IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1168 OF 2024

The General Manager,
Bombay Electric Supply & Transport
Corporation, Having their office at
BEST Bhavan, Electric House,
Colaba, Mumbai – 400 005. ..... Appellant

Vs.

1) Sabra Nesha Ainul Ansari
Aged : 31 years, Widow of the deceased

2) Kumari Afreen Ainul Ansari
Aged : 9 years, Daughter of the deceased

3) Kumari Shahista Ainul Ansari
Aged : 6 years, Daughter of the deceased

4) Kumari Zoya Ainul Ansari
Aged : 5 years, Daughter of the deceased

5) Amina Navi Hasan Ansari
Aged : 72 years, Mother of the deceased
Residing at native place (U.P.)
Respondent Nos. 2 to 4 are being minor
Represented by their mother Sabra Ansar
As a natural guardian and next friend

All residing at Room No. 2,
Hennery Sequira Chawl, Gaondevi Road,
Bihari Tekdi Road, Kandivali (E),
Mumbai – 400 101. ..... Respondents

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

Mr. Amol A. Gatne i/b. Ms. Swati Uday Mehta, for Respondent Nos.1 to 5 in F.A. No.1168 of 2024.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 12th FEBRUARY, 2025.
PRONOUNCED ON : 21st FEBRUARY, 2025.

JUDGMENT :-

. Present Appeal is seeking an exception to the Judgment and Order dated 07.10.2023, in M.A.C.P. No.881 of 2017, passed by the learned Member, Motor Accident Claims Tribunal, Mumbai ("The Tribunal") thereby the said Claim Petition filed under Section 166 of the Motor Vehicles Act, 1988 ("The Act") has been partly allowed with costs and the Appellant has been directed to pay the Respondent Nos.1 to 5 a compensation of Rs.41,90,500/- with interest @ 7% p.a., excluding interest on the compensation of Rs.1,00,000/- towards the future prospects.

2) Heard finally at the stage of admission, with the consent of Mrs. Jhaveri, the learned counsel for the Appellant and Mr. Gatne, the learned counsel for the Respondents. Perused the record.

3) Brief facts giving rise to this Appeal are that, Respondent No.1 is a widow, Respondent Nos.2 to 4 are children and Respondent No.5 is the mother of late Mr. Ainul Navi Hasan Ansari ("the deceased"). On 07.03.2017, at about 22.15 hours, the deceased was

riding his motor cycle bearing registration No. MH-04/CS-736 ("M/cycle") on western express highway, *Uttar Vahini*, Malad (E), Mumbai. When the M/cycle reached near the Times of India bridge on the said road, a bus bearing registration No. MH-01-L-9154 ("the bus") came from behind and rammed onto the M/cycle. As a result, the deceased sustained serious injuries. Immediately, the deceased was shifted to Shatabdi Hospital, there he was declared as brought dead.

4) AW2-Mr. Moinuddin Ansari, who is brother of the deceased, filed an FIR of the accident which came to be registered at Cr. No.186 of 2017 with Dindoshi Police Station, Mumbai against the driver of the bus for the alleged offences punishable under Sections 279 and 304A of the Indian Penal Code, 1860. The Respondents averred that, the accident occurred due to rash and negligent driving of the bus, which belonged to the Appellant. The driver of the bus was employed with the Appellant. It was averred that, the deceased was doing an electronics business thereby he was earning Rs.50,000/- per month. The Respondents were dependent on the income of the deceased. Therefore, the Respondents filed the said Claim Petition seeking compensation of Rs. 1,00,00,000/-.

5) The Appellant filed its Written Statement (Exh.14) and resisted the Claim Petition. The Appellant has not admitted and

specifically denied each and every allegation, submissions and averments made against it in the claim. The Appellant contended that the accident occurred due to sole negligence of the deceased as he tried to overtake the bus from its wrong side/left side and through a narrow gap. Therefore, Appellant was not liable for the compensation and prayed to dismiss the Claim.

6) To prove the claim, the Respondent No.1 adduced her evidence on Affidavit (Exh.17) and examined AW2-Mr. Moinuddin Navihasan Ansari (Exh.26). Besides, the Respondents have relied upon various documents in evidence. In contrast, the Appellant adduced the evidence of OW1-Mr. Malang Ashikali Patel on Affidavit (Exh.34), who was driver of the bus.

7) The evidence of the Respondent No.1 and AW2 is that the accident occurred due to rash and negligent driving of the bus by OW1. But both the witnesses have not seen the actual accident, therefore, they have relied upon the FIR (Exh.18) to accept their said evidence. In the FIR AW2 has specifically stated that OW1 drove the offending vehicle in a rash and negligent manner and dashed against the M/cycle from it’s behind.

8) As against this, the evidence of OW1-Mr. Malang Patel is that at the relevant time, he was driving the bus and proceeding towards Pushpa Park, Malad. When the bus reached near the Times

of India bridge, there was a narrow service road, having width of ten feet only and, work of the metro rail was in progress there. Some tin sheets were put up for the said work. The width of the bus was eight feet. As such, there was gap of only two feet in between the said tin sheets and the bus. However, the deceased tried to over take the bus from wrong side i.e., left side of the bus and, through the narrow gap in between the metal barricades/tin sheets and the bus. As a result, the deceased lost his balance and at the same time, the handle of his M/cycle brushed against the tin sheets and the rear side door of the bus. Consequently, the deceased fell on the road and sustained injuries. Thus, OW1 claimed that the accident occurred due to rash and negligent driving by the deceased.

8.1) In the cross-examination, OW1 admitted that at the end of the investigation, Charge-sheet was filed against him for causing this accident by driving the bus negligently. He has admitted that the construction of the metro rail was in progress by the side of the road. Therefore, the tin sheets were installed around the construction site. The bus had rear view mirrors on both sides. He has admitted that he was driving the bus by keeping sufficient distance on both sides.

9) I have carefully considered the rival evidence in the light of the police papers. I noticed that the FIR was completely silent as to the fact that only a ten-foot narrow road was available to pass over

from the spot of the accident, due to the metro rail work was going on there. There is no evidence as to exactly where the handle of the M/cycle of the deceased brushed against the tin sheets and rear portion of the bus. OW1 admitted that, the handle of the M/cycle may be more than 2 feet long. OW1 admitted that he had maintained sufficient distance on both the sides while driving the bus at the spot. From this fact it is safe to presume that there was about 1 foot gap on both the sides of the bus. Because the road was only 10 feet wide as stated by OW1 and, the breadth of the bus was 8 feet. As such, it was not possible for the deceased to overtake the bus from the wrong/left side as the M/cycle handle being about two foot long, the deceased could not have entered the narrow passage between the tin sheets and the bus. The FIR clearly states that the M/cycle was dashed to its rear side. OW1 failed to explain the aforesaid circumstance. Therefore, the conclusion is inevitable that, the accident occurred due to rash and negligent driving of the bus. The postmortem report (Exh.20) states that the cause of death of the deceased was “shock and hemorrhage due to multiple injuries and fractures” sustained in the accident.

10) The date of birth of the deceased is 04.05.1980 *vide* High School Mark Sheet (Exh.21). As noted in the postmortem report, the deceased was aged 37 years. The Appellant has not disputed the said fact.

11) Insofar as the occupation and income of the deceased is concerned, the evidence of the Respondent No.1 is that the deceased was running a business of electronics and earning Rs.50,000/- per month, at the time of accident. To countenance this evidence, the Respondent No.1 has relied upon the entries in the saving bank account passbook of the deceased (Exh.16) and his Shop and Establishment Certificate (Exh.24).

12) There is no cross-examination relating to the saving bank account passbook (Exh.16) and the Certificate (Exh.24). Thus, it went unchallenged in the cross-examination. From the said Certificate (Exh.24), it is evident that the shop namely 'Ansari Electronics' was registered in the name of the deceased and it was situated at Andheri (W), Mumbai. The shop was in existence since 07.05.2013. There are various credit and debit entries in the bank account passbook (Exh.16). Unless there is income, there cannot be such credit/debit entries. There were six members in the family including the deceased. The family was residing in Mumbai at the time of the accident. Considering the inflation rate prevailing at the time of the accident, one is expected to earn at least Rs.20,000/- per month to maintain a family of six members i.e., to meet the basic needs like, food, clothes, education, medical and other personal expenses. Therefore, the findings recorded by the learned Tribunal that the deceased was

earning Rs.2,50,000/- p.a. at the time of the accident, is justifiable.

13) In accordance with the decision in **National Insurance Co. Ltd. v/s. Pranay Sethi and others.**[1], some amount shall be added to the net annual income of the deceased towards his future prospects. The deceased was aged 37 years. His income was not regular. As such, the Tribunal was right in adding 40% of the yearly income of Rs.2,50,000/- towards the future prospects of the deceased. On such addition, the actual yearly income of the deceased comes to Rs.3,50,000/- (250000 + 100000).

14) In accordance with the decision in **Sarla Verma and others v/*s.* Delhi Transport Corporation and another**[2], in paragraph 14, where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-forth (¼th) where the number of dependent family members is 4 to 6.

14.1) In the case in hand, the Respondent No.1 is the widow, Respondent Nos.2 to 4 are the then minor children and the Respondent No.5 is the aged mother of the deceased. They all were dependent on the income of the deceased. As such, it would be appropriate to deduct 1/4th of the actual yearly income of deceased towards his personal and living expenses. On the 1/4th deduction, the yearly contribution to the family comes to Rs.2,62,500/-

1. 2017 ACJ 2700 (SC).
2. 2009 ACJ 1298 (SC).

(Rs.3,50,000 – Rs.87,500/-). The deceased was aged 37 years, therefore, the multiplier would be '15'. Applying this multiplier to the yearly family contribution i.e., multiplicand of Rs.2,62,500/-, the actual loss of dependency would be **Rs.39,37,500/-.**

14.2) As per the ratio in the case of Pranay Sethi (*supra*) and **Magma General Insurance Co. Ltd. v/s. Nanu Ram Alia Chuhru Ram & ors.**[3], the Appellants being the widow, daughters, minor son and mother of the deceased, the Tribunal awarded them Rs.44,000/- each as spousal, parental and filial consortium, respectively. Further, all the Appellants are entitled to receive Rs.16,500/- under the head 'funeral expenses' and Rs.16,500/- under the head 'loss to estate'. Thus, total compensation comes to **Rs.41,90,500/-**.

15) The Claimants are entitled for some interest on the compensation amount. Rate of such interest is required to suit the prevailing rate of interest at the time of accident. There is no straitjacket formula for awarding interest at a particular rate. It depends on facts and circumstances of each case. This accident occurred in the year 2017. The Claim Petition was decided in the year 2019. The deceased was the only earning member in the family. Having regard to these circumstances, the average rate of interest prevailing between 2017-2019 and the inflation, the interest rate @

3. 2018 ACJ 2782 (SC).

7% p.a. as granted by the Tribunal appears lesser and in my considered view it should be 7.5% p.a..

15.1) The Tribunal directed that, the amount of Rs.1,00,000/- awarded towards the future prospect shall carry the interest from the date of the impugned Judgment and Order and not from the date of the Claim Petition. But this is not correct. In this regard a useful reference can be made to a decision of this Court in **M/s. IFFCO-TOKIO General Insurance Co. Ltd. v/s. Suvarna Rajabhau Ghodake & ors.**[4], therein this Court observed that the decision in the case of **Magma General Insurance Co. Ltd.** [supra] indicates that the interest is granted from the date of filing of the claim petition even on the future prospects.

16) In the backdrop of the aforesaid discussion, the impugned Judgment and Order need an interference only to modify the same to a limited extent i.e., to grant appropriate interest on the award. As a result, the Appeal is liable to be dismissed. Considering the facts of the case, the entire costs of the Appeal shall be saddled upon the Appellant. Hence, following Order is passed :-

– O R D E R –

(a) First Appeal is dismissed with costs.

(b) The impugned Judgment and Order dated

4. 2025 (1) Bom.C.R.398.

07.10.2023, passed by the learned Member, Motor Accident Claims Tribunal, Mumbai in M.A.C.P. No.881 of 2017 is modified.

(c) The Appellant is directed to pay the Respondents a compensation of Rs.41,90,500/- (inclusive of no fault liability) together with interest thereon at the rate of 7.5% per annum from the date of the Claim Petition till realisation of the amount.

(c-1) The Respondents shall be entitled to proportionate costs of the Appeal.

(d) The Appellant/insurance company will be entitled to adjustment of the amount against the already paid under the impugned Award.

(e) Appellant is directed to comply with this Judgment and Order within a period of two months from today, by depositing the amount in the Tribunal.

(e-1) On deposit of the amount the Tribunal shall immediately inform about the deposit to the Respondents.

(f) The entire amount so deposited shall be paid to the Respondent No.1.

(SHYAM C. CHANDAK, J.)