

MHPA040010902019



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IN THE COURT OF MOTOR ACCIDENT CLAIMS TRIBUNAL
AT HINGOLI
(PRESIDED OVER BY P.V. BULBULE, DJ-3)

M.A.C.P.No.227/2019

Exhibit No.

- 1 Nirmalabai W/o Shankar Dalvi
Age: 30 years, Occu: Household,
R/o Maldhamani,
Tq. & Dist. Hingoli
- 2 Kalavati W/o Sakham Dalvi
Age: 65 years, Occu: Agriculturist
R/o Maldhamani,
Tq. & Dist. Hingoli

PETITIONERS

VERSUS

- 1 Pathan Khan Sohail S/o Rafique
Ahmed Khan, Age: 42 years,
Occu: Business, R/o H.No.22,
Block No.32, Labour Colony,
Shivaji Nagar, Nanded,
Tq. & Dist. Nanded
(Owner of Luxury
Bus No.MH-38/F-3111)
- 2 Chola mandalam MS Gen. Insurance
Co. Ltd.
Through its Branch Manager,
CTS Bi, 14536, 3rd Floor,
Oberoi Towers, Civil Line,
Jalna Road, Diagonally,
OPP. Hotel Amerpreet, Aurangabad,
Dist. Aurangabad

RESPONDENTS

Claim: For compensation under Sec.166 of the Motor Vehicles Act.

Shri K.P. Jondhale, Advocate for the petitioners

Shri Ajay Vyas, Advocate for Respondent No2

JUDGMENT

[Delivered on the 27th day of June 2022]

This is a petition under Section 166 of the Motor Vehicles Act for granting compensation of Rs.10,00,000/- along with interest @ 12 % per annum from the date of the accident till the realization of the amount.

BREIF FACTS :-

02- Petitioner No.1 is the wife of the deceased Shankar S/o Sakharam Dalvi whereas, petitioner No. 2 is the mother. Respondent No.1 is the owner of the luxury Bus No.MH-38/F-3111 and respondent No.2 is the insurance company.

03- On 27-08-2019, the deceased was returning from Hingoli to his village Maldhamni. He reached diversion of Maldhamni at about 8.30 to 9.00 P.M. At that time, luxury Bus No.MH-38/F-3111 came from the Kalmnuri side at excessive speed in a rash and negligent manner. The driver lost control of the bus and gave a dash to the deceased Shankar. One Bhujang Shankar Shinde informed the incident to the petitioners. The deceased was carried to the Hingoli hospital and thereafter to Nanded hospital. But he died on 01-09-2019. The petitioners claim that the deceased was an agriculture worker who earning Rs.6000/- per month.

04- Respondent No.1 appeared but, failed to file the Written Statement. Therefore, the matter has proceeded without the Written Statement of respondent No.1.

05- Respondent No.2 filed the Written Statement at Exh.12 and admitted that at the relevant time, the vehicle is duly insured. Respondent No.2 has denied all the adverse allegations. Respondent No.2 claims that the petitioners should prove the rash

and negligence, vehicle involvement and income of the deceased. It is pleaded that the driver of the luxury bus was not holding a valid licence with the knowledge of respondent No.1. There is no valid permit and fitness certificate and there is a delay of 10 days to register the crime. The compensation claimed by the petitioners is excessive. Likewise, an excessive interest rate is claimed by the petitioners. It is also pleaded that the deceased was the gratuitous passenger in the luxury bus. No additional premium is paid in respect of the said passenger. There is a breach of an insurance contract, therefore, he has prayed for the dismissal of the petition.

06- I have framed the issues below Exh.13. Those issues along with my findings and reasons thereon are as follows:

Sr. No.	<u>ISSUES.</u>	<u>FINDINGS</u>
1	Do the petitioners prove that on 27-08-2019 at 9.00 P.M. the deceased Shankar Sakharam Dalvi died out of the use of a bus bearing No.MH-38/F-3111?	Yes
2	Does respondent No.2 prove that there was a breach of the condition of the insurance policy?	No
3	Whether the petitioners are entitled to compensation? If yes, to what extent and from whom?	Partly yes
4	What order?	The petition is partly allowed

REASONS

07- To prove the claim, the petitioners examined petitioner No.1 Nirmalabai W/o Shankar Dalvi as PW-1 at Exh.14 and eye witness Bhujang Shankar Shinde as PW-2 at Exh.27. The petitioners have relied on certain police documents which are discussed at the relevant place.

As to ISSUE NO.1: {A rash and negligence and death}

08- It is the case of the petitioners that the deceased was waiting for the vehicle at Maldhamni diversion. The luxury bus gave a dash while crossing the road. I have perused the evidence of Nirmalabai PW-1. Her evidence shows that on 27-08-2019 from 8.30 to 9.00 P.M. the deceased was crossing the road at Maldhamni diversion to come to his village. Suddenly, the luxury bus came in a rash and negligent manner and gave a dash to the deceased. Her evidence also shows that the deceased was carried to Hingoli hospital and thereafter to Nanded hospital but, he died on 01-09-2019. During the cross-examination, she admits that she and her husband both are illiterate. She has not filed the Aadhar card of her husband. They have 2 to 4 acres of agricultural land but, she cannot state the income. She is not the eye-witness to the incident and another person stated her about the incident. The incident occurred during the night time. On the spot, many tucks used to come and go. The informant Waman Tukaram Dalvi is

her brother-in-law. She has also admitted that the FIR is lodged 10 days after the incident.

09- I have perused the evidence of Bhujang PW-2. He has supported the petitioners. He has stated additionally that he carried the injured Shankar at Hingoli hospital and eye-witness to the incident. During the cross-examination, he states that he could not read English. He studied up to 9th Standard. The deceased Shankar was his villager. He has a good relationship. He was running the hotel on the said diversion. After returning from the hospital, he came to his hotel. He deposes that he used to travel on the travels bus to go to his village. The deceased came from Hingoli by auto and alighted. The spot of the incident is at a distance of 100 to 200 feet. At that time, Prakash residents of Selsura also witnessed the incident. He was present for one to two hours in the hospital but he did not inform the police chowki. He informed the vehicle number to the cousin brother of the deceased within half an hour of the incident.

10- The learned counsel for the petitioner relied on **Rajesh and others V. Rajbir Singh and others (2013 ACJ 1403)**. Respondent No.2 has submitted that this judgment is over-ruled in **National Insurance Company Ltd. Versus Pranay Shetti and Other, SC dated 31-10-2017**.

11- The petitioner also relied on **Sneha Saularam Bankar**

and Others Versus Hanumant Vaman Pednekar and another (2016(2) T.A.C. 505 Bom.). In this case, it is held that the evidence of the witness is material and sufficient to establish a rash and negligent driving of the bus by the driver. The enquiry before Tribunal is a summary inquiry and does not require strict proof of liability.

The petitioner also relied on **Asha Verman and Others Versus Maharaj Singh and Others, (2015(2) T.A.C.299 (S.C.))**. The offending vehicle being driven rashly and negligently collided with the back of the motorcycle of the deceased and the deceased sustained grievous injuries. After 12 days of the accident, the injured died. The Hon'ble Court allowed the compensation.

12- On the contrary, the learned counsel for respondent No. 2 has relied on **Shriram Insurance Company Ltd. Vs. Vanita and others, (2020(2) TAC 922 (Bom.))**. In this case, it is held that the initial burden is on the claimant to prove the involvement of the vehicle and how the accident had taken place. Merely certified copies of FIR, spot panchnama, and other documents, the claim cannot be proved the incident.

A similar observation is held in **New Assurance Company Vs Ashalata, in First Appeal No.2829/2015, Bench at Aurangabad dated 19-09-2018.**

13- I have perused the spot panchnama and the FIR. The FIR is at Exh.16. In the FIR, it has categorically mentioned that

after the accident, the deceased was carried to Hingoli hospital and thereafter to Nanded hospital. The incident occurred on 27-08-2019 and the deceased died on 01-09-2019. The FIR is registered on 06-09-2019. The deceased was severely injured; therefore, the petitioners and their other relatives were engaged in giving the treatment. The mental condition of the relatives of the deceased was naturally not proper. Likewise, petitioner No.1 is the wife and petitioner No.2 is the mother of the deceased. After death also, they sustained the mental shock. Therefore, this delay is not fatal to the case of the petitioners. Likewise, **Ravi Vs. Badrinaraya, (2011 AAC 719)**, also laid down a similar principle in respect of the delay.

14- After the death of the deceased, Nanded hospital informed to Nanded Rural Police Station. The Nanded police conducted the inquest panchnama, gave a letter for post-mortem and conducted the post-mortem. Therefore, the concerned police station must send immediately documents to the police station in which the incident occurred. But the police have not followed this requirement. In this aspect also, a delay is not fatal. The deceased was walking on the road. Therefore, the luxury driver must take care of pedestrians. He has not taken precautions and he failed in his duty. Therefore, rashness and negligence are prima facie established in this matter.

15- Respondent No.2 has taken the defence that the

deceased was a gratuitous passenger in the luxury bus but, there is no documentary evidence. Likewise, respondent No.2 has not led the positive evidence in this respect. Respondent No.1 failed to file the written statement; therefore, he has impliedly admitted the involvement of the vehicle. Therefore, I answer to issue No.1 in the affirmative.

AS TO ISSUE NO. 02: - {A breach of policy}

16- Respondent No.2 has taken the defence that there is a breach of the condition of the insurance policy. The petitioners have produced the permit at Exh.22, the fitness certificate at Exh.23, driving licence at Exh.25, all these documents supported the claim of the petitioners. There is no material on record to conclude there is any breach of policy. Therefore, I answer issue No.2 in the negative.

AS TO ISSUES NOS.03 AND 4: {The compensation and liability}

17- The petitioners have claimed that the age of the deceased was 35 years at the time of the incident and he was earning Rs.6000/- per month. The incident occurred in the year 2019. Considering the minimum wages in the year 2019, Rs.6000/- monthly income is just and proper. Petitioner No.1 has admitted that she has not produced the Aadhar card to show the

age of the deceased. The petitioners are illiterate. I have to see police papers and medical papers. In the post-mortem report Exh.20, the age of the deceased is also 35 years as per the medical officer. Therefore, it is just to hold the age of the deceased as 35 years.

18- Two petitioners were dependent on the deceased. Therefore, 1/3rd income of the deceased is liable to be deducted for his personal expenses and the 16 multiplier applies as per the age of the group to this case.

19- Learned counsel for respondent No.2 claims that the deceased was the worker, therefore, he was not entitled to get the future prospects and increase. In this regard, he has cited the citation

- i- New India Assurance Company Vs. Alpa Rajesh Shah, First Appeal No.848/2012, decided on 19-10-2013,**
- ii- Cholamandalam M/s General Insurance Company Ltd. Vs. Aarifa and others, Civil Appeal No.6020/2019, SC, decided on 01-08-2019,**
- iii- Laxmidhar Nayak and others Vs. Jugal Kishor Behera and others, reported in AIR 2018, SC 204, decided on 28-11-2017,**
- iv- Misc. First Appeal No.101074/2017, Karnataka High court, decided on 07-11-2017.**

I have perused the above citations. As per Pranay Shetti's

case, the deceased even doing the service or private job or labour is also entitled to the future prospects. Likewise, because of the judgment of the Hon'ble Supreme Court, a Filial consortium is to be given to petitioner No.2. Hence, I proceed to calculate the compensation as under:

(Age of deceased was 35 years and 16 multipliers would be applicable)

Sr. No.	HEADS	CALCULATION
1}	Income of the deceased Rs.6000 x 12 comes to	Rs.72,000/- per annum
2}	Deduction 1/3 rd for personal expenses of the deceased 72,000 - 24,000 =Rs.48,000/-	Rs.48,000/-
3}	Future prospects 40 % Rs.48,000/- multiplied by 40 divided by 100= Rs.19,200/- 48,000- + 19,200 =Rs.67,200/-	Rs.67,200/-
4}	Multiplier 16 applies to this case (67,200 x 16)	Rs.10,75,200/-
5}	Conventional Heads: Loss of consortium Rs.40,000/- Loss of Estate Rs.15,000/- Funeral expenses Rs.15,000/- Total = Rs.70,000/-	Rs.70,000/-
	Total (4 and 5)	Rs.11,45,200/-

	Add = Filial consortium to petitioner no.2 Rs.40,000/- x 1 =Rs.40,000/-	Rs.40,000
	Total	Rs.11,85,200/-

20- Because of my above observation, the petition deserves to be allowed with proportionate costs. Petitioner No.1 is the wife and she is entitled to get 60 % amount of the compensation and out of this 60 % amount, 30% amount be kept in the F.D.R. for five years. Petitioner No.2 is the mother and she is entitled to get 40 % and out of it, 10 % amount be kept in the F.D.R. for five years. Hence, I answer to issue No.4 accordingly.

21- In view of my findings on the above issues, the petition deserves to be allowed with proportionate costs. Likewise, as per the present lending rate of the nationalized bank, the petitioners deserved to get 6% interest on the compensation. In the result, I proceed to pass the following order:

ORDER

1 The petition is allowed with proportionate costs.

2 The respondents do pay jointly or severally compensation of **Rs.11,85,200/-** (Rupees Eleven lakh eighty-five thousand two hundred only) with the interest of 6 % from the date of petition till realization of the amount to the petitioners. This amount is included the 'NFL' amount i.e., paid earlier

The respondents shall deposit the compensation amount through NEFT/RTGS to the account of the Tribunal.

3 The compensation amount is disbursed as follows:

i-Petitioner No.1 is entitled to get 60 % amount of the compensation and out of this 60 % amount, 30 % amount be kept in the F.D.R. for five years.

ii-Petitioner No.2 is entitled to get 40 % and out of 40 % amount, 10 % amount of compensation be kept in the F.D.R. for five years.

4 The petitioners are directed to pay deficit court fees if any.

5 Award be prepared accordingly.

Judgment dictated and pronounced in open court.

Dated:27/06/2022

(P.V. Bulbule)
Member, M.A.C.T.&
District Judge-3,
Hingoli

