



**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

**FIRST APPEAL NO. 1547 OF 2008**

Maharashtra State Road Transport  
Corporation  
Through its Divisional Controller,  
Divisional Office, Beed, Dist. Beed.

**....Appellant**

**Versus**

Sunil s/o Panditrao Murkute,  
Age 29 years, Occu. Nil,  
R/o. Gangakhed, Tq. Gangakhed,  
Dist. Parbhani.

**....Respondent**

Mr. A.B. Dhongade, Advocate for appellant.

Mr. S.S. Dargad, Advocate for respondent No. 1.

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| <b>CORAM</b>       | <b>: ARUN R. PEDNEKER, J.</b> |
| <b>RESERVED ON</b> | <b>: 03/04/2024</b>           |
| <b>DATED</b>       | <b>: 07/05/2024</b>           |

**JUDGMENT :**

1) By the present first appeal, the Maharashtra State Road Transport Corporation (hereinafter referred to as 'M.S.R.T.C.' for short) has challenged the judgment and order dated 29.1.2008 passed by the Motor Accident Claim Tribunal, Ambajogai, District (hereinafter referred to as 'M.A.C.T.' for short) in M.A.C.P. No. 24/2007, by which the claim of the injured applicant/ present respondent was allowed.

2) Brief facts, giving rise to the present first appeal, can be summarized as under :-

It is the case of the respondent/claimant that on 11.5.2006 the claimant/respondent was riding motorcycle at about 16.30 hrs. on Sonpeth to Parli road and when he reached near village Nathra-Injegaon, one S.T.

bus bearing No. MH-20/D-5281 running from Sailu to Parli came in high speed and gave dash to the motorcycle of the claimant. In the said accident the motor cycle rider including the respondent sustained severe injury on chest, right leg etc. Thereafter, the claimant was referred to the hospital at Latur and took treatment for 35 days as indoor patient and underwent three operations on his tibia fibula and other bones. The claimant sustained 40% permanent disability. On account of injuries sustained, the claimant developed paralysis and that he is not able to walk and speak in proper manner.

3) It is the case of the claimant that he is unable to move from one place to another without the help of others. Thereafter, the claimant filed injury claim before the M.A.C.T., Ambajogai under section 166 of the Motor Vehicle Act, which was allowed by the Tribunal. The operative part of the order of the Tribunal is as under :-

**ORDER**

01. The application is allowed partly.
02. The respondent shall pay compensation of Rs.6,95,182/- (Rs. Six Lakh Ninety Five Thousand One Hundred and Eighty Two only) including compensation of no fault liability of Rs.25,000/- with simple interest at the rate of 6% per annum from the date of the application dated 09-03-2006 till the full realization of the claimant.
03. The respondent shall pay proportionate costs of the application to the claimant and shall bear it's own costs.
04. After depositing the amount of compensation with interest the amount of Rs.1,50,000/- (Rs. One Lakh

Fifty Thousand only) for the period of five years and amount of Rs.2,50,000/- (Rs. Two Lakh Fifty Thousand only) for a period of ten years i.e. total Rs.4,00,000/- (Rs. Four Lakh only) be kept in fixed deposit in the name of the claimant in the bank of Badoda Br. Ambajogai, and the remaining amount shall be paid to the claimant by account payee cross cheque.

05. The claimant is entitled to receive interest of fixed deposits for his expenses.
06. Award be drawn up accordingly.
07. Pronounced in open Court on 29-01-2008."

4) Aggrieved by the judgment and order passed by the Tribunal, M.S.R.T.C./appellant herein came before this Court by filing present first appeal. The learned counsel for the appellant/M.S.R.T.C. submits that that the claimant himself was the driver of the motorcycle and was partly responsible for the accident and this is the case of contributory negligence.

5) Thus, the only point for consideration in this appeal is "whether the rider of motorcycle has partially contributed to the accident ?"

6) The learned counsel submits that four persons were travelling on the motorcycle including the claimant and due to that, the motorcycle rider was not able to control the motorcycle and as such, claimant is partly responsible for the accident. The learned counsel for the appellant submits that while the bus was turning from AUSA road to Parli, at the same time, the motorcycle was also turning and as such, in view of the excess number of people travelling on the motorcycle, the rider was not able to control the

vehicle and accident has occurred and that rider of the motorcycle/claimant is partly responsible for the accident. To support the above contentions, The learned counsel for the appellant has referred para No. 2 of the cross examination of PW 1, relevant part of the same is as under :-

"हे म्हणणे खरे आहे की, नाश्ता पाटीजवळ आल्यानंतर मला इजेगावला जाण्यासाठी उजवीकडे वळायचे होते. मला १० फुटाच्या अंतरावरून बस दिसली. हे म्हणणे खरे आहे की, मला रोडच्या उजव्या बाजुला वळायचे होते. आमची मोटार सायकल उजव्या बाजुला वळताना अपघात झाला. दहा फुटावर असताना मी मोटार सायकल थांबवली नाही. साक्षीदार स्वतः सांगतो की खड्डा असलेमुळे थांबवली नाही."

The learned counsel for the appellant has also referred last few lines of the cross examination of PW 2, relevant part of the same is as under :-

"मोटारसायकलवर मी स्वतःहा, सुनिल, सुनिलची पत्नी आणि लहान मुलगी असे चौघेजण बसलो होतो. हे म्हणणे खरे आहे की अपघात ज्या ठिकाणी घडला त्या ठिकाणी टी पॉईंटचा रोड आहे. बस परळीकडे जाण्यासाठी सोनपेठकडून आली. हे म्हणणे खरे आहे की, इजेगाव सोनपेठ रोडवर आहे. त्यामुळे आम्हाला सोनपेठ रोडकडे म्हणजे उजव्या बाजुला ओळायचे होते. सोनपेठ कडून येणारी बस आम्हाला १० फुट अंतरावरून दिसली. समोरून बस येत होती. म्हणून मोटारसायकलचा वेग कमी करण्यात आला"

6) Relying on the above evidence of PW 1 and PW 2, the learned counsel for the appellant submits that there is partial negligence on the part of motorcycle rider and prays to allow the first appeal to the extent of contributory negligence.

7) Per contra, the learned counsel for the respondent/claimant submits that sketch map prepared of the spot panchanama clearly shows that the

motorcycle is on the left hand side of the road and that the evidence also suggests that the motorcycle was not at high speed and the motorcycle was on the extreme left side of the road and not at the middle of the road. The learned counsel submits that the bus was at a very high speed and there is no contributory negligence on the part of the claimant and merely because more number of people were travelling on the motorcycle, it cannot be said that the claimant has contributed to the accident, unless it is shown that in some way the motorcycle rider has precipitated the accident or was riding in rash and negligent manner when the accident occurred. He submits that in the instant case, there is no evidence to suggest that the motorcycle was driven in rash and negligent manner. To support the above contentions, the learned counsel placed reliance on para Nos. 26 and 27 of the judgment of Andhra Pradesh High Court reported in **2023 (4) Andh LD 258 (The United India Insurance Company Limited Vs. G. Shakeera begum and Ors.)**, which is as under :-

"26. It is to be seen whether Section 128 of the MV Act, per se, amounts to contributory negligence. The evidence of PW.2 is crystal clear that the driver of the offending vehicle drove it rashly and negligently and hit the motorcycle, which was proceeding on the extreme left side of the road. The respondent/insurance company has not examined the Driver of the offending vehicle or any other eye witness whose name is shown in the charge sheet as a witness to the incident. This Court finds no reason to disbelieve the evidence of PW.2 in the absence of any other convincing evidence before the Court. This Court views that the three persons travelling on a motorcycle may have been guilty of Traffic Offence. Still, there is no reason for the Court to make any inference regarding negligence as contributory by

the only fact that three persons were going on a motorcycle. In other words, merely because there is a violation of the provisions of the Act or Rules on the policy conditions, it is not automatic that in every case that the principle of contributory negligence is to be applied mechanically.

27. Unless the vehicle owner or the insurance company can prove that the accident occurred only because of the act taking more persons than the prescribed number, the owner/insurance company will be liable to make good the loss/compensation. There is no evidence adduced on behalf of the insurer that the accident occurred because of the triple riding of the motorcycle. In the absence of evidence, it cannot be assumed or presumed that the accident happened because of the triple riding of the motorcycle. It is contended on behalf of the respondent/insurance company that the motorcycle rider did not have a license. No evidence is placed by the insurance company to support the contention. For convenience, if it is assumed correct, this Court views that inference of negligence cannot be drawn on that ground. The contributory negligence is not a matter of conjectural inference, but it shall be based on specific evidence. This Court accepts the Tribunal's finding in this regard. It is inclined to hold that mere triple riding on a motorcycle without any further proof of negligence on the part of the rider contributing to the accident cannot be considered a ground to hold that triple riding contributed to the accident in question. In the case on hand, the material placed before the Tribunal shows that the Driver of the offending vehicle hit the motorcycle, causing the accident. In light of the above-said conclusion, this Court rejects the contra argument made by the learned Counsel for the appellant. Accordingly, this point is answered."

8) The learned counsel for the claimant submits that evidence is correctly appreciated by the Tribunal and this Court should not interfere in the findings of facts, unless it is grossly erroneous. The learned counsel, therefore, prays for dismissal of the first appeal.

9) Having considered the rival submissions, it is to be noted that before the Tribunal, the claimant has adduced his evidence as PW 1, evidence of pillion rider i.e. eye witness as PW 2 and produced F.I.R., spot panchanama and Form AA. Per contra, there is no evidence adduced by the M.S.R.T.C. On considering the evidence filed by the claimant, the Tribunal rendered a finding that the bus was driven at high speed in rash and negligent manner and gave dash to the motorcycle and in the said accident, claimant sustained injuries and allowed the claim of the claimant.

10) PW 1 Sunil Panditrao Murkute has stated in his examination in chief that within the area of Injegaon, a bus bearing No. MH-20/D-5281 was proceeding from Selu to Parli, came from opposite side and gave dash to the motorcycle of PW 1. PW 1 has stated in his examination in chief that he fell down along with his wife Meena, Daughter Antika and Bhima and all of them sustained injuries. He has also stated in his examination in chief that he was riding the motorcycle with due care and on the correct side of the road and the bus driver was driving the bus in rash and negligent manner and in a fast speed without leaving sufficient space on road for crossing the other vehicles coming from opposite side. In the cross examination, the said witness has stated that he wanted to turn on right hand side for going to Ijegaon and he spotted the bus at the distance of 10 ft. away and he had

slowed down his the motorcycle. He stated that due to ditch in road he could not stop the motorcycle. PW 1 has denied the suggestion that the motorcycle was in high speed and that he had scratched the bus and had fallen down.

11) In the evidence PW 2 \_ Bhimrao Tulshiram Gutte, who was also proceeding on the same motorcycle with PW 1, stated that the bus came from opposite side in high speed without leaving space for crossing other vehicle and it dashed by its front driver side to their motorcycle due to which all the persons on motorcycle sustained injuries. In cross examination, PW 2 has admitted that where the accident took place, it was 'T' point on the road and the bus came from Sonpeth side for going towards Parli-Vaijnath side. He also admitted that as the motorcycle had to go to Sonpeth, it was necessary for them to take right turn. He has stated in his cross examination that he saw the bus from 10 ft. distance and therefore, speed of the motorcycle was slowed down by the rider. He specifically denied that the motorcycle had given dash to the bus when bus reached at main road from the corner of the 'T' point of Sonpeth. He has also denied the suggestion that if the motorcycle had stopped, accident could have been avoided. He has also denied that the motorcycle was at high speed and due to that motorcycle could not be controlled.

12) From the evidence of PW 1 and PW 2, it is apparent that the bus while turning at 'T' point of Sonpeth was at high speed and did not leave any space to the travellers on extreme left side of the road and as such, the accident occurred. The map of occurrence of scene produced along with

spot pannchanama shows that the motorcycle was at the extreme left side of the road and the bus was turning from the left side at the 'T' point. The map of occurrence of scene in the spot panchanama would indicate that the bus was turning from Sonpeth towards Parli and motorcycle was at the extreme left side of the road. Evidence on record shows that the motorcycle was required to take turn towards the right side, but the spot panchanama shows that bus had hit the motorcycle which was on the extreme left side of the road. The appellant has not examined the driver of the bus in spite of the opportunities given to prove that the claimant drove the motorcycle in rash and negligent manner.

**13) Andhra Pradesh High Court in the case of The United India Insurance Company Limited Vs. G. Shakeera Begum and Ors. reported in 2023 (4) Andh LD 254 at para No. 26 and 27 observed as under :-**

"26. ".....In other words, merely because there is a violation of the provisions of the Act or Rules on the policy conditions it is not automatic that in every case that the principle of contributory negligence is to be applied mechanically.

27. Unless the vehicle owner or the insurance company can prove that the accident occurred only because of the act taking more persons than the prescribed number, the owner/insurance company will be liable to make good the loss/compensation There is no evidence adduced on behalf of the insurer that the accident occurred because of the triple riding of the motorcycle. In the absence of evidence, it cannot be assumed or presumed that the accident happened because of the triple riding of the motorcycle....."

**14) Thus, on perusal of the above judgment of Andhra Pradesh, it is seen that merely because the motorcycle was driven with multiple passengers, it**

cannot be said that same has resulted in the accident unless there is some positive evidence to that effect on record. There is no evidence lead by the M.S.R.T.C. and the evidence of the claimants suggest that there was no negligence on the part of the rider of the motorcycle and the same is not shaken.

15. Thus, the findings of the Tribunal cannot be interfered with and the same cannot be said to be perverse. As such, the contention of the appellant that atleast 20% of the contributory negligence should be attributed to the motorcycle rider on the ground that the motorcycle was driven with multiple occupants and as such, the driver was not able to control the motorcycle, cannot be accepted and has no relevance in this case. The evidence produced before the Court was only indicating that the bus was driven in rash and negligent manner and it had hit the motorcycle. In view of the same, I do not see any reason to interfere with the order passed by the Tribunal. In the result, the appeal is dismissed.

16. MSRTC to deposit the remaining compensation within six weeks along with accrued interest.

**[ARUN R. PEDNEKER J.]**

SSC/