

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

First Appeal No. 893 of 2005

Divisional Controller,
Maharashtra State Road
Transport Corporation,
Division : Beed,
District : Beed.

.. Appellant
(Original respondent no.1)

versus

1. Dilshad s/o. Mumtaj,
Age : 30 years,
Occupation : Agriculture /
Labour,
R/o. Saigaon,
Taluka : Ambajogai,
District : Beed.

2. Raosaheb s/o. Waman Marked,
Age : 46 years,
Occupation : ST Driver,
R/o. Eknathnagar, Khedgaon,
District : Ahmednagar,
now serving at S.T. Depot,
Shirur,
Taluka and District : Beed.

.. Respondents
(No.1 - Original claimant
&
No.2 - Original respondent
no.2 - Formal party)

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

Mr. S.G. Chapalgaonkar, Advocate, for respondent no.1.

Respondent no.2 is formal party.

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With

First Appeal No. 894 of 2005

Divisional Controller,
 Maharashtra State Road
 Transport Corporation,
 Division : Beed,
 District : Beed.

.. Appellant
 (Original respondent no.1)

versus

1. Aliyabegum w/o. Tajkhan,
 Age : 27 years,
 Occupation : Household,
 R/o. Saigaon,
 Taluka : Ambajogai,
 District : Beed.
2. Ms. ruba D/o. Tajkhan,
 Age : 6 years, Minor.
3. Ramiz @ Arbazkhan s/o. Tajkhan,
 Age : 4 years, Minor.

Respondent nos.2 and 3 being
 minors under the guardianship
 of their real mother i.e.
 respondent no.1 Aliyabegum
 Tajkhan R/o. as above.

Being Legal Heirs of deceased
 Tajkhan Feoroddin Khan.

4. Raosaheb s/o. Waman Marked,
 Age : 46 years,
 Occupation : ST Driver,
 R/o. Eknathnagar, Khedgaon,
 District : Ahmednagar,
 now serving at S.T. Depot,
 Shirur,
 Taluka and District : Beed.

.. Respondents
 (Nos.1 to 3 - Original claimants
 &
 No.4 - Original respondent
 no.2 - Formal party)

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

Mr. S.G. Chapalgaonkar, Advocate, for respondent nos.1 to 3.

Respondent no.4 is formal party.

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CORAM : A.M. BADAR, J.

DATE : 15TH DECEMBER 2015

ORAL JUDGMENT :

1. These are appeals filed by original respondent no.1 - Maharashtra State Road Transport Corporation [**For short, hereinafter referred to as “MSRTC”**] - owner of ST Bus bearing registration No. MH-20/D-3296. First Appeal No. 893 of 2005 is directed against the judgment and award passed by the learned Addl. Member of the Motor Accident Claims Tribunal at Ambajogai District : Beed, on 11-5-2005 in M.A.C. No. 6/2002 which was filed by present respondent no.1 - injured. Respondent no.2 herein was original respondent no.2 before the Tribunal. He is driver of the ST Bus. First Appeal No. 894 of 2005 is directed against the judgment and award passed by the learned Addl. Member of the Motor Accident Claims Tribunal, Ambajogai, on 11-5-2005 in M.A.C. No. 48/2002. The appellant was respondent no.1 in the said petition. Respondent nos.1 to 3 herein were the original claimants before the Tribunal. Respondent no.4 herein was respondent no.2 before the learned Tribunal. He was driver of the ST Bus. Both these appeals are decided by common judgment as they are arising out of the same accident in which

one person was injured and one died. M.A.C. No. 6/2002 was filed by injured claimant Dilshad s/o. Mumtaj whereas, M.A.C. No. 48/2002 was filed by Aliyabegum and other legal representatives of Tajkhan who died in the said accident. For the sake of convenience, parties shall be referred to in their original capacity.

2. Brief facts are thus :-

(a) In M.A.C. No. 6/2002, injured claimant Dilshad prayed for awarding compensation of Rs. 2,00,000/- whereas, in M.A.C. No. 48/2002, claimants prayed for awarding compensation of Rs. 5,00,000/- on account of death of Tajkhan by contending that they are his dependent legal representatives.

(b) According to claimants, in both these petitions, Tajkhan along with injured Dilshad and one Raheman were returning from to Mumbai to Saigaon by jeep bearing registration No. MH-23/E-1389. The said jeep was being driven by Tajkhan. When that jeep reached at Village Chowk near Karjat bifurcation at about 4.00 a.m. on 8-2-2000, ST Bus bearing registration No. MH-20/D-3296 owned by original respondent no.1 - MSRTC and driven by respondent no.2 Raosaheb Marked came from the opposite direction. The said bus was in high and excessive speed. It gave dash to the jeep. Because of injuries suffered in this accident, Tajkhan died at Dhirubhai Ambani Hospital, Panvel, on 9-2-2000. Claimant Dilshad was shifted to J.J. Hospital at Mumbai and he was subsequently admitted to S.R.T.R. Medical College & Hospital at Ambajogai. Claimant Dilshad sustained fracture to his facial bone, fracture of left femur and

joint, dislocation of teeth and injuries to other parts of body. Claimant Dilshad pleaded that because of this accident, he suffered permanent disability and he is still undergoing medical treatment.

(c) Claimants in M.A.C. No. 48/2002 contended that Tajkhan was 30 years old and was earning Rs. 5,000/- pr month from agricultural as well as other business.

(d) By pleading that the accident happened because of sole negligence on the part of the S.T. Bus, claimants in both these claim petitions prayed for awarding compensation.

(e) Both these claim petitions came to be opposed by filing identical written statements by respondent no.1 - MSRTC - owner of the ST Bus involved in the accident. It admitted that the accident happened in the vicinity of Village Chowk near Karjat bifurcation. However, according to respondent no.1 - MSRTC, accident happened because of rash and negligent driving of the driver of the jeep. Driver of the ST Bus was driving it from the left side of the road by observing rules of traffic. Rest of the contentions raised by claimants were denied by respondent no.1. It appears that subsequently respondent no.2 Raosaheb Marked was deleted from array of respondents.

(f) In order to prove his claim, claimant in M.A.C. No. 6/2002 namely Dilshad had examined himself. In rebuttal, respondent no.1 - MSRTC examined its driver Raosaheb Marked. Claimants in M.A.C. No. 48/2002 examined claimant no.1 Aliyabegum. They also adduced evidence of

Sayed Dilshad (Claimant in M.A.C. No. 6/2002) and that of Sayed Jallioddin Sayed Khaliloddin. In this petition also, respondent - MSRTC examined its driver Raosaheb Marked.

3. After hearing the parties, the learned Tribunal by its judgment and award dated 11-5-2005 was pleased to allow M.A.C. No. 6/2002 filed by injured Dilshad partly. Compensation amounting to Rs. 1,50,000/- came to be awarded to him. On the very same day, M.A.C. No. 48/2002 filed by claimants Aliyabegum and others also came to be allowed partly by directing respondent to pay compensation of Rs. 3,77,000/- on account of death of Tajkhan. The learned Tribunal came to the conclusion that the accident happened because of rash and negligent driving of the ST Bus involved in the accident and therefore its owner was directed to pay compensation to claimants.

4. Heard Shri Dhongade, the learned Counsel appearing for appellant - MSRTC / owner of the ST Bus in both these appeals. He argued that the learned Tribunal erred in coming to the conclusion that the accident happened because of rash and negligent driving of the driver of the ST Bus involved in the accident. In submission of the learned Counsel for the appellant, finding of the learned Tribunal that the road was having slope and the jeep was travelling in the ascending direction of the road is perverse. The spot Panchanama placed on record does not show that the road was having slope and the ST Bus was being driven in the descending direction. The learned Counsel for the appellant further argued that disability certificate of claimant Dilshad in M.A.C. No. 6/2002 is not in prescribed format.

5. As against this, Shri Chapalgaonkar, the learned Counsel appearing for respondents / original claimants, argued that the spot Panchanama is of no assistance for coming to any conclusion regarding rash and negligent driving of the motor vehicle. He further argued that evidence of Raosaheb Marked - driver of the ST Bus cannot be relied because he has made several exaggerations in his testimony. According to Shri Chapalgaonkar, the learned Counsel for respondents, version of the driver of the ST Bus, that the jeep was coming from the opposite direction in zigzag manner and gave dash to the ST Bus, *per se* cannot be believed because the accident happened on the highway having width 28 feet as disclosed from the spot Panchanama as well as evidence of claimant Dilshad.

6. I have carefully gone through the record and proceedings including evidence of injured Dilshad who was examined in death claim in respect of Tajkhan. I have carefully perused evidence of Raosaheb Marked - driver of the ST Bus as well as certified copy of the spot panchanama placed on record.

7. Careful perusal of spot Panchanama shows that the accident happened on Mumbai-Pune highway in the night intervening 7-2-2000 and 8-2-2000. Spot Panchanama was recorded on 8-2-2000. Spot Panchanama reveals that the jeep driven by deceased Tajkhan was found standing facing towards Pune. The ST Bus was found standing facing the direction of Mumbai. The spot Panchanama shows that tyre of the cleaner side of the bus was on the side of the road. Spot Panchanama further

shows that because of the dash, driver side of the bus was damaged. Spot Panchanama further shows brake marks of 5 feet length were in existence behind the bus. It needs to be noted here that Mumbai-Pune road is running from North to South direction. While giving location of the jeep as well as the ST Bus, it is not clarified in the Spot Panchanama as to whether the jeep was found on east side of the road or west side of the road. Similar is the case in respect of location of the ST Bus. It is not mentioned in the spot Panchanama as to whether the ST Bus was found standing on the eastern side of the road or western side of the road. Therefore by perusal of spot Panchanama, one cannot say with certainty as to which of these vehicles left its own side and went to the wrong direction. At the same time, spot Panchanama indicates that the ST Bus must be at high speed because its brake marks were found stretching up to the distance of 5 feet. In such situation, one will have to switch on to the ocular evidence in respect of the accident in question in order to determine mode and manner of its happening.

8. Oral evidence coming on record in respect of the mode and manner of the accident in question is of interest witnesses. Those are claimant Dilshad and driver of the ST Bus - Raosaheb Marked. Therefore it becomes duty of the Court to examine which of these witnesses has given truthful version of the mode and manner of happening of the accident in question. Evidence of Dilshad is at Exhibit 32 in M.A.C. No. 48/2002 and at Exhibit 20 in M.A.C. No. 6/2002. On both occasions, version of Dilshad is similar. He has stated in his evidence that when they were returning from Mumbai to Saigaon, the accident happened because of dash of the ST Bus to the jeep in which he along with deceased Tajkhan

were travelling. As per his version, the jeep was trending the ascending portion of the road whereas the bus coming from the opposite direction was trending descending portion of the road. The learned Counsel for the appellant states that such statement cannot be found in the deposition of Dilshad. However, it needs to be noted that this is the material elicited from cross examination of Dilshad by the learned Counsel appearing for respondent - MSRTC in M.A.C. No. 6/2002. By giving suggestion to Dilshad in cross examination, respondent no.1 - MSRTC in M.A.C. No. 6/2002 has brought on record that the jeep was trending ascending direction of the road whereas the ST Bus was coming down from the descending portion of the road at the place of the accident. This situation on the spot at the time of accident brought on record from evidence of Dilshad naturally goes to show that the ST Bus involved in the accident must be plying at high speed because even the spot Panchanama reflects that there were marks of brakes of ST Bus on the road.

9. It is in evidence of Dilshad that ST Bus left its own side and came to the side of the road from which the jeep was proceeding and gave dash. Dilshad denied the suggestion that driver of the ST Bus took the ST Bus to the extreme left side and stopped it but still the jeep gave dash to the ST Bus.

10. As against version of this witness, it is in evidence of Raosaheb Marked - driver of the ST Bus, that he observed that the jeep is coming in zigzag way. He further deposed that upon seeing the approaching jeep driven in zigzag manner, he stopped the ST Bus on the left side of the road but still the jeep gave dash to his bus.

11. Spot Panchanama as well as evidence of Dilshad and Raosaheb Marked goes to show that the road where the accident happened was having width of 28 feet. It was Mumbai-Pune highway. The accident happened in wee hours of 8-2-2000. In all three persons were travelling in the jeep at the time of the accident in question. In such situation, it cannot be said that on such highway having busy traffic, driver of the jeep would drive it in a zigzag manner at morning hours. The jeep which was trending ascending direction must be in slow speed as though in spot Panchanama finding of brake marks of the ST Bus is mentioned, but mention of brake marks of the jeep is not there, obviously because the jeep must be in slow speed while trending the ascending portion of the road. In the wake of this evidence on record, the learned Tribunal gave a finding that the accident happened because of rash and negligent driving of the ST Bus in question. Such finding cannot be said to be without any supporting evidence on record. Considering the evidence on record, no other view is possible and as such it needs to be held that the accident in question had happened because of rash and negligent driving of the driver of the ST Bus.

12. There is faint challenge to the quantum of compensation with an argument that the disability certificate placed on record by claimant Dilshad is not in a prescribed proforma. Evidence of claimant Dilshad shows that after the accident he was admitted to J.J. Hospital at Mumbai for three months and he was operated on four occasions at that hospital. Perusal of certificate at Exhibit 27 in M.A.C. No. 6/2002 shows that the same is issued by the Department of Orthopaedics, Grant Medical College

and Sir J.J. Group of Hospitals, Mumbai. By this certificate, Department of Orthopaedics of this Government Hospital certified that claimant Dilshad has suffered 55 % permanent disability. This certificate makes it clear that Dilshad has suffered three fracture injuries including fracture to his left leg and fracture of his left ulna. As claimant Dilshad was admitted for three months at J.J. Hospital, Mumbai, I see no reason to doubt the certificate at Exhibit 27. What matters is the substance and not the format. Hence even if the certificate at Exhibit 27 is not in the prescribed format, the contents thereof cannot be doubted.

13. Evidence of claimant Dilshad shows that prior to accident in question, he used to maintain his family but after the accident, his family is required to maintain him. He deposed that after the accident, he is depending on others for his livelihood. In such situation, by no stretch of imagination award of Rs. 1,50,000/- to him can be said to be exorbitant.

14. So far as death claim of Tajkhan is concerned, in M.A.C. No. 48/2002, the learned Tribunal assessed his monthly income at Rs. 3,000/-. After deducting Rs. 1,000/- towards his personal and living expenses, loss of dependency is calculated by applying multiplier of 15. The deceased was stated to be 30 years old at the time of his accidental death. He was doing transport business and evidence of Sayed Jallioddin shows that the deceased was owner of two motor vehicles used for travel business and one jeep. In the wake of this evidence, estimation of his monthly income at Rs. 3,000/- cannot be faulted with. Rest of the calculations made by the learned Tribunal for assessment of compensation in respect of his death claim are found to be correct. Hence it cannot be said that the

compensation awarded by the learned Tribunal in M.A.C. No. 48/2002 is exorbitant.

15. In the result, both appeals are devoid of substance. Hence First Appeal No. 893 of 2005 and First Appeal No. 894 of 2005 are dismissed with no order as to costs.

(A.M. BADAR)
JUDGE

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