



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 371 OF 2022

The Maharashtra State Road Transport Corporation,  
Vahatuk Bhavan, Mumbai

... Appellant

Vs.

1. Mina Kashinath Zanje, age 54 years  
widow of deceased

2. Sandesh Kashinath Zanje, age 27 years  
son of deceased

both residing at Village: Akale,  
Near Maruti Mandir, Mahad,  
Raigad, Pon:402301.

... Respondents

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Mr. Nitesh V. Bhutekar with Mr. Aniket Nangare for Appellant.  
Mr. Niketan Nakhwa for Respondents No. 1 and 2.

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CORAM : ABHAY AHUJA J.  
RESERVED ON : 30 JUNE 2023  
PRONOUNCED ON: 5<sup>th</sup> JULY 2023

**JUDGMENT :**

1. This is an Appeal filed under Section 173 of the Motor Vehicles Act, 1988 (the "MV Act") by the Maharashtra State Road Transport Corporation Limited (the "MSRTC"), which owned the offending vehicle, viz. the MSRTC Bus, against the judgment and award dated 4<sup>th</sup> October, 2019 passed by the Motor Accident Claims Tribunal, Mumbai (the "MACT, Mumbai") in Motor Accident Claim Petition No. 606 of 2015, whereby the

Appellant - MSRTC has been directed to pay compensation of Rs. 18,91,600/- inclusive of No Fault Liability (the “NFL”) with interest at the rate of 7.5% p.a. from the date of institution of the claim, till realisation.

2. Since, by earlier orders of this Court, the Appeal has been directed to be finally heard at the stage of admission, the matter is heard for final disposal. Compilation of documents have been filed in the matter. I have also heard Mr. N.V. Bhutekar, learned Counsel for the Appellant and Mr. Niketan Nakhawa for the Respondents and with their able assistance, I have perused the papers and proceedings as well as the compilation of documents in the matter and considered the rival contentions.

3. Earlier the claim petition was filed with the MACT, Mumbai by the widow and the son of one Kashinath Zanje, who died in an accident on 21<sup>st</sup> February, 2015 on Mumbai-Goa Highway. On 21<sup>st</sup> February, 2015, at about 18.20 hours, Mr. Kashinath Zanje was proceeding on motor cycle, when he reached Mouje Chabhar Khind on Mumbai-Goa Highway, MSRTC Bus bearing No. MH-14-BT-1926 ( the “offending vehicle”) came in high speed and dashed the motor cycle of the deceased. Due to the impact, it is stated that Mr. Kashinath Zanje fell down on the road and

sustained grievous injuries. He was taken to the Rural Hospital at Mahad, however, as he sustained serious injuries, he was moved for further treatment to J. J. Hospital, Mumbai where he was admitted but despite treatment he expired on 25<sup>th</sup> June, 2015 after which postmortem was performed at J. J. Hospital. Since the bus was owned by the Appellant-MSRTC, the Respondents herein preferred a claim against the Appellant herein for a compensation of Rs. 50,00,000/- with future interest at the rate of 12% p.a. Before the Tribunal, the Appellant contended that the accident had not occurred due to the negligence on the part of the offending vehicle, but it occurred due to the sole negligence of the deceased and therefore, requested that the claim application be dismissed.

4. The Tribunal after considering the rival contentions, the evidence and after hearing the Counsel for the parties held that the claimants, viz., the Respondents herein, proved that the deceased died due to the subject motor accident on 21<sup>st</sup> February, 2015 and that they have also proved that the accident took place because of the negligence on the part of the driver of the MSRTC bus. Further, observing that even though the driver of the offending vehicle justified himself that the bike rider came from wrong side and dashed to the ST bus on the conductor side, however, since the

version of the oral evidence about the sole negligence of the bike rider did not find its place in the police papers like FIR, spot panchanama, inquest panchanama, postmortem report whereas the said documents disclosed that the accident had taken place due to the rash and negligent driving of the ST bus by the driver, in the absence of any documentary proof on record, with respect to the sole negligence of the deceased, the Tribunal held that the Appellant-MSRTC could not prove that the accident took place due to the sole negligence of the deceased.

5. Considering the age of the deceased, income of the deceased and dependency as well as the decisions of the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. Vs Pranay Sethi and Ors.*<sup>1</sup> and *Sube Singh and Anr Vs. Shyam Singh (Dead)*<sup>2</sup>, with respect to future prospects as well as multiplier, the deduction towards personal and living expenses of the deceased as well as compensation under the conventional heads such as loss of estate, loss of consortium, funeral expenses, the Tribunal has held that the claimants are entitled to get a total amount of Rs. 18,91,600/- inclusive of NFL to be paid by the MSRTC in the apportionment as contained in clause 2 of the impugned order.

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1 2017 ACJ 2700

2 AIR 2018 SC 1195

6. Mr. Bhutekar, learned Counsel for the Appellant MSRTC would submit that the Tribunal ought to have considered the judgment in criminal case no. 201 of 2015 while holding or placing the entire liability to compensate the claimants upon the Appellant herein; he would submit that the Tribunal ought to have considered the fact that the driver of the offending vehicle was acquitted in the said criminal case and should have atleast applied the principle of contributory negligence, particularly keeping in mind the testimony of the driver of the offending vehicle. Learned Counsel refers to paragraph 8 of the impugned decision and submits that Mr. Vilayat Dawood Nandgaokar, the driver of the offending vehicle has deposed that while going to Ramdas Pathar vasti, the accident took place; according to him, when he reached Chambhar Khind, at that time one bike rider came from the wrong side and dashed the ST bus on conductor side and that the accident has taken place due to the fault of the bike rider. Learned Counsel refers to the examination-in-chief as well as cross-examination of the driver on page 7 of the compilation of documents and submits that in the examination-in-chief, the driver of the offending vehicle has clearly stated that the accident has taken place due to the fault of the bike rider. Referring to the cross-examination of the driver, where the driver has stated that there is no mention either in the

FIR or in the spot panchanama that bike rider came from the wrong side and dashed towards conductor side of the bus, learned Counsel would submit that even though the documents or the police papers do not contain this reference, the personal account of the driver should be taken into account. He submits that all that the driver has said in the cross-examination is that the biker coming from the wrong side is not mentioned in the documents and that the driver has nowhere said that the bike rider did not come from the wrong side.

7. With respect to the quantum awarded to the Claimants, Mr. Bhutekar, would submit that the Tribunal has erred in considering the salary of the deceased at Rs. 18,000/- per month as there was a difference in the salary amount of the deceased and the Tribunal ought to have considered the salary at the rate of Rs. 13,000/- per month. Learned Counsel draws the attention of this Court to paragraph 14 of the impugned decision and submits that the deceased was a supervisor in Duflon Industries Pvt. Ltd. at MIDC, Mahad and in order to prove his salary, salary slips from the month of September, 2014 till February, 2015 were produced. Learned Counsel would submit that the salary of the deceased in the month of the accident was Rs. 13,930/-. He refers to the

salary slip of the deceased at page 42 of the compilation of documents, which is the pay slip for the month of February, 2015 and submits that the salary slip for the said month clearly indicates the salary of Rs. 13,930/- and not Rs. 18,000/- per month as considered by the Tribunal. Learned Counsel submits that this is the evidence that has been confirmed by the HR manager of the company in which the deceased was employed and, therefore, the said figure of Rs.13,930/- should be taken and not the figure of Rs. 18,000/-. Further, referring to the pay slip at page 15 of the compilation with respect to the month of December, 2014, Mr. Bhutekar would submit that in view of the law settled by the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. vs. Indira Shrivastav and Others*<sup>3</sup>, the amounts such as washing allowance, special allowance, conveyance which are specifically spent for the deceased cannot be taken into consideration for determining the compensation to be paid to the claimants and have to be deducted.

8. On the other hand, Mr. Nakhawa, learned Counsel for the Respondents-Claimants, would submit that the order of the Tribunal is in accordance with the principles settled by the Hon'ble Supreme Court and

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3 (2008) 2 SCC 763

does not require any interference. Learned Counsel would submit that the police papers speak of the complaint registered against the driver of the offending vehicle along with the FIR and that the departmental inquiry was also held against the driver. That, therefore, clearly the driver of the ST bus was negligent in driving the bus and that if the complaint was false he would have approached the higher police authorities. Learned Counsel also refers to paragraph 8 of the impugned judgment to further submit that it is settled law that mere acquittal from a criminal case would not be sufficient to hold that the bus driver was not negligent as the said decision in criminal case is not binding on the Tribunal. Learned Counsel would submit that the Tribunal was duty bound to decide the claim independently on the basis of the evidence brought before it without being influenced by the observations made by the Criminal Court in its judgment. Learned Counsel would submit that the burden of proving that the driver of the offending bus was not negligent or that the deceased was negligent or that he came from the wrong side was entirely upon the Appellant- MSRTC, which the Appellant has not been able to show. Therefore, the deposition of the driver cannot be considered in the light of the documentary evidence in the form of the police papers and the FIR, the spot panchanama, etc., which clearly establishes that the fact of the

incident dated 21<sup>st</sup> February, 2015 in which the deceased died was due to the rash and negligent driving of the offending ST bus by its driver.

9. With respect to the aspect of the rash and negligent driving on the part of the driver of the offending S.T. Bus, learned Counsel takes this Court to page 9 of the compilation of documents, which contains the panchanama dated 22<sup>nd</sup> February, 2015, where it is stated that the offending bus came in high speed over the turning on the Mumbai-Goa Highway road and while turning in high speed, dashed against Motor cycle coming from the side of MIDC causing the accident.

10. Mr. Nakhawa, Learned Counsel for Respondents-Claimants has also referred to the deposition of the driver of the offending vehicle, which is at pages 7 and 8 of the compilation of documents. Referring to the cross-examination of the driver, learned Counsel would submit that the said cross-examination clearly establishes that there is no mention either in the FIR or in the spot panchanama that the bike rider came from the wrong side and dashed towards the conductor side of the bus.

11. With respect to the quantum, learned Counsel for the Respondent-Claimants would submit that the submission of the Appellants that the salary slip of the deceased, where the deceased's gross salary is shown as Rs. 13,930/- ought to be considered is misplaced in as much as the amount of Rs. 13,390/- was a salary for the month of the accident i.e. month of February, 2015 and as the deceased was present on duty in that month only for 21 days after which he did not attend office due to the subject accident on 21<sup>st</sup> February, 2015. Learned Counsel would submit that as can be clearly seen from the deposition of the Assistant Manager, HR of Duflon Industries Pvt. Ltd. at page 6 of the compilation of documents read with Form 16 of the deceased for the assessment year 2015-16 for the period 1<sup>st</sup> April, 2014 to 22<sup>nd</sup> February, 2015, that the gross salary of the deceased was Rs. 18,161/- and the Tribunal has taken the salary for the purposes of computation of compensation at Rs.18,000/-.

12. Learned Counsel submits that therefore the Tribunal has rightly observed that the driver of the offending bus was negligent and proceeded to award the compensation calculated on the basis of deceased's salary at the rate of Rs.18,000/- p.m.

13. There is no dispute that the documentary evidence consisting of police papers namely the FIR, the Spot panchnama, the Inquest panchnama, the postmortem report suggest that it is due to the incident of 21<sup>st</sup> February 2015 because of which the deceased died was due to the rash and negligent driving of the driver of the offending ST Bus belonging to the Appellant-Corporation. The panchnama dated 22<sup>nd</sup> February 2015 also clearly mentions that the offending bus came in high speed over the turning on the Mumbai-Goa Highway road and while turning in high speed dashed against the motorcycle coming from the side of MIDC causing the accident. The cross examination of the driver of the offending vehicle confirms the contents of the FIR and the spot panchnama. The burden of proving that the driver of the offending bus was not negligent or that the deceased was negligent or that he came from the wrong side was entirely upon the Appellant MSRTC. None of the documentary evidences in and around the date of the accident refer to or support the version of the driver of the offending vehicle that when he reached Chambhar Khind, at that time one biker came from the wrong side and dashed the ST Bus on conductor side and that the accident took place due to the fault of the bike rider. I therefore agree with the findings of the Tribunal that if the complaint was false and the FIR was wrongly

registered, the conductor of the ST bus would have approached the higher police authorities clearly stating that a false case was registered against him but that is not the case here. It is also observed that a departmental enquiry was conducted against the driver. Although it is mentioned that the driver has been acquitted in the criminal case, I agree with the tribunal that the tribunal is duty bound to decide the claim of the applicant independently on the basis of evidence brought before it without being influenced by the observations of the criminal Court. I am, therefore, in agreement with the view of the tribunal that the evidence of the deposition of the driver of the offending vehicle or the acquittal of the driver in the criminal case would not assist the case of the Appellant in the light of the documentary evidence on record.

14. Coming to the compensation calculated on the basis of deceased's salary at the rate of Rs.18,000/- per month, I am of the view that the Tribunal has correctly calculated the same. The salary slip considered for the same have been perused and it is observed that although the total earnings show a sum of Rs.18161/- per month, the Tribunal has considered the salary of the deceased at Rs.18,000/- per month. This evidence has been adduced and proved by the H.R. Manager of the

company in which the deceased was employed. I have also perused the salary slip of the deceased for the month of February, 2015, the month in which the deceased died and agree with the submission made on behalf of the Respondent-Claimants that the salary of Rs.13,390/- was for the month of the accident i.e. the month of February, 2015 and as the deceased was present on duty in that month only for 21 days after which he did not attend office due to the subject accident, therefore, the submission on behalf of the Appellant Corporation that Rs.13,390/- ought to be considered is clearly misplaced. As the salary of the deceased at the time of the accident or his subsequent death on 25<sup>th</sup> February, 2015 is to be considered on the basis of what the deceased drew throughout the year in all the months, benefit whereof his entire family would be entitled to and not just the portion of his salary which he drew in the part of the last month in which he died. That in my view would be the correct meaning of the last salary that the deceased drew at the time of his death and not what the Appellant Corporation is trying to canvass.

15. Mr. Bhutekar, learned Counsel for the Appellant-Corporation, has referred to the decision of the Hon'ble Supreme Court in the case of *National Insurance Company Ltd Vs. Indira Shrivastava and Ors. (supra)*

to submit that amounts such as washing allowance, special allowance, conveyance which form part of the deceased's salary ought to be deducted as the same are specifically spent for the person of the deceased.

16. I have perused the said decision. In that case the Hon'ble Supreme Court had the occasion to consider the connotation of the term "income" for the purposes of determination of "just compensation" as envisaged under Section 168 of the MV Act. The High Court, in that case on Appeal having been preferred both by the appellant and also the respondents therein partly allowed the same by a common judgment holding that the claimants were entitled to compensation calculated in the case of the deceased at Rs. 19,53,224/- along with the interest @ 9% from the date of presentation of the claim petition, till its realisation, holding that traveling reimbursement could not be taken into consideration for computation of net income of the deceased. Interpreting Section 168 of the M.V. Act, the Hon'ble Supreme Court observed that the said Section uses the word "just compensation", which should be assigned a broad meaning; that the Court cannot in determining the issue involved in the matter lose sight of the fact that private sector companies in place of introducing a pension scheme take recourse to payment of contributory provident fund, gratuity

and other perks to attract people who are efficient and hard working. Different offers are made to an officer by employer, same may be either for benefit of employee himself or for the benefit of the entire family. If some facilities are being provided whereby entire family stands to benefit, the same must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicant is required to be determined. The Hon'ble Supreme Court also held as to what would be just compensation must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay packet is what the dependents have lost due to the death of the deceased. It is in the nature of compensation for future loss towards the family income. The Hon'ble Apex Court also went on to hold that the amounts which were required to be paid to the deceased by his employer by way of perks should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contra-distinguished from the one which were for his benefit. However, statutory amount of tax payable thereupon must be deducted. Paragraphs 10, 17 and 19 of the said decision are usefully quoted as under:-

*“10. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined. For the aforementioned purpose, we may notice the elements of pay, paid to the deceased :*

<i>“Basic</i>	<i>: 63,400.00</i>
<i>Conveyance allowance</i>	<i>: 12,000.00</i>
<i>Rent CO Lease</i>	<i>: 49,200.00</i>
<i>Bonus (35% of basic)</i>	<i>: <u>21,840.00</u></i>
<i>Total</i>	<i>: 1,45,440.00</i>

*In addition to above, his other entitlements were :*

<i>Contribution to PF 10% Basic</i>	<i>Rs. 6,240/- (p.a.)</i>
<i>LTA reimbursement</i>	<i>Rs. 7,000/- (p.a.)</i>
<i>Medical reimbursement</i>	<i>Rs. 6,000/- (p.a.)</i>
<i>Superannuation 15% of Basic</i>	<i>Rs. 9,360/- (p.a.)</i>
<i>Gratuity Contribution 5.34% of Basic</i>	<i>Rs. 3,332/- (p.a.)</i>
<i>Medical Policy-self &amp; Family</i>	<i>@ Rs.55,000/- (p.a.)</i>
<i>Education Scholarship @ Rs.500 payable to his two children Directly</i>	<i>Rs.12,000/- (p.a.)</i>

*17. This Court in **Asha v. United India Insurance Co. Ltd.**<sup>4</sup> did not address itself the questions raised before us. It does not appear that any precedent was noticed nor the term 'just compensation' was considered in the light of the changing societal condition as also the perks which are paid to the employee which may or may not attract income tax or any other*

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<sup>4</sup> (2004) 1 ACJ 448

*tax. What would be 'just compensation' must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay packet is what the dependents have lost due to death of the deceased. It is in the nature of compensation for future loss towards the family income.*

*19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.”*

17. In paragraph 25 of the aforesaid decision, the Hon'ble Supreme Court has also expressed a word of 'caution' when the Hon'ble Court says that the expression “just” must also be given its logical meaning. Whereas it cannot be a bonanza or a source of profit but in considering as to what would be just and equitable all facts and circumstances must be taken into consideration.

18. Keeping in mind the principles as well as noting the fact in the case of *National Insurance Co. Ltd. vs. Indira Shrivastav & Others (supra)* that the said case was concerning travelling reimbursement, which the High Court had held could not be taken into consideration for computation of

net income of the deceased, as against items such as conveyance, washing allowance, special allowance, in this case, which form the entire pay packet of the deceased at the time of his death as the same are reflected in the salary slip of the deceased, and not being a reimbursement which amounts were not only for the benefit of the deceased but also for the benefit of his entire family, in my view, cannot be deducted while calculating the compensation to be payable to the claimants. Moreover it has not been demonstrated either before the Tribunal nor before this Court that these allowances were only being used by the deceased himself and not by the members of the family. In this connection, reliance is placed on the decision of a Single Judge of the Madras High Court in the case of *National Insurance Company Ltd. vs. Padmavathy*<sup>5</sup> where the Madras High Court clearly observed that the Tribunal can make only statutory deductions such as income tax and profession tax and no other deduction could be made while computing the dependency compensation.

Para 7 of the said decision is usefully quoted as under :

*“7. Income tax, professional tax which are deducted from the salaried person goes to the coffers of the Government under specific head and there is no return. Whereas, the general provident fund, special provident fund, LIC contribution are amounts paid under specific heads and the contribution is always repayable to an employee at the time of voluntary*

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5 CMA No.114 of 2006 decided on 29-1-2007 : 2007 AIHC 1921

*retirement, death or for any other reason. Such contribution made by the salaried person are deferred payments and they are savings. The Supreme Court as well as various High Courts have held that the compensation payable under the Motor Vehicles Act is statutory and that the deferred payments made to the employee are contractual. Courts have held that there cannot be any deductions in the statutory compensation, if the legal representatives are entitled to lump sum payment under the contractual liability. If the contributions made by the employee which are otherwise savings from the salary are deducted from the gross income and only the net income is taken for computing the dependency compensation, then the legal representatives of the victim would lose considerable portion of the income. In view of the settled proposition of law, I am of the view, the Tribunal can make only statutory deductions such as income tax and professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation. Any contributions made by the employee during his lifetime, form part of the salary and they should be included in the monthly income, while computing the dependency compensation.”*

19. Therefore, the contention on behalf of the Appellant that the amounts towards conveyance, washing allowance, special allowance as indicated in the pay slip of the deceased would need to be deducted, cannot be countenanced.

20. Further, in my view, the Tribunal has correctly applied the principles as enunciated by the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. Vs Pranay Sethi and Ors.*<sup>6</sup> with respect to the multiplier

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<sup>6</sup> 2017 ACJ 2700

for determining the dependency, for future prospects, for deduction towards personal and living expenses or for the deduction or entitlements under the conventional heads such as loss of estate, loss of consortium, funeral expenses, to arrive at the total amount of compensation of Rs. 18,91,600/- that would be payable to the Respondents-Original Claimants in the claim application by the Appellant -MSRTC in the apportionment as contained in Clause 2 of the order and payable in the manner mentioned in Clauses 3 and 4 thereof.

21. I, therefore, do not find any error or illegality or perversity in the order of the Tribunal. There is no merit in the Appeal of the MSRTC. The Appeal deserves to be dismissed and is hereby dismissed.

22. Let the payments mentioned in the decision of the Tribunal dated 4<sup>th</sup> October, 2019 be made to the Respondents-Claimants herein, within a period of four weeks, with interest as mentioned therein, less the amounts already withdrawn by the claimants during the pendency of the proceedings. Interim order(s), if any, stand vacated and pending interim application(s) accordingly stand disposed. Parties to bear their own costs.

**(ABHAY AHUJA, J.)**