

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

FIRST APPEAL NO.: 1369 OF 2003

1. Smt. Alka Sahebrao Chaudhari,
Age: 30 yrs., Occ.: Household.
2. Master Nilesh Sahebrao Chaudhari,
Age: 20 years, Occu.: Education.
3. Vasudha Sahebrao Chaudhari,
Age: 14 years, Occu.: Education.
Nos.2 and 3 through minor
their mother No.1.
4. Shri Kisanrao Babanrao Chaudhari,
Age: 60 years, Occ. Agri.
5. Sau. Bhagubai Kisanrao Chaudhari,
Age: 56 years, Occu. Household,
All R/o Dharangaon, Tq. Kopargaon,
Dist. Ahmednagar.

... **APPELLANTS**
[ORIG.CLAIMANTS]

VERSUS

1. The Maharashtra State Board
Transport Corporation Ltd.,
Head Office, Bombay.
Depo. Ahmednagar.

... **RESPONDENT**
[ORIG.RESPONDENT]

Mr. A. S. Gandhi, Advocate for the Appellants.
Mr. M. K. Goyankar, Advocate for the Respondent.

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CORAM:-
DATED:-

T. V. NALAWADE, J.
20th NOVEMBER, 2015.

JUDGMENT:

1. The appeal is filed to challenge the judgment and Award of Claim Petition No.43 of 2002 which was pending before the Claims Tribunal, Kopargaon, District Ahmednagar. The Tribunal has dismissed the claim of the Appellants by holding that the deceased himself was negligent. Both the sides are heard.

2. Deceased Sahebrao was the husband of Claimant No.1 Alka. Claimant Nos. 2 and 3 are issues of Claimant No.1, born from deceased Sahebrao and Claimant Nos.4 and 5 are parents of deceased Sahebrao. The accident took place on 24th August, 1994 at about 02.30 to 03.00 p.m. on Kopargaon-Yewala road in front of Thole Petrol Pump. It is the case of claimants that due to rash and negligent driving of bus of M.S.R.T.C. bearing No.MWQ-6176 the accident took place and Sahebrao died in the accident. It is the case of the claimants that the deceased was in service and he was aged about 39 years. It is contended that all the claimants were dependent for their livelihood on the income of deceased and the monthly salary of the deceased was at-least Rs.2,600/-. It is contended that the deceased was getting some amount as allowances and bonus and the average income of

deceased per month was at-least Rs.3,000/-. They had claimed compensation of Rs.10.07 Lakh.

3. The M.S.R.T.C., owner contested the matter by filing written statement. The Respondent contended that the accident took place due to the fault of the deceased and there was no fault on the part of driver of the bus. It is contended that the deceased was paddling bicycle and he lost balance and he fell under rear portion of the bus and due to his fault the accident took place. It is alternatively contended that unknown vehicle had given dash to the deceased and due to that he fell on the side of the bus and accident took place.

4. On the basis of aforesaid pleadings, issues were framed by the Tribunal. Both the sides gave evidence. The Tribunal considered the income from salary and income from agricultural land also and presumed that the monthly income of deceased was at-least Rs.3,600/-. 15 was used as multiplier considering the age of the deceased and accordingly the compensation was calculated at Rs.5.22 Lakh on the principle of fault under section 166 of the Motor Vehicles Act. There is no dispute about the quantum

and so there is no need of discussing this point more.

5. For proving the rash and negligent act of the driver of bus, the claimants relied on police papers. The driver of the bus had given report to police immediately after the accident and that report is at Exhibit-45. He had reported to police that one cyclist had sustained dash of his bus and had come under rear wheel on driver's side of the bus. He had left the spot as people had gathered there and he was afraid that there was possibility of assault on him by people.

6. Claimants examined Amir Ali, A.S.I. who had made the investigation of this crime. In his evidence the Spot Panchanama is duly proved as Exhibit-59. He had filed charge sheet against the bus driver and copy of charge sheet is at Exhibit-61.

7. The Spot Panchanama shows that it was prepared between 15.55 hours and 16.30 hours on the same day. The accident had taken place at about 02.35 p.m., as per the version of the bus driver. The Spot Panchanama shows that the accident took place on the road which had the

width of 37.54 ft. and on one side of the road there was a petrol pump. The bus was facing towards North. At the distance of 9 ft. from rear wheel on driver's side of the bus, one bicycle was lying and near the bicycle there were bloodstains. There were scratch marks on the mudguard on driver's side near rear wheel of the bus. In the spot Panchanama it is mentioned that on Eastern side of the front wheels of the bus there was the road having width of 22 ft. There is also mention about the side Pattis, wings of the road. It appears that even when there is evidence of bus driver and there is aforesaid record the Tribunal visited the spot and prepared notes of inspection. The Tribunal has observed that there is probability that the bus had gone to wrong side at the most by 1 ft. but the cyclist was right in the middle of the road, he was coming from opposite direction and was probably trying to overtake another vehicle and in that attempt he gave dash to the bus or due to dash given by some other vehicle he fell down near the rear wheel of the bus and due to his fall the accident took place.

8. The Tribunal has virtually ignored the circumstance

like, in the first report given by driver to police, which is required to be given under the provisions of Motor Vehicles Act he had informed that his bus had given dash to the bicycle of the deceased and he had run away from the spot. The accident took place at about 02.35 p.m., in broad day light and on the road having aforesaid width. The spot Panchanama shows that on one side of the road there was one petrol pump and on other side also there were constructions. Thus, the bus was proceeding through the populated area and so it was necessary for the bus driver to take proper care. The aforesaid circumstances are sufficient to infer that, first the bicycle received dash of the bus, due to that the deceased came under the rear wheel of the vehicle and the bus crossed distance of about 9 ft. from the point where the deceased had come under the rear wheel of the bus on driver's side. Unfortunately, in the spot Panchanama there is no specific mention about the distance between other wheels of the bus and the edge of the road on Western side or Eastern side. In any case, it can be said that on the basis of the circumstances noted in the spot Panchanama and the investigation made by police, police found that the accident had taken place due

to the fault of driver of the bus and the charge sheet was filed against him. This circumstance ought to have been kept in mind by the Tribunal but this circumstance is virtually ignored by the Tribunal.

9. The evidence of the bus driver shows that he stopped the vehicle only when he heard the sound of one cyclist on the rear side. When the right side of the bus had come in contact with the bicycle, the accident took place in broad day light and the bus crossed some distance after running over the deceased, these circumstances ought to have been properly explained by the bus driver. In view of the report given by him to police, which is duly proved and the other circumstances, this Court has no hesitation to hold that the accident took place due to the fault of bus driver. The learned counsel for Respondent submitted that there was at least some negligence on the part of the deceased and so the apportionment of negligence needs to be done. This submission is not at all acceptable. There is evidence of only bus driver and there are aforesaid circumstances against the bus driver. As the bus had crossed some distance after running over the deceased, not much

importance can be given to the fact that bus was on some what left side of the road after the impact. So, this Court holds that the Tribunal has committed error in holding that the accident took place due to the fault of the deceased. This Court has no hesitation to hold that the Tribunal has committed error in dismissing the claim petition. Said finding cannot sustain in law.

10. In the result, the following order is made:

(1) Appeal is allowed. Judgment and Award of the Tribunal is hereby set aside. The claim petition of the Appellants is allowed with costs in following terms:

(i) Respondent to deposit with the Tribunal compensation of Rs.5.22 Lakh as the compensation on the principal of fault.

(ii) The Respondent is also liable to pay the interest at the rate of 9% p.a. The interest will be payable from the date of the petition till the date of realisation.

(iii) If any amount is paid on the principal of "no fault" that amount is to be deducted from the amount that is now awarded and the interest is to be paid on the remaining amount.

(2) After deposit of the amount with the Tribunal the disbursement of the amount is to be made as follows:

(i) 50% amount is to be given to claimant No.1 Alka, widow of the deceased and the remaining amount is to be equally distributed amongst claimant Nos.2 to 5.

(ii) The entire amount awarded to claimant No.1 Alka is to be deposited in her name in fixed deposit in any nationalised bank for a period of five years. She is entitled to get quarterly interest on that amount.

(iii) Award is to be made accordingly.

(3) Deficit court fee is to be recovered before disbursement of compensation amount.

[T. V. NALAWADE, J.]

Dated:20/11/2015.
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