13. Though there is denial of the contentions of the claimants, there is no specific case sought to be made out before the Tribunal about non-involvement of the bus in the accident. Similarly, no claim is made about the contributory negligence.

5. In the light of these facts, the Tribunal accepted the case of the claimant of occurrence of the accident due to negligence of the driver of bus and granted compensation accepting the age, employment and income of the deceased.

6. Learned counsel for the Corporation submits that though it is not specifically stated in the written statement about non involvement of the bus in the accident, so also the contributory negligence, from the police paper, it is clear that the accident in question cannot be said to have been occurred due to sole negligence of the driver. On these amongst other contentions, setting aside of the impugned judgment and award is sought.

7. Learned counsel for the claimants supported the impugned judgment to the extent of the findings recorded by the Tribunal about involvement of the bus and the accident having occurred due to the negligence of the driver of the bus. It is argued unless specific pleas are raised in that regard, no evidence can be considered by the Court.

8. On the point of quantum, it is argued that the Tribunal has not considered the future prospects, it should be 50% of the income of the deceased. It is further not disputed with regard to the fact that proper multiplier applicable in this case is 16 and not 17. It is also pointed out that funeral expenses are granted @ Rs.2500/- and loss of estate @ Rs.2500/- and consortium of Rs.5000/- is granted to the widow and that no consortium is granted to the parents and daughter. She relied on the

judgment of the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***.

9. Perusal of the pleadings before the Tribunal indicates that thought the written statement was filed, there was no specific case sought to be made out by the Corporation for non-involvement of the bus in the accident and also the contributory negligence of the deceased was not alleged. Apart from the fact, there is no pleading to that effect, even perusal of the police papers do not indicate any negligence on the part of the deceased in the accident. Charge-sheet has been filed against the driver of the MSRTC bus. He has not challenged the said charge-sheet. Though it is argued that the offence was registered against unknown vehicle first, it is pertinent to note that in the accident the deceased died on the spot. The report has been lodged by the Senior Manager of JWS Steel. From the report itself it is clear that by the time, he reached the spot, the offending vehicle had fled. In such circumstances, it cannot be held that the offending vehicle was not involved in the accident nor any contributory negligence can be attributed to the deceased.

10. As far the employment and income of the deceased is concerned, evidence is led before the Tribunal of Girish Vhige at Exhibit-32. He claims to have been working as a Senior Manager in JSW Steels. He placed on record, the details of last drawn earnings of the deceased. From Exhibit-33, it is clear that the net salary of the deceased was Rs.24,998/-. Though it is sought to be argued now that the claimants

have failed to prove the income, perusal of the cross-examination does not indicate any denial of the income of the deceased. In absence of any such denial, this Court finds no reason to discard the contention of the claimants in this regard.

11. Exhibit-33 indicates that the amount of Rs.200/- towards professional tax only requires to deduction from the gross salary, therefore, the income of the deceased is accepted as Rs.26028/- per month. Admittedly future prospects are not granted in view of the judgment of the Supreme Court in ***National Insurance Co. ltd. vs. Pranay Sethi , 2017 ACJ 2700(SC)***, so also consortium has not been paid in consonance with the law laid down by the Supreme Court in the case of ***Magma General Insurance Co. Ltd.(Supra).*** Similarly the funeral expenses and loss of estate are not adequately compensated.

12. Considering the above calculations, the claimants are entitled for following compensation :

Particulars	**Rs.**	**Amount**
Annual Income (Rs.26,228/- less Rs.200/- Professional Tax = Rs.26,028/- x 12	**Rs.**	3,12,336.00
50% future prospects	**Rs.**	1,56,168.00
Total	**Rs.**	4,68,504.00
1/4 deduction towards personal expenses	**Rs.**	1,17,126.00
Total	**Rs.**	3,51,378.00
Rs.3,51,378/- x 16 (multiplier)	**Rs.**	56,22,048.00
Consortium (Rs.48,000/- x 4(claimants))	**Rs.**	1,92,000.00
Funeral Expenses	**Rs.**	18,000.00
Loss of Estate	**Rs.**	18,000.00
Total Compensation	**Rs.**	**58,50,048.00**

The claimants are entitled to compensation to the tune of Rs.58,50,048/-

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

O R D E R

(1) First Appeal No.29 of 2024 stands dismissed.

(2) Cross-Objection Stamp No.7805 of 2023 stands allowed in the following terms.

(i) The original claimants are entitled for compensation to the tune of Rs.58,50,048/-@ 6.% interest per annum from the date of filing claim petition till realisation of the amount.

(ii) Respondent No.1-MSRTC shall deposit the compensation amount along with accrued interest thereon within eight weeks from the receipt of this order.

(iii) The original claimants are permitted to withdraw the compensation amount along with accrued interest thereon.

(iv) The claimants shall pay deficit court fees on the compesnation amount, if any, as per Rule.

(v) Record and Proceedings be sent back to the Tribunal.

9. Pending applications, if any, stand disposed of.

(R. M. JOSHI, J.)