

Priya Soparkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1654 OF 2024

Divisional Controller, Maharashtra State Road Transport Corporation. ...Appellant

Versus

Smt. Janhavi Jeevankumar @ Jeevan Gurao and ors. ...Respondents

Mr. Sumedh Gaikwad with Mr. Manjeet Lotankar and Mr. D. D. Rananaware, for the Appellant.

Mr. Uday B. Nighot, for the Respondents Nos. 1 to 3.

Mr. Amol Gatne, for the Respondent No.4.

CORAM: R. M. JOSHI, J.

DATED: 17th JANUARY, 2026.

PC:-

1. By consent of both sides, heard finally at the stage of admission.

2. This Appeal is filed by the Maharashtra State Road Transport Corporation (**MSRTC**) which takes exception to the judgment and award dated 21st November, 2023 passed in Motor Accident Claim Petition (**MACP**) No.285 of 20189, whereby the claim was allowed by granting compensation of Rs.68,24,000/- with interest at the rate of 9% per annum.

3. It is the case of the Claimants before the Tribunal that on 25th April, 2016, an accident occurred in which deceased was a pillion rider on motorcycle bearing registration No.MH-03-BF-8549 died. It is alleged that the accident was caused on account of the negligent driving of the bus by its driver bearing registration No.MH-20-BL-2427 owned by MSRTC. Claimants also raised other submissions with regard to the occupation and income of the deceased and compensation to the extent of Rs.70 lakhs came to be claimed. Whereas, MSRTC filed Written Statement denying the contentions and averments of the Claimants, wherein it is specifically claimed that there is no negligence on the part of the driver of the bus in the occurrence of the accident and the accident took place solely due to the negligent driving of motorcycle by its rider. The learned Tribunal accepted the case of the Claimants and passed impugned judgment and award. Hence, this Appeal.

4. Learned counsel for the Appellant-MSRTC submits that the Tribunal has failed to take into consideration evidence on record which indicates occurrence of the accident solely due to the negligence of the rider of the motorcycle. In this regard, he further argued that the though the accident has occurred on 25th April, 2016, the First Information Report came to be registered on 4th May, 2016. Thus, according to him possibility of false implication of the bus is not ruled out. On the point of income of the deceased, it is submitted that though the Claimants have placed on record evidence indicating his previous employment and income, however, there is no evidence led before the Tribunal showing income earned by the deceased from the business which was allegedly conducted by him. It is his submission that the Tribunal

has erred in accepting the income of the deceased at the rate of Rs.35,000/- per month. So also, granted higher rate of interest. On these among other submissions, setting aside of the impugned judgment and award is sought.

5. The learned counsel for the Claimants submits that in case of a composite negligence, it is open for the Claimants to seek compensation from either of the joint tort feasures. In order to prove the negligence on the part of the driver of the bus, according to him, the Claimants have placed reliance on charge-sheet, which indicate so. He drew attention of the Court to the statement of the driver of the motorcycle recorded on the date of accident itself, indicating that the spot at which the accident had occurred, the offending bus was taking a turn and in such case, it was necessary for the driver to take utmost care. It is his submission that having regard to the observations made by the Trial Court in in the criminal proceeding also, it cannot be said that the bus was not involved, nor any negligence is there in the occurrence of the accident on the part of its driver.

6. Learned counsel for the Claimants that the Tribunal has committed no error in accepting the income of the deceased at the rate of Rs.35,000/- per month in view of the fact that the deceased was highly qualified and was earlier employed earning not less than Rs.50,000/- to Rs.60,000/- per month. It is his submission by relying upon judgment of the Hon'ble Supreme Court in the case of *S. Vasanthi and anr. Vs. Adhiparasakthi Engineering College and anr. reported in (2022)15 Supreme Court Cases 316*, that

acceptance of the income of the deceased is not unjust to cause interference therein.

7. Though it is sought to be argued on behalf of the counsel for the MSRTC that there is delay in lodging of the First Information Report, the police papers indicate that the statement of the rider of the motorcycle was recorded on the same day on which the accident occurred. In such circumstances, merely because police belatedly registered crime, it does not become a ground for discarding the case of the Claimants.

8. It is contended that the driver of the bus was not responsible for the occurrence of the accident and support the said submission. The driver was examined before the Tribunal. It is settled position of law that the Claimants are required to prove the negligence on the part of the driver of the offending vehicle on preponderance of probability and no strict proof is required to be given, as contemplated in a criminal proceeding. It is further settled position of law that this issue can be decided on the basis of charge-sheet and the police papers. The Claimant No.1 though has not witnessed the occurrence of the accident, he relied upon the charge-sheet, which includes statement of the rider of the motorcycle. The said statement indicates that at the place of the accident, the bus was taking a turn for proceeding towards the express way. In such circumstances, it was absolutely necessary for the driver of the bus to take utmost care to ensure that no accident occurs. Though the driver before the Tribunal states about he driving the bus at the speed of 10 to 20 kilometers per hour, that itself will not be sufficient to hold that there was no negligence on

the part of the driver of the bus in occurrence of the accident. Pertinently driver does not state in his evidence on oath that he was vigilant and ensured while taking turn of bus, which is a big vehicle, that bus does not come into contact with other vehicle. Once it is held that the driver of the bus is also responsible for the accident, whereas it is held that the driver of the bus is also responsible for the accident. It becomes immaterial to the extent of which he can be held so responsible.

9. The learned Tribunal by accepting the evidence on record in the form of charge-sheet, recorded the finding with regard to the negligence on the part of the driver of the bus. Apart from this, undeniably, charge-sheet was filed. Charge-sheet was filed against the driver who never challenged the same charge-sheet. Even though the driver of the bus is acquitted from the criminal case, by that itself, it cannot be said that he was not negligent in any manner in causing of the accident, because the degree of proof in a criminal trial is beyond doubt, whereas in proceeding her claim under Motor Vehicles Act, such proof is contemplated on probability.

10. Having regard to this evidence on record and in view of the fact that at the most present case could be of composite negligence, it was open for Claimants to seek compensation from MSRTC alone. Considering these facts, this Court finds no reason or justification to cause interference in the findings recorded by the Tribunal in this regard.

11. In so far as the income of the deceased is concerned, the Claimants have led evidence indicating the educational

qualifications of the deceased. By examining the previous employer, it is brought on record that deceased was working as Windows Server Analyst and was drawing salary of Rs.50,000/- to Rs.60,000/- per month. No doubt, the deceased has resigned from the employment and started his own business, but it is necessary to record that the deceased was having adequate qualification and when a person while entering into a business leaves the job, it is expected that he would earn in proportion if not more to the income from employment. In any case, the Tribunal has not accepted the income of the deceased at the rate of which he was earning salary, and the same is accepted at the rate of Rs.35,000/- per month.

12. This Court finds substance in the contention of learned counsel for the Claimants that in the facts of the case, so also in view of the judgment of the Hon'ble Supreme Court in case of *S. Vasanthi* (supra), the order passed by the Tribunal accepting income of the deceased at the rate of Rs.35,000/- per month, deserves no interference.

13. As far as interest awarded by the Tribunal on the amount of compensation is concerned, unless the said order is perverse in nature, no interference is required there.

14. As a result of above discussion, I pass the following order:-

ORDER

- (i) First Appeal stands dismissed.
- (ii) The Claimants are permitted to withdraw the deposited amount alongwith accrued interest thereon.

(iii) The statutory amount be transmitted to the Tribunal alongwith accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

(iv) Record and proceedings be sent back to the Tribunal.

15. In view of the dismissal of the Appeal, pending Applications, if any, stand disposed of.

(R. M. JOSHI, J.)