

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.745 OF 2002

**SATISH
RAMCHANDRA
SANGAR**

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1. **The Executive Engineer, Transport(Sub),]**
Municipal Corporation of Gr. Mumbai,]
S. V. Road, Subway, Opp. Milan Cinema,] **...Appellant**
Santacruz (W), Bombay – 400 054.] **(Original Opponent)**

Versus

1. **Smt.Sandhya Rajesh Masurkar,**]
Age : 26 Years, Widow of deceased.]
2. **Shri.Tukaram Narayan Masurkar,**]
Age : 69 Years, Father of the deceased.]
3. **Kum.Swapnil Rajesh Masurkar,**]
Age : 5½ Yrs., Son of the deceased.]
4. **Kum.Sanket Rajesh Masurkar,**]
Age : 5 Months, son of the deceased.]
- Respondent Nos.3 and 4 are minors]
by their **mother and Next friend**]
Smt.Sandhya Rajesh Masurkar,]
Residing at : 364–B, 2nd Floor,]
R. No.75, New Haji Kasam Chawl,] **...Respondents**
Lalbaug, Dr. B. A. Road, Bombay–12.] **(Original Applicants)**

Mr.Drupad Patil a/w Ms.Pallavi Khale i/b. Ms.Komal Punjabi:-	Advocates for Appellant.
Mr.Saumen Vidyarthi (Through V.C.) a/w Ms.Ishita Bhole:-	Advocates for Respondents.

CORAM : S. M. MODAK, J.

DATE : 29th AUGUST 2026

ORAL JUDGMENT :-

1. The Motor Accident Claims Tribunal – Mumbai (“**Tribunal**”) as per the Award dated 14th February 2002, held the Executive Engineer, Transport (Hub), Municipal Corporation of Greater Bombay responsible to pay a compensation of Rs.5,00,000/- (Rupees Five Lakh) to the Claimants who are the legal representatives of the deceased Rajesh Tukaram Masurkar. The said Rajesh was driving a kinetic scooter and when it came on the flyover while going towards Lalbaug Parel, due to pothole or giving a dash to road divider, he has skidded and he was thrown away to the opposite direction. At the same time, a dumper driven by Machindra Kondiba Bagate was moving towards the Devnar dumping ground came on Parel flyover and he gave a dash to the deceased Rajesh, as a result Rajesh sustained injuries and he died. The submission of Mr.Drupad Patil for the Appellant is, in fact, it was a pure accident and the driver of dumper was noway responsible and the Tribunal ought to have exonerated him.

2. On the point of accident, there are two versions. **One version** which is deposed by Vijay Sitaram Ghag who is the Police-sub Inspector attached to Bhoiwada Police Station and at the relevant time, he was returning to the Police Station on his scooter. On the other

hand, there is version given by **dumper driver**. The Tribunal favoured with the version given by PSI. So, the issue involved in this Appeal is “whether the Tribunal was correct in believing PSI Ghag and not believing the dumper driver Bagate”. One more issue raised by Mr.Drupad Patil and “it is about giving 100% rise in the income of the deceased that is from Rs.2,024/- (Rupees Two Thousand Twenty Four) per month to Rs.5,450/- (Rupees Five Thousand Four Hundred Fifty).

3. On this background, I have heard learned Advocate Shri.Drupad Patil for the Appellant and learned Advocate Shri.Saumen Vidyarthi for the Respondents / Claimants. Both of them have taken me through the oral evidence and documentary evidence which consists of the FIR, the spot panchnama and the income documents. So, we have got oral version available along with the contemporaneous documents created by the Police. The oral version needs to be ascertained on the basis of contents of the documentary evidence.

Submissions

4. Learned Advocate Shri.Vidyarthi has relied upon few of the citations dealing with the aspect of role of Tribunal in appreciating such evidence. These judgments are as follows:-

(i) **Haji Zainullah Khan (Dead) By Lrs. V/s. Nagar Mahapalika, Allahabad¹**, wherein, the Tribunal as well as the High Court has dismissed the claim Petition. However, it was reversed by the Supreme Court. There was version deposed by the eye witness Abdul Khalique. He was disinterested and independent witness. As against this, there is a version given by the Driver and the Assistant Engineer who were employees. They were treated as interested witnesses.

(ii) ***N.K.V.Bros. (P) Ltd. V/s. M. Karumai Ammal and Others²***. The Supreme Court has opined about what should be the approach of the Tribunal. On one hand, the Tribunal should take special care to see that innocent victims do not suffer and at the same time, drivers and owners do not escape liability merely because of some doubt here or some obscurity there.

(iii) What should be the duty of a person who is using the road towards the other is reiterated in case of ***Shakuntla Shridhar Shetty V/s. State of Maharashtra³***. It is observed:-

“15. It is not necessary to refer to any authority for the proposition that when a person is using the road he owes a duty to other users of the road who also owe a duty to him, but there is no doubt that the driver of a vehicle must take reasonable care to avoid acts or omissions which can be reasonably foreseen and which will be likely to injure other persons on the road”.

1 (1994) 5 Supreme Court Cases 667

2 (1980) 3 Supreme Court Cases 457

3 1976 A. C. J. 368

5. On this background, when I have perused the issues framed by the Tribunal, I find there is burden cast on the Applicants to prove the rash and negligent driving of dumper driver. Whereas, there is also burden cast on the Corporation to prove that in fact, it was the deceased who was rash and negligent. The Tribunal has answered Issue No.1 in positive and accordingly observed, the Appellant has failed to prove the rashness of the deceased. Mr.Patil has invited my attention to the findings of Issue No.2. In fact, both the issues are interconnected. If one will succeed, the other will fail. Both the issues could have been decided together by the Tribunal. The Tribunal while answering the Issue No.1 has discussed oral testimony of the PSI Ghag and the driver Bagate.

6. It is true, in the First Appeal, re-appreciation of evidence is possible. Admittedly, Sandhya widow of the deceased is not an eye witness. She got knowledge from third person. When I have gone through their evidence, it is important to consider what the PSI Ghat has deposed. The material facts are as follows:-

Evidence of PSI Ghag

(a) PSI Ghag came on Parel flyover at about 12.00 midnight. At that time, he saw one person coming on a kinetic scooter from opposite side i.e. Dadar side. The scooter skidded and

scooter driver was thrown towards the divider. Whereas, the scooter remained on his side only.

- (b) The scooter driver tried to get up. However, at that time, the dumper driver came from Lalbaug side in fast speed and passed the PSI Ghag from right side and the dumper driver went over the scooterist. During the course of cross-examination, he has denied the suggestion that dumper driver has not come in high speed. Whereas, the dumper driver has stated the following facts in his evidence.

Evidence of dumper driver

- (i) He was driving the dumper with 30 k.m. per hour. At that time, the scooterist came from Dadar side in a fast speed.
- (ii) He heard a sound of impact of back side of dumper and hence, he stopped the dumper. He wants to suggest that the impact of the scooter was on a back side and the driver cannot be held responsible about whatever has happened behind his vehicle. This is disbelieved by the Tribunal.
- (iii) He got down from the dumper and saw the scooterist had fallen down on the divider. At that time, there was no vehicle at the spot.
- (iv) The dumper was filled in with garbage. He saw the scooterist for the first time from a distance of 35 feet. Mr. Vidyarthi has laid emphasis on this answer and according to him, the dumper driver ought to have been vigilant when he drove the dumper. Whereas, according

to Mr.Drupad Patil, this strange answer cannot be considered against his client.

(v)He has denied the suggestion about presence of police officer and he overtook the motorcycle of the police officer. According to him, the cleaner side wheel of the dumper was over the head of the deceased and not the front side.

7. It is always said that a man may lie but not the circumstances. The circumstances on the spot were recorded by the Police by way of spot panchnama. It will be material to consider its contents. They are as follows:-

Spot panchnama

- (a) The deceased was found on the spot and his brain has come out of the head. There is blood lying.
- (b) There are scratches on road divider on northern side of the dead body and there were scratches on east side for 20 feet.
- (c) There were flesh stuck to the front cleaner side wheel of the dumper. This suggestion has to be considered while appreciating the version given by dumper driver that there was a dash to his dumper from back side.
- (d) Whereas in the FIR given by Mr.Ghag, there is also reference that the kinetic scooter driver has dashed to the road divider and the scooter fell on that side. Whereas, the scooter driver fell on the other side. (Page No.14). According to him, the dumper driver was responsible to the accident.

Situation at the spot

8. According to Mr.Vidyarthi, there was pothole and the deceased Rajesh tried to avoid that pothole and that is how, he lost his control. The Tribunal in the introductory paragraph of the judgment has referred about this pothole. However, PSI Ghag has not said about this. Even in the spot panchnama, there is no reference about pothole. There are two aspects. One how the deceased Rajesh was thrown on the other side of the road divider from where the dumper driver is coming. Where it is due to pothole or due to scratching of the scooter to the road divider and that is how, the deceased Rajesh was thrown on the other side. The dumper driver has not said anything about this. Even PSI Ghag has not said anything about this. But the reference about the scratches to the road divider speaks for itself. There is reason to believe that the deceased Rajesh has touched the road divider and that is why, there are scratches and that is how, he was thrown on other side of the road.

9. The argument of Mr.Drupad Patil is for this act, his client cannot be held responsible. According to him, it was the fault of the deceased Rajesh to hit the road divider and his client cannot be held responsible. Whereas, according to Mr.Vidyarthi, in fact the dumper driver was at

great speed and he has seen the scooterist from the distance of 35 feet and he ought to have driven the dumper at such a speed so that he can stop the dumper when he has noticed some person or vehicle on his way.

10. There is one reason for not believing the version of dumper driver that there was dash from the backside because this fact is not stated by PSI Ghag and in fact, in the written statement, in paragraph No.9 filed by the Appellant, the plea taken is,

“one motorcycle came in a very fast speed from the opposite direction beyond divider and suddenly his motorcycle dashed against the divider and came down right rear wheel of the vehicle of the opposite party”.

There is one more reason for falsifying this plea. Flesh was stuck to the front side cleaner side wheel of the dumper. If there was dash from the rear side, how there can be a flesh on front side. Mr.Patil has also submitted that the position of the dead body was such that his legs were on the divider. When there is flesh on front cleaner side, it means the dash was given by the dumper from the front side only.

11. In fact, the dumper driver ought to have been vigilant and he ought to have taken care in considering the situation prevailing on the road at that time. No doubt, it was a midnight but it does not mean

that he can drive the dumper at a great speed and in such a speed that he cannot control it when there is some obstruction. If the dumper driver could have driven the dumper in moderate speed, probably he could have avoided that accident. It is important to note that there is slope on that bridge towards Dadar side. So, I am not impressed by the arguments of Mr.Patil that his client was not rash and negligent. When the deceased was thrown on that side if the dumper driver was not at speed, the accident could have been avoided. But it suggests that the dumper driver was not in a moderate speed. In fact, when there are scratches, even the deceased Rajesh is also responsible if he could not have dashed the road divider, he was not thrown on the other side. So, to certain extent, he was responsible and contributed to the accident.

12. Learned Advocate Shri.Vidarthi submitted that there is no such pleadings or any suggestion is given. Learned Advocate for the Appellant also submitted that in fact their driver is not at all negligent. It is true, no case is put forth about contributory negligence by the Corporation. Be that it may, Court has to appreciate the evidence and come to right conclusion. In fact, the Claimants could have explained as to how the deceased Rajesh was thrown on the other side and his scooter remained on his original side. This absence and coupled with

the scratches on road divider, this Court holds that he was also responsible to certain extent. I consider him negligent for 10% and the dumper driver for 90% because the dumper driver if at a moderate speed, he could have avoided the accident. The deceased died on the spot, the impact was so forceful that the brain has come out from the head.

Income of deceased

13. Now coming to the monthly income, there is evidence given by the employer—Satyabhan Singh. The deceased was working as Khalashi in Railway and he joined the duty on 20th August 1992 and promoted on 20th August 1993. He was drawing salary of Rs.2024/-. He could have been further promoted provided he has passed departmental examination. According to the employer, he could have got salary of Rs.5,450/-. He was due to retire in the year February–2027. About his employment and salary, there is no much dispute. The dispute is about considering his monthly salary at the double of Rs.2,040/-. Whereas, according to Mr.Vidyarthi, various judgments given by the Supreme Court were not in force at that time and even if we consider the income by considering the future prospects, the income will be on higher side. He has tendered a table of calculation. The calculation suggested by

him is as follows:-

<u>Sr.No.</u>	<u>Heads</u>	<u>Compensation Awarded/Stepped up</u>
(i)	Monthly Income:-	Rs.2,024/-
(ii)	Future Prospects:-	Rs.1,012/-/- (50% of the Income)
(iii)	Annual Income:-	Rs.2024/-+1012/-=3036/-, Annually it comes to Rs.36,432/-
(iv)	Dependency 3/4th	Rs.27,324/-
(v)	Multiplier:-	Rs.27,324/-X17=4,64,508/-
(vi)	Funeral Expenses:-	Rs.18,000/-
(vii)	Loss of Estate:-	Rs.18,000/-
(viii)	Loss of Consortium:-	Rs.1,92,000/- (Rs.48,000/- per head)
(a)	Total Compensation Awarded:-	Rs.6,92,508/-

14. This amount has to be bifurcated. It is as follows:-

The Appellant is liable to pay Rs.6,23,257.20/- (being 90% of **Rs.6,92,508/-**). The Appellant has deposited Rs.18,15,562/- (Rs.5 lakh towards the principal and remaining amount towards the interest) in this Court. The Appellant is required to deposit remaining amount of Rs.1,92,508/- (Rupees One Lakh Ninety Two Thousand Five Hundred Eight) plus interest at the rate of 9% from the date of Petition till realization.

15. Mr.Vidyarthi has invited my attention to the portion from

paragraph No.17. Even though the compensation calculated by the Tribunal was Rs.7,94,300/-(Rupees Seven Lakh Ninety Four Thousand Three Hundred), learned Advocate for the Claimants has restricted it to Rs.5,00,000/- (Rupees Five Lakh) as claimed in the Application and that is why Rs.5,00,000/- (Rupees Five Lakh) is awarded by the Tribunal. Learned Advocate Shri.Vidyardhi relied upon the observations in case of ***Prakash Chandra Swain and others V/s. Bikash Gadanaik and another.***⁴ He is right.

16. The Respondent No.2 Shri.Tukaram Narayan Masurkar who is the father of the deceased has expired. The submission of Mr.Vidyardhi is the Court has to consider the dependents at the time of accident and if any dependent has expired, the percentage of dependency will not be affected. He relied upon the observations in case of ***Kirti and others V/s. Oriental Insurance Co. Ltd.***⁵. He is right.

17. The Tribunal has granted interest at the rate of 9% from 1st November 1994 whereas, according to learned Advocate Shri.Vidyardhi, it ought to have been 12%. He relied upon the observations in case of ***Hemant Krishnanath Wadke V/s. Patheja Forging & Auto Parts Manufacturing Co. Pvt. Ltd. and others***⁶, wherein 12% interest was not

4 2026 ACJ 164

5 2021 ACJ 1

6 2005 ACJ 1202

altered considering the circumstances mentioned therein. I am not impressed by this argument. The observations are on the basis of facts of this case.

18. On the point of granting compensation on one head which is not awarded by the Tribunal, he relied upon the observations in case of *United India Insurance Co. Ltd. V/s. Kunti Binod Pande and others*⁷.

It is held “*even though there is no cross objection, the Court can grant compensation because the duty is cast to award just compensation*”. I feel that instead of doubling the salary, the compensation as suggested by Mr.Vidarthi can certainly be granted. I am inclined to grant interest at the rate of 9% considering the facts and circumstances. The Appellant has to pay 90% of this amount. In view of that, following order is passed:-

-: **ORDER** :-

- (a) **The Appeal is partly allowed.**
- (b) The Award dated 14th February 2002 passed by the Motor Accident Claims Tribunal–Mumbai is modified as follows:-
 - (i) **The Respondent / present Appellant is directed to pay Rs.1,92,508/- (Rupees One Lakh Ninety Two Thousand Five Hundred Eight) to the present Respondents / Original Claimants within 8 weeks from**

⁷ 2020 ACJ 2714

the date of uploading of the order along with interest at the rate of 9% per annum from 1st November 1994 till the date of payment. **The amount be deposited in the Motor Accident Claims Tribunal, Mumbai.**

- (ii) The Claimants are directed to pay additional Court Fee.
- (iii) The Tribunal to apportion the amount amongst the Claimants.
- (iv) The amount deposited, if any, in this Court, be transferred to the Tribunal for disbursal after considering the withdrawal, if any.
- (v) The Record and Proceeding be sent back to the Tribunal on priority basis.

- 19. In the light of the above observations, **the Appeal is disposed of.**
- 20. **Pending Applications, if any, also stand disposed of.**

[S. M. MODAK, J.]