

(2019) 09 BOM CK 0093
In the Bombay High Court
Case No : First Appeal No. 106 Of 2001

Devappa Ganpat Maskar And Ors	APPELLANT
Vs	
Maharashtra State Road Transport Corporation	RESPONDENT

Date of Decision : 11-09-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168, 173

Citation : (2019) 09 BOM CK 0093

Hon'ble Judges : Anuja Prabhudessai, J

Bench : Single Bench

Advocate : Krutika Pokale, A.M. Gokhale, C.M. Lokesh, G.S. Hegde

Final Decision : Allowed

Judgement

1. This is an appeal under Section 173 of the Motor Vehicles Act challenging the judgment and award dated 25.3.1997 passed by the learned Member of Claims Tribunal, Satara in MACP No. 414 of 1992.
2. By the impugned judgment and award, the Claims Tribunal has awarded to the appellants-original claimants total compensation of Rs.71,936/- with interest @ 12% per anum. The Tribunal has directed the respondent Corporation to pay compensation of Rs.53,952/- being 75% of the total compensation by holding that it was a case of contributory negligence.
3. The case of the appellant /claimants before the Tribunal was that on 26.4.1990 the deceased-Shakuntala was traveling from Bombay to Kolhapur by ST Bus bearing No. MWR 635 owned by the respondent Corporation. When the bus reached at Khodashi, it dashed against an oncoming tractor trolley bearing No. MTP 7409. Said Shakuntala expired due to the injuries sustained in the said accident. The claimants had stated that the accident was caused due to rash and negligent driving by the driver of the ST Bus.
4. The appellant-claimants claimed that Shakuntala who was 32 years of age was earning Rs.500/- per month from tailoring business and Rs.300/- per month from

sale of vegetables. The appellant-claimants therefore filed an application under Section 166 of the Motor Vehicles Act and claimed total compensation of Rs.2,71,700/-.

5. The respondent Corporation did not dispute the factum of accident, but denied that the accident was caused due to rash and negligent driving by the driver of the ST bus. The respondent Corporation claimed that the accident was caused due to rash and negligent driving of the driver of the tractor trolley. In the alternative the respondent Corporation claimed that both the drivers were equally responsible for the accident and the liability, if any, should be apportioned accordingly.

6. The Insurer of the Tractor trolley which was arrayed as the Opponent No.8 in the Claim petition denied that the driver of the Tractor trolley No. MTP 7409 and the trailer Nos. MTL 7021 and MHF 1839 was responsible for the accident. The insurer of the said tractor trolley states that the fact that a crime had been registered against the driver of the ST Bus itself suggests that the accident was caused due to rash and negligent driving by the driver of the bus. The opponent no.8 therefore disputed its liability to pay compensation to the applicant-claimants.

7. The Tribunal, upon considering the evidence on record held that it was the case of contributory negligence on the part of the ST bus and the Tractor trolley. On the quantum of compensation, the Tribunal held that the deceased was 32 years of age. The Tribunal assessed loss of dependency on the basis of notional income of Rs.100/- per month. Considering the annual income of the deceased as Rs.1200/- per annum and applying multiplier of 15 the Tribunal assessed loss of dependency at Rs.18000/-. The Tribunal also awarded Rs.15000/- towards loss of love and affection, Rs.15000/-towards pain suffered by her during the time of her treatment and death, Rs.1136/- towards actual medical expenses and Rs.1800/-towards Ambulance Charges. The Tribunal also awarded compensation of Rs.6000/- towards funeral expenses and Rs.15000/-towards loss of estate. The Tribunal therefore held that the claimants are entitled to total compensation of Rs.71,936/- with interest @ 12% from the date of petition till realization, and directed the Corporation to pay Rs.53952/- being 75% of the total compensation with further direction to the insurer of the Tractor trolley to pay the balance 25% with proportionate interest thereon. Being aggrieved by the judgment and award, the original claimants have preferred this appeal.

8. Ms.Pakale, the learned Counsel for the appellants contend that the Tribunal has erred in discarding the evidence of claimants which disclosed that the deceased was earning Rs.800/- per month and further in computing the loss of dependency on the basis of notional income of Rs.100/- per month. She further submits that the Tribunal has erred in not awarding any compensation towards future prospects, towards loss of spousal and parental consortium. She submits that the appellant-claimants are entitled for higher compensation.

9. Mr. Hegde, the learned Counsel for the respondent submits that in a connected appeal being First Appeal No.1402 of 2003 this Court (Coram: Shalini Phansalkar-Joshi, J.) has held that it was a clear case of composite negligence. This Court has further observed that the appellant-claimant is entitled to recover the entire compensation from the owner or insurer of any of the offending vehicles and that there was no necessity to apportion the inter-se liability of joint tort feorsors. He submits that this Court has given liberty to the Corporation to recover 25% from the owners or insurer of the tractor trolley involved in the accident. He submits that similar liberty can be given in this case.

10. As regards the quantum of compensation, learned Counsel Mr. Hegde, submits that the claimant had not been able to prove that the deceased was earning Rs.800/- per month. He submits that the compensation awarded by the Tribunal is just and fair and it does not warrant any interference.

11. I have perused the record and considered the submission advanced by the learned Counsel for the respective parties. It is not in dispute that Shakuntala, was traveling by the S.T. bus bearing No.MWR 635 which is owned by the Corporation. There was collision between the bus and the tractor trolley No. MTP 7409, while the bus was in the process of overtaking a truck. Said Shakuntala had expired as a result of the injuries sustained in the said accident.

12. On evaluation of evidence, the Tribunal has recorded a finding that it was a case of contributory negligence. In *Khenyei vs. New India Assurance Co.* (2015) 9 SCC 273, the question before the Apex Court was whether it is open to a claimant to recover the entire compensation from one of the joint tort feorsors, when the accident is caused by composite negligence. The Apex Court after considering the principles enunciated in previous decisions explained the difference between composite negligence and contributory negligence and has observed thus:

"14. There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the extent cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite negligence, a person who has suffered has not contributed to the accident but the outcome of combination of negligence of two or more other persons.

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18.... What emerges from the aforesaid discussion is as follows:

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feorsors and to recover the entire compensation as liability of joint tort feorsors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.

13. Reverting to the facts of the present case, the deceased was a passenger in the bus which had collided with a tractor trolley. The deceased had not contributed to the accident in any manner and hence it could never be the case of contributory negligence. In fact, the Tribunal has recorded a finding that the death of Shakuntala was due to negligent driving of the driver of the S.T.Bus as well as the driver of the tractor trolley. When the accident is caused due to negligence of joint tortfeasors, it is the case of composite negligence and not contributory negligence.

14. Be that as it may, the owners and the insurer of both the offending vehicles have not filed substantive appeals or cross objections challenging the finding that the accident was caused due to the negligence of the drivers of both these vehicles. There is also no challenge to the extent of liability /apportionment determined by the Tribunal. Hence it is not necessary to go into the merits of the findings recorded by the Tribunal, and I propose to decide the issue of quantum of compensation by accepting the said findings.

15. The evidence of PW1-Devappa indicates that the deceased used to earn Rs.500/- from tailoring business and Rs.300/- from sale of vegetables. The Claims Tribunal has discarded his evidence for want of documentary proof and assessed loss of dependency on the basis of notional income of Rs.100/-. Suffice it to say that it is unrealistic to expect a small time tailor or vegetable vendor to prove her or his earning of Rs.800/- per month by producing documentary evidence.

The Tribunal, in my view, was not justified in discarding the evidence of PW1 for want of documentary proof and further in computing the loss of dependency on

the basis of notional income. The Tribunal has also not added any amount towards future prospects.

16. In *National Insurance Company Ltd. vs. Pranay Sethi*, 2017(ACJ) 2700, the Apex Court while dealing with the question of future prospects has observed that price rise does affect a self employed person and there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increment and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude, which always intends to live with dynamism and move and change with the time. The Apex Court has summarized its conclusions in the penultimate paragraph of the judgment which reads thus:

"61. The household work performed by women throughout India is more than US 621.8 billion per year [Evangelical Social Action Forum and Health Bridge, .]. We often forget that the time spent by the women in doing household work as homemakers is the time which they can devote to paid work or to their education. This lack of sensitiveness and recognition of their work mainly contributes to women's high rate of poverty and their consequential oppression in the society, as well as various physical, social and psychological problems. The Courts and Tribunals should do well to factor these considerations in assessing compensation for housewives who are victims of road accident and quantifying the amount in the name of fixing 'just compensation'".

17. In the instant case, the deceased who was at her prime age of 32 years attended to the daily needs of her husband and children and did other household chores. She contributed to family income by working as a tailor and vegetable vendor. The deceased who performed multiple roles as a home maker and bread winner would have certainly strived hard to earn more in a pursuit of better livelihood. The Tribunal was therefore not justified in not considering the prospects of future income while computing her compensation.

18. It is no longer *res-integra* that the age of the deceased is a determinative factor in selecting the multiplier in computing the loss of dependency. As per the decision of the Apex Court in the case of *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.* 2009 ACJ 1298, the multiplier applicable for the age group 31 to 35 years is 16. The Tribunal has thus erred in applying multiplier of 15 in computing loss of dependency. The compensation awarded by the Tribunal is not just and reasonable. Hence, it is necessary to compute the compensation on the basis of the binding principles and formula laid down by the Apex Court. The deceased was 32 years of age as on the date of accident. Hence as per the judgment of the Apex Court in *Sarla Verma*, the multiplier applicable is 16. The

compensation awarded by the Tribunal cannot be considered as just and fair.

19. Considering the income of the deceased as Rs.800/- per month and upon deducting 1/3rd towards her personal expenses, the actual income works out to Rs.533/- per month. Adding 40% towards future prospects and applying multiplier of 16, loss of dependency works out to Rs.1,43,270/-. The Appellant no.1 being the widower is entitled for compensation of Rs.40,000/- towards loss of spousal consortium, and the appellants nos.2 and 3, minor children of the deceased who were deprived of love, guidance and affection of their mother due to her untimely death, are entitled for Rs.40,000/- each towards loss of parental consortium. In addition, the appellants are also entitled for compensation of Rs.30,000/- towards loss of estate and funeral expenses. The appellants had also proved that while the deceased was hospitalized they had spent Rs.1136/- on medical expenses, and Rs.1800/- on Ambulance charges. Thus the appellants are entitled for total compensation of Rs.2,96,206/-.

20. The appellant-claimants had claimed total compensation of Rs.2,71,700/-. In *Ramla vs. National Insurance Co. Ltd.* AIR (2019) SCC 404 the Apex Court has observed thus:

"There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award "just compensation" The Motor Vehicles Act is beneficial and welfare legislation. A "just compensation" is one which is reasonable and welfare legislation. A "just compensation" is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time barred. Further, there is no need for a new cause of action to claim and enhanced amount. The Courts are duty bound to award just compensation (see the judgments of this Court in the cases of *Nagappa v. Gurudayal Singh* (b) *Magma General Insurance v. Nanu Ram* , (c) *Ibrahim v. Raju.*"

21. Considering the facts and circumstances of the present case, in my considered view, the compensation of Rs.2,96,206/- is just and fair compensation. In the connected appeal being Appeal No.1402 of 2002, the rate of interest has been reduced to 7.5%. Hence in this case also the applicant-claimant would be entitled for compensation with interest at the rate of 7.5%.

22. Since this is a case of composite negligence, and considering the principles enunciated in *Khenyei* (supra) the appellant-claimants are entitled to recover the entire compensation from the respondent Corporation. The Respondent Corporation would be at liberty to recover 25% amount from the owner/insurer of the tractor trolley involved in the accident.

23. Hence the following order :-

(i) The appeal is allowed.

(ii) The compensation awarded to the appellants is enhanced from Rs.71,936/-

with interest @ 12% to Rs.2,96,206/- with interest @ 7.5% from the date of petition till the date of actual payment.

(iii) The Respondent Corporation shall deposit the enhanced compensation with proportionate interest thereon before the Tribunal within a period of eight weeks from the date of the order.

(iv) The Respondent Corporation is at liberty to recover 25% of compensation with proportionate interest from the insurer of the tractor trolley No. MTP 7409.

(v) The appellants are at liberty to apply to the Tribunal for withdrawal of the amount, upon payment of additional court fee, if payable under the statute.

(vi) The award of the Tribunal under challenge in this appeal stands modified accordingly.

.Appeal stands disposed of in above terms.