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Duration :-6Yrs.,8-Ms.

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, MUMBAI
APPLICATION NO.517 OF 2014
(Presided Over by S.B.HEDAOO, MEMBER)

EX.____

1. Mr.Pravin Jagannath Bhalerao,
Aged about 37 years
(Husband of the deceased)
2. Master Praful Pravin Bhalerao
Aged about 13 years
(Son of the deceased)
3. Master Rahul Pravin Bhalerao
Aged about 11 years
(Son of the deceased)
4. Mr. Jagannath Dada Bhalerao
(Father-in-law of the deceased)
5. Smt. Shakuntala Jagannath Bhalerao
Aged about 60 years
(Mother-in-law of the deceased)
Applicant no.2 & 3 being minors
through their father and next
friend Mr.Pravin J.Bhalerao-Applicant no.1

All are residing at : P.R. Kadam Marg,
T-5, Adarsh Chawl, Mukundrao
Ambedkar Nagar, Asalfa Village,
Mumbai- 400 084. ...**Applicants**

V/s.

Maharashtra State Road
Transport Corporation,
Mumbai Central, Mumbai ....**Opp.Party**

Shri S.M. Parab, Advocate for Applicants.
Shri R.B.Pawar, Advocate for the opposite party

JUDGMENT
(Delivered on 7th December, 2020)

1. Whether future prospects can be given to the notional income of housewife is a question that arose when the claimants unsuccessfully projected deceased Archana as a staff nurse working in a private hospital on the salary of Rs.12,000/- p.m. while agitating the claim for compensation u/s.166 of the M.V.Act, if I may anticipate my conclusion about the very occupation of deceased Archana at this stage itself. The facts of matter can best be summarised as below :

2. On 9.2.2014 at about 5.30 p.m. the applicant no.1 was riding his motorcycle no.MH-03-AK-1271 in moderate speed by following all traffic rules. His wife Archana was pillion rider along with her two minor issues on that day. After crossing Vashi Toll Plaza, when they reached near Kamani, he alleged that bus bearing registration no.MH-12-EF-6351 came in high speed in rash and negligent manner and tried to overtake the motorcycle of the applicant no.1 and in that process the bus dashed to the motorcycle of the claimant no.1. As a result of which the applicant no.1 his wife Archana and her both issues fell on road. Deceased Archana sustained severe injury and so she was taken to Rajawadi hospital, Ghatkopar where she succumbed to the injuries. It is alleged that the accident occurred due to rash and negligent driving of said bus. All the applicants were economically depending upon the income of the deceased. Thus, all the applicants are deprived of the company as well as financial support of the deceased. On the day of incident deceased was 33 yrs. old. She was earning Rs.12,000/- p.m. by serving as staff nurse in Pulse Hospital, Kamothe, Navi Mumbai. On the day of mishap the bus was owned by opposite party on record. The claimant therefore prayed compensation of Rs.30,00,000/- from both the opposite party.

3. The opposite party opposed the application by filing written statement at Ex.13. The opposite party denied the age and income of the deceased. The company further denied the allegation that the driver of the bus was rash and negligent. It is coming with the case that on 9.2.14 at about 5.30 p.m. this bus was heading from Uran to Dadar. Near Kamani after Vashi Toll Plaza, this motorcycle came from behind the bus. The rider of this motorcycle tried to overtake the bus from the left side of the bus driver in a high speed. While overtaking the bus the rider went on the pile of sand and stones kept by the road side as the rider could not control his motorcycle while overtaking the bus in high speed. Since this motorcycle went on the pile of sand and stones it slipped. There was no physical contact of the bus and motorcycle. As such the bus was not involved in the accident at all. The accident took place due to the sole negligence on the part of the applicant no.1. The claim is false and it be dismissed with costs. With all such averments, the opposite party submitted to dismiss the application.

4. The rival pleadings of the parties gave rise to the framing of issues at Ex.15 which are reproduced as follows, and I record my findings against each of them with the reasons therefor as below.

Sr.Nos.	Issues	Findings
1	Whether the petitioners prove that deceased on 9.2.14 at 5.30 p.m. near Vashi Tol Plaza, Makhurd, Mumbai, the deceased Archana died in road traffic accident due to rash and negligent driving of offending bus no.MH-12-EF-6351?	Yes.
2	What was the age and income of the deceased on the day of incident ?	Age : 33 yrs. Income : Rs.5,000/- p.m.

3	Whether the petitioners are entitled for the compensation as sought ? If yes, from whom ?		Yes, from opposite party, as per final order.
4	What order ?		Application is partly allowed.

REASONS

AS TO ISSUE NO.1 :

5. The claimant no.1 examined himself at Ex.16. He stated that on 9.2.14 at about 5.30 p.m. he was riding motor cycle no.MH-03-AK-1271 at about 5.30 p.m. alongwith his wife and minor child. They were going for shopping on said motor cycle. His evidence discloses that he was riding the motorcycle with care and by following traffic rules. He alleged that near Kamani after Vashi Toll Plaza, Mankhurd, Mumbai, the offending S.T.Bus bearing registration no.MH-12-EF-6351 came in high speed from his behind and tried to overtake his motorcycle and in that attempt the rear side of the bus dashed to the right side handle of the motorcycle. He then stated that due to this contact of bus with his motorcycle he lost the balance and he alongwith his family and motorcycle fell on road. He then stated that his wife sustained serious head injury and she succumbed to those injuries on that day itself. He alleged that mishap occurred due to rash and negligent driving of the said bus.

6. The opposite party to rebut this evidence of the claimant no.1 examined its bus driver Vijay C. Kusaram at Ex.26. He stated in his version that at the relevant time he was driving the bus properly at the said spot. However, said two wheeler rider carrying two pillion riders on his motorcycle without helmet suddenly came from the left side of his bus in high speed to overtake the bus. His evidence then says that in left side of his bus there was sand and stone material lying on the road. He then

disclosed that as the two wheeler was in high speed, the rider of the two wheeler suddenly lost control over it and went on sand and stone area and slipped on road. He thus alleged that the it is the rash and negligent riding of the motorcycle rider which caused the death of the wife of the claimant no.1

7. If we pit the evidence of the claimant no.1 and this S.T. driver against each other, the evidence of the claimant is obviously receiving support and corroboration from the police papers. The FIR is lodged by this witness i.e. claimant no.1 examined before this Court. The FIR is lodged very promptly on the very day of incident. In FIR, it is specifically alleged that this ST bus suddenly came from the right side of this two wheeler to overtake the same and during that process the rear portion of the bus hit the right side handle of the two wheeler thereby causing this serious accident. In FIR specific allegation of rash and negligent driving is made against the driver of the bus. The FIR is lodged very promptly. So, the chances of concoction or made out story gets ruled out.

8. On the contrary, the version of the bus driver does not get support from any of the police papers or the details of the spot described in spot panchanama Ex.18. In Ex.18, there is no reference about the existence of any sand and stone material lying on or by the side of the said road. The bus driver in cross examination went to the extent in saying that he had reported the detail description of the topography of the scene of occurrence to his superior and his superior noted down the information in their record. However, the opposite party did not place any record to support the version of this bus driver. The learned counsel for the opposite party pointed out that the claimant no.1 in cross examination weakly

responded to the question whether there was sand and stone material at said spot by answering that “he does not know”. The learned counsel therefore strongly contended that on the basis of this conduct of the claimant no.1 not to divulge on the material thing in response to specific question gives sufficient scope to draw adverse inference against him and it can be safely be concluded that there was sand and stone material on spot. The argument is not sustainable because such answer from the claimant no.1 cannot establish the defence of the opposite party because every party has to raise his case on its own. As pointed out earlier the opposite party pressed into service the evidence of their driver to prove stony and sandy topography of the scene of occurrence but that thing is not corroborated by any police paper nor the departmental paper which are alleged to have been prepared on the basis of the information of this bus driver, which is the version of this driver during cross examination, are coming forth from the opposite party. So, all the best evidence which could be or are available since are not supporting the defence of the opposite party, it would be most unjust to draw conclusion against the claimant no.1 about his negligence on the basis of such weak answer.

9. I may further add here that as per the very evidence of the bus driver he came to know about the occurring of accident when he heard about the sound of falling of bike and he stopped and alighted from bus. This conduct on the part of the driver of the bus increases the probability that only when he sensed that some other vehicle came in contact with his vehicle followed by sound of falling, he stopped his bus. Generally, a driver of a heavy vehicle gets that sense when his vehicle even touches to another running vehicle even slightly as particular sound of that touch is always caught by every driver. Had there been no such touch between the two wheeler and his bus, the bus driver would not have

sensed anything wrong and would have left the spot as if nothing happened. So, this conduct on the part of the bus driver rules out the probability that the claimant no.1 slipped on road or lost balance due to the pile of stones and sand.

10. Extending the discussion further on this point, the argument of the learned counsel for opposite party that the claimant no.1 answered in cross examination that no damage is caused to the right portion of his two wheeler rules out the probability of the theory of the claimant that bus dashed to the right side handle of the two wheeler is also not acceptable. The reason is that the claimant no.1 was on his two wheeler which is quite small. So, even slightest touch which may not develop a visible dent to that portion of motor cycle may cause imbalance to the rider of the running two wheeler.

11. The learned counsel for the opposite party then pointed out that there is no allegation of overtaking this motorcycle rider by the bus driver in the FIR which came for the first time in the evidence and therefore the evidence of the claimant no.1 is not believable. On perusal of FIR, it becomes clear that this witness in FIR alleged that the rear side of the bus struck to the right side handle of his two wheeler while in examination in chief he deposed that when the overtaking by bus was almost complete the rear left side of the bus dashed to the right side handle of the two wheeler. In my view if both these statements are understood comprehensively and in broader sense they convey somewhat same meaning because both these statements carry the common fact that the rear side of the bus hit the right side handle of the two wheeler and that can happen when the bus is crossing over the two wheeler.

12. The learned counsel for the opposite party then submitted that since this claimant no.1 was riding the motorcycle without helmet alongwith deceased and his son and it was triple seat ride of the bicycle, negligence must be attributed to the claimant no.1 who was riding the motorcycle. The wearing of the helmet by pillion rider appears to be a recent motor Vehicles Act development just about three years back. There is no evidence that in 2014 when this accident happened there was such law. Further, there is no evidence that since the claimant no.1 was carrying his two family members on pillion on his motorcycle it contributed to the happening of this incident. The learned counsel then tried to argue that the motorcycle was overtaking the bus can be accepted on the basis of the answer of the motorcyclist that he was in the speed of 20 to 25 k.m.p.h. and the bus driver stated on oath that he was driving his bus 10 k.m.per hour. Therefore, there is atleast contributory negligence on the part of claimant no.1. In my view only on the basis of this answer such big conclusion cannot be drawn without supporting the evidence, moresowhen the statement of the driver that he was in slow speed is controverted by the claimant in the cross examination of the driver.

13. I may further add here that neither bus driver nor opposite party raised any objection before police authority about registration of offence against the bus driver. It appears that the bus driver is finally chargesheeted before court of law which is clear from the certified copy of the chargesheet submitted by the claimant with application Ex.28. Thus, all the things went far ahead and the stand of the opposite party through the mouth of their employee/bus driver is not at all able to rebut this strong evidence of the claimant no.1. There is no disputed on record that the deceased Archana died in this mishap which is clear from the FIR

Ex.17, Inquest Panchanama Ex.19 and P.M. Report Ex.20.

14. In the light of above discussion, it can be easily inferred that the claimant no.1 lost balance on his two wheeler due to the dash given by the said bus thereby occasioning the death of Archana who was pillion rider on said motorcycle. Therefore, I hold that Archana died due to rash and negligent driving of the said bus and answer this issue in affirmative.

AS TO ISSUE NO.2 :

15. The claimants came with the case that the deceased was 33 yrs. old on the day of incident. There is no documentary record about the date of birth of the deceased. The police paper clearly discloses her age as 30 yrs. which must be tentative. Therefore, the age of the deceased as 33 yrs. so pleaded by claimants can safely be concluded.

16. So far as the income of the deceased is concerned the claimant came with the case that the deceased was staff nurse in Pulse Hospital, plot no.28, sector no. 21, Kamothe, Navi Mumbai. There is a salary certificate of that hospital with list Ex.17 in which it is stated that the deceased was working in said hospital as a staff nurse from December 2012 till February 2014. However, this salary certificate is not proved by the claimant by calling hospital authority. The bailiff report at Ex.24-A regarding the service of witness summon discloses that the person who issued said salary certificate namely Amol Chikhalikar has gone to Dubai and this Dr.Amol and Dr. Manoj were partners in said hospital till 2015. So, the witness summons is served upon one Prashant who was found in said establishment of the hospital. In fact the claimants should have reissued the witness summons to call said Prashant or any other person in

the said hospital or by calling Dr.Manojkumar, the old partner of Dr.Amol to prove the signature of Dr.Amol on the salary certificate issued in the name of the deceased. However, the claimants did not do that exercise. In fact this salary certificate carries the date of March 2004 while the employment period is mentioned as December 2012 to February 2014. So, everything is doubtful and no proper evidence is led about the employment of the deceased through this certificate.

17. The claimants then placed on record the true copy of the bank statement of the deceased with list of document Ex.29. He highlighted entries running from August 2013 to January 2014 in the range of Rs.4,000/- to 6,000/-p.m. in the form of crediting of these amounts in said accounts of the deceased maintained in Bank of India. On perusal of these entries, it becomes clear that the interval of these deposits normally is of 15 days and at one place it is almost 1½ month. So, certainly, it is not regular monthly interval. From some entries, it becomes clear that the amount is credited by cheque and some amount is credited by cash. The claimants should have examined the bank employee with entire record about the cheque clearance entry to associate these entires with Pulse Hospital. No such exercise is undertaken by the claimants. Therefore, this bank statement is not useful to the claimants to prove that deceased was earning Rs.12,000/- p.m. as a staff nurse.

18. The final straw to the case of the claimants in this regard came when the police papers i.e. Inquest Panchanama disclosed the status of the deceased as housewife. Similarly, the FIR lodged by the claimants clearly sounded that he was the sole earner in his family. The FIR was regarding the death of his wife, so it was probable and natural on his part to disclose the occupation of his wife or any income source she had which

was a material fact. So, the FIR lodged by the husband of the deceased is also silent about the employment of the deceased.

In the light of above discussion, I have very reason to discard the case of the claimant that the deceased was earning Rs.12,000/- p.m. as a staff nurse in Pulse Hospital and I hold her to be a housewife, considering her social status as a married woman with two minor children when she passed away.

19. As the deceased is held to be a housewife her notional income will have to be considered since she was not earning actually. Housewife discharges many important duties and without her complete house is not possible. In the case at hand due to the untimely death of the Archana dispersion of her two small children who were in the age of 13 and 11 on the day of accident is well understandable. Archana must be taking all the care of her husband, children. The housewife renders very important duty. She looks after her husband and children passionately round the clock and creates the comfort zone in the house. In the absence of her in a house for a single day realises her importance to the other family members. Therefore, the value of services of any housewife to the family are really invaluable. However, for practical purposes as it happening in this case we will have to value her services for calculating the compensation. Considering the price index then prevailing in 2014 when the accident happened, I think that the notional income of the housewife can be fixed atleast to the tune of Rs.5,000/- p.m. Accordingly, I answer this issue.

AS TO ISSUE NO.3 :

20. In view of affirmative finding on issue no.1, I hold that the claimant nos.1 to 3 i.e. the husband and children of the deceased are entitled for the compensation. So far as the claimant nos.4 and 5 are

concerned they are the parents of the claimant no.1 who earns and maintain them and therefore I am not inclined to grant any share to them in this compensation as dependents.

So far as the liability of the compensation is concerned, there was no dispute that the bus was owned by the opposite party and the driver was it's employee. Therefore, the liability will have to be shouldered by the opposite party.

21. Now we come to the calculations. The deceased is found to be housewife as per finding on issue no.1. The question is whether future prospects can be granted to a person who was found not earning actually. The Tribunal came across recent common judgment of the Hon'ble Supreme Court in the case ***Rajendra Singh and others Vs National Ins.Co.Ltd. And ors. 2624 of 2020 and 2625 of 2020 dated 18.6.2020***. Today when the matter slated for judgment, I heard the learned counsel for the opposite party on this judgment. This judgment clearly led down the ratio in para 11 that the housewife who contribute for the welfare of the family and upbringing for the children must be given future prospects in as much as with the passage of time the utility of her services increases in the family. The learned counsel for the opposite party submitted that para no.11 of said judgment clearly reflects that only when the housewife renders skilled services to the family the question of future prospects comes. On careful reading of that para no such interpretation is possible. In fact housewife is a housewife and with the passage of time her skill in tackling and handling household affairs increases is the only observations in said para. Therefore, the argument of the learned counsel of the opposite party is not accepted. The learned counsel for opposite party then pointed out that when the claimants are not coming with the specific case that the deceased was a housewife but they have projected the case that

the deceased was a staff nurse, then the Tribunal cannot substitute that theory by concluding that the deceased was housewife, much less skilled housewife. I already pointed out that the judgment of ***Rajendra*** (Cited supra) does not makes a difference between simple housewife or skilled housewife. Secondly, when the claimants failed to establish the actual earning of the deceased as a staff nurse and the deceased undeniably being married with two children, her obvious status of housewife cannot be glossed over.

22. The learned counsel then submitted that in this case since there is no evidence that the deceased was rendering skilled services to the family or looking after her husband and children and the claimants infact failed to prove the deceased to be an earning staff nurse, the question of giving future prospects does not arise. I have already clarified that the status of the deceased as housewife is obvious. She died married leaving behind two children. I have further clarified that the judgment of ***Rajendra*** (cited supra) does not make any distinction between skilled and unskilled housewife. Therefore, as per the said recent judgment of Hon'ble Supreme Court future prospects in the income of the housewife will have to be given. The deceased was found 33 yrs old. Therefore, 40% future prospects will have to be given as per the recent judgment of ***National Ins.Co. Ltd. V/s. Pranay Sethi and Ors., 2017 ACJ 2700***.

23. So 40% of Rs.5,000 comes to Rs.2,000/- and the notional income thus rises to Rs.7,000/-. The person really connected with the deceased were her two children and husband and therefore I take them to be real dependents to have standard deduction of 1/3rd. 1/3rd of Rs.7,000/- comes to Rs.2,333/-. The income drops to Rs.4,667/- with this

deduction. The yearly income comes to Rs.56,004/-. The relevant multiplier applicable to the age of the deceased as per the judgment of ***Sarla Varma V/s. Delhi Road Transport Corporation AIR 2009 SC 3104*** is '16'. So, the net notional loss of this family on account of the death of the deceased comes to Rs.8,96,064/-.

24. As per the recent judgment of the Hon'ble Supreme Court in case of ***United India Ins. Co.Ltd. Vs Satinder Kaur arising out of SLP No.28548/2014 in Civil Appeal No.2705/2020***, it is categorically held that for the children conventional head towards parental consortium should be given to the tune of Rs.40,000/- for each child. The Hon'ble Supreme Court in this matter also referred the judgment of ***National Ins.Co. Ltd. V/s. Pranay Sethi and Ors., 2017 ACJ 2700***. So for the loss of company of this mother the claimant no.1-Praful and claimant no.2-Rahul who were 13 yrs. and 11 yrs. old at that time would be entitled for this head. Similarly, the claimant no.1 being the husband of the deceased Archana would be entitled for spousal consortium to the tune of Rs.40,000/-. Fixed amount of Rs.15,000/- each for funeral expenses and loss of estate would be there. The judgment of ***Pranay Sethi*** is dated 31.10.17. As per clause 8 of para 61 of said judgment it is specifically directed that after every three years there would be 10% rise in these conventional heads of consortium, funeral expenses, loss to estate etc. So, the total amount of conventional head which comes to Rs.1,50,000/- (Rs.40,000/- each to claimant no.1 to 3 and Rs.15,000/- each for funeral and loss of estate) would have 10% increase since three years already lapsed after said judgment of ***Pranay Sethi***. So, 10% of Rs.1,50,000/- is Rs.15,000/-. As such the conventional head comes to Rs.1,65,000/-.

Accordingly, the compensation rests to **Rs.10,61,064/-**.

25. So far as the point of investment is concerned, claimant no.3 is on the verge of attaining majority. So, to protect his interest his share needs to be invested for further two years after attaining majority and he also deserves more share than claimant nos.1 and 2, he being youngest.

26. So far as the rate of interest is concerned, now a days the banking and other long term deposits carry the interest at the most between 7% to 8% and therefore I quantify the rate of interest to the extent of 8% p.a., from the date of application, moresowhen there appears no evidence on record to show that the applicant adopted any delaying tactics in disposal of this proceeding.

27. Before parting with the judgment I may deal with the various judgments

Ruling cited by the claimants

1. Kusumlata and ors. Vs. Sadbhir and Ors., 2011 ACJ 926 (SC)

2. Kishan Gopal and anr. Vs Lala and Ors 2013 ACJ 2594 (SC)

3. Nepal Singh Vs Upendra Singh, 2016 ACJ 2488 (Delhi H.C.)

4. K Rajani and Ors Vs m. Satyanarayan Gaud, 2015 ACJ 797 (AP)

5. United India Ins Co.Ltd. Vs.Siddique Bhai, 2013 ACJ 2698 (Guj.)

The judgment nos.1 to 4 are on the point of negligence. The point of negligence is necessarily pure question of fact. The issue of negligence is dealt with at length under issue no.1. Suffice to say here that all these judgments proved good guidelines for due decision of the issue of negligence.

The judgment no.5 from the above list is on the point that any order passed u/s 140 operate as 'Res Judicata' in a proceeding u/s 166 of the M.V Act. Yes, the opposite party appears to have complied with the NFL order. However, merely because the opposite party complied with the

NFL order it cannot be said that it abandoned the substantive defence of negligence alleged against the claimant no.1 who was riding the motorcycle while agitating its defence u/s 166 of the M.V. Act. In the judgment relied upon by the claimants the defence was about breach of the terms and conditions. No such facts are present in the case in hand. Even otherwise said judgment has merely a persuasive value. Therefore, this ruling is not applicable. Hence, the order.

ORDER

1. Application is partly allowed with proportionate costs.

2. The opposite party do pay compensation of Rs.10,61,064/- (Rupees Ten Lac Sixty One Thousand Sixty Four Only) inclusive NFL to the applicant, with interest @8% P.a. from the date of application till its realisation.

3. On depositing the amount by insurer, 30% amount be given to the claimant no.1 through cross cheque on his due identity.

4. 30% amount be given to claimant no.2-Praful through cross cheuqe on his due identity on production of majority proof.

5. Rest of the 40% amount be put to the share of claimant no.3-Mast.Rahul and his share be invested in FDR through claimant no.1 Pravin-father of him in any nationalised bank during his minority and then for further period of two years after attaining majority.

6. Share in compensation to claimant nos.4 and 5 is refused.

DT.07.12.2020 (S.B.Hedaoo)
rs. MEMBER
MACT, MUMBAI