

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

FIRST APPEAL NO. 624 OF 2004

Maharashtra State Road Transport
Corporation, Division - Ahmednagar
through its DIVISIONAL CONTROLLER,
Ahmednagar.

**....Appellant.
(Ori. Oppt. No. 3)**

Versus

1. Appasaheb s/o. Baburao Nalawad,
Age 50 years, Occu. Agril.,
2. Sushila Appasaheb Nalawade,
Age 46 years, Occu. Household,
3. Kum. Vaishali Appasaheb Nalawade,
Age 21 years, Occu. Nil,
4. Kum. Vidhya Appasaheb Nalawade,
Age 17 years, Minor.

Respondent No. 4 as minor through
her guardian i.e. Respondent No. 1.

All R/o. Jogeshwarwadi, Tal. Karjat,
District - Ahmednagar.

....Respondents.

Mr. M.K. Goyanka, Advocate for appellant.

Mr. B.S. Shinde h/f. Mr. V.P. Latange, Advocate for respondent
Nos. 1 to 4.

CORAM : T.V. NALAWADE, J.
DATED : 23rd November, 2015.

JUDGMENT :

- 1) The appeal is filed against judgment and award of

Claim Petition No. 308/1998 which was pending before the Motor Accident Claims Tribunal, Ahmednagar. The petition filed by present respondents under section 166 of Motor Vehicle Act is allowed and in respect of death claim, compensation of Rs. 3,35,550/- is awarded and the interest at the rate of 9% p.a. is given. Both the sides are heard.

2) The claim was filed in respect of death of one Vinodkumar Appasaheb Nalawade. The claimant Nos. 1 and 2 are the parents of deceased and the claimants Nos. 3 and 4 are sisters of deceased and they were minor. The accident took place on 29.12.1997 at about 2.30 p.m. on Ahmednagar - Aurangabad road in the vicinity of Kothala S.T. Stand. The spot is situated within the local jurisdiction of Bhingar Camp Police Station. The deceased was riding a scooter. It is contended that bus of Maharashtra State Road Transport Corporation [M.S.R.T.C.] bearing No. MH-12/FA-1664 gave dash to the scooter of the deceased and the accident took place. He died due to injuries sustained in the accident.

3) It is the case of claimants that the age of the deceased was 22 years and he was studying in Homeopathic Medical College. It is contended that the admission was taken in

the year 1995 and he had passed two years of the course. It is contended that the deceased was a brilliant student and the claimants were expecting support from him in future after completion of education of the deceased. It is contended that the deceased was involved in extra curricular activities and he was holding many certificates in athletics, drawing etc.

4) It is the case of claimants that they had spent huge amount on the aforesaid medial course. The particulars of the amount spent in respective academic years are given in the claim. It is contended that in view of the age of the deceased and the income, that he would have made, the claimants are entitled to atleast Rs. 10,00,000/- as compensation.

5) M.S.R.T.C. and his driver contested the matter by filing written statement. They denied that the bus was involved in the accident. It is contended that at the relevant time, the bus was stationary. It is contended that from opposite directions, the scooter of the deceased came in excessive speed and he suddenly fell on the right side of the bus and the bus was not involved in the accident.

6) On the aforesaid contentions, issues were framed.

Both the sides gave evidence. Appasaheb, father of deceased gave evidence. But he has no personal knowledge regarding the accident. One Raghunath Shinde, who is running a tea stall near the spot of accident, is examined by the claimants as eye witness. He has given evidence that the accident took place at about 2.30 p.m. and he noticed that the scooter was coming from the eastern side and the bus came from opposite direction and the bus gave dash to the scooter and the accident took place. His evidence shows that he had given information about the accident to police when police made inquiry about the accident before filing of the chargesheet. Nothing could be brought on the record to create a probability that he is interested witness and he has given false account of the accident.

7) Anil Ghatge, another witness is examined to prove the spot panchanama and the panchanama is proved as Exh. 42.

8) As against the aforesaid evidence given by the claimants, there is the evidence of driver of the bus Dattatraya Bansode. He has given evidence that his bus was stationary and it was present on the Kachha portion of the road at the relevant time. He has deposed that the scooter came from opposite direction and after passing his bus, the scooter fell down and

accident took place. He has denied that his bus was involved in the accident.

9) Sanjay Bhosle, conductor is also examined by M.S.R.T.C. and he also gave evidence that the bus was stationary. In the cross examination, he has given clear admission that he had stated before police that at the relevant time bus was in motion and when persons shouted he saw to the backside of the bus and realized that the bus had met with an accident.

10) Police filed chargesheet against the bus driver out of this accident. The aforesaid evidence of the conductor shows that the bus was in motion. The F.I.R. was given by Assistant Police Inspector after making investigation against the bus driver. The spot panchanama at Exh. 42 which is duly proved shows that the scooter was lying at the distance of 20 fts. on the backside of the bus. The head lamp of the scooter was damaged and there was damage caused to the front portion of the body of the scooter. The driver side portion of bumper of the bus of front side was found in pressed condition and the glass of indicator was also found to be in broken condition and the pieces of glass were lying there. This material is sufficient to infer that the bus

was involved in the accident. Further, the P.M. report shows that the deceased sustained as many as seven injuries which were like C.L.Ws., abrasions and contusions and due to the injuries, there was fracture to cervical spine and there was fracture of right side ribs. In the head portion, in frontal area haematoma was found. The death took place due to these injuries. This record is sufficient to prove that the death took place due to injuries sustained in the aforesaid accident.

11) The aforesaid material is considered by the Tribunal. It is clear that false defence was taken by the driver of the bus that the bus was stationary. It is not possible to interfere in the finding of the Tribunal that the bus was involved in the accident and accident took place due to rash and negligent driving of the bus driver.

12) The learned counsel for M.S.R.T.C. did not argue much on the point of quantum of compensation. The deceased was on the verge of completion of B.H.M.S. course. The amount which was spent on the course is given as compensation and there are receipts in that regard. One employee of said college is also examined to prove those receipts. The tribunal has presumed that the deceased would have made income of Rs.

2400/- p.m. 1/3rd amount is deducted towards personal expenses. Only 10 is adopted as multiplier for calculation of the loss of dependency. Thus, meager amount of compensation is given by the tribunal and so, there is no scope of interference in this part of the decision also. Unfortunately the claimants did not challenge the decision of the Tribunal.

13) In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

SSC/