

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

FIRST APPEAL NO. 484 OF 2016

RUKHMANBAI PRATAPSINGH GHUSINGE AND
OTHERS
VERSUS
THE DIVISION MANAGER OF M.S.R.T.C. AURANGABAD

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Advocate for Appellants : Mr. M. R. Deshmukh
Advocate for Respondents : Mrs. Ranjana Reddy

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CORAM : V.K. JADHAV, J.

Dated: May 02, 2016

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ORDER :-

1. By consent of learned counsel for the parties,
heard finally at admission stage itself.

2. Being aggrieved by the judgment and order dated
12.12.2007 passed by learned Chairman, Motor
Accident Claims Tribunal, Aurangabad, in MACP No.540
of 2005, the original claimants have preferred this
appeal.

3. Brief facts, giving rise to the present appeal, are as
under :-

a] On 19.9.2005 at about 8.30 p.m., on Aurangabad

to Vaijapur road near Panch Pirwadi within the limits of Sillegaon Police Station, Taluka Gangapur, District Aurangabad, the accident took place. On that day, at the relevant time, deceased Pratapsingh was proceeding towards Aurangabad on his motor cycle. At that time, one S.T. bus bearing registration No. MH-20/6171 came from opposite side and dashed to the motor cycle of deceased Pratapsingh. In consequence of which, deceased Pratapsingh fell down on the road and sustained severe injuries and he died on spot. At the time of accident, deceased Pratapsingh was 40 years of age and he used to earn Rs.3,000/- to Rs.4,000/- per month by working as driver. He was the only earning member of his family and the claimants were dependent on his income. Thus, his legal representatives/claimants filed claim petition for grant of compensation under various heads.

b] The Respondent MSRTC strongly resisted the claim petition by filing written statement at Exh.14. Respondent MSRTC has denied the involvement of S.T. bus in the accident. It is further contended that some

unknown vehicle has given dash to the motor cycle of deceased Pratapsingh and that the S.T. bus number was falsely mentioned in the FIR.

c] Learned Chairman, Motor Accident Claims Tribunal, Aurangabad, by its impugned judgment and order dated 12.12.2007, dismissed the claim petition. Hence, this appeal.

4. Learned counsel for the appellants-claimants submits that the claimants have produced before the Tribunal certified copies of F.I.R., spot panchnama, inquest panchnama and form Component 'AA' and the documents are duly exhibited. Learned counsel submits that, even an application for compensation under section 166 of the Motor Vehicles Act, 1988 is not necessary. In view of the provisions of sub-section (4) of section 166 of the said Act, report of the accident forwarded by the Police Officer under sub-section (6) of section 158 of the said Act is required to be treated as an application for compensation. The Tribunal has dismissed the claim petition on the ground that even

though the S.T. bus appears to have been involved in the accident, driver of the said S.T. bus is not known and it is also not known whether the driver of said S.T. bus was subjected to criminal prosecution thereafter. The tribunal has further observed that in view of the same, involvement of the S.T. bus in the accident is doubtful. In view of the said documents i.e. F.I.R., spot panchnama, inquest panchnama and form component 'AA', wherein the registration number of said S.T. bus is specifically mentioned and in view of certified copy of the charge sheet which is produced before this Court by way of additional evidence and which is accepted by this Court, the findings recorded by learned Chairman of the Tribunal are totally perverse. Even though claimant no.1 has deposed about the accident and placed on record police documents, the respondent MSRTC has not bothered to cross examine claimant no.1 on that point. Respondent MSRTC, for no reason, denied the involvement of S.T. bus in the accident. Charge sheet was filed against the driver of S.T. bus and he died a natural death in the month of December, 2005. Respondent MSRTC has also received a notice of this

claim petition prior to the death of said driver of the S.T. bus. Learned counsel submits that there is no substance in the submission that driver of the bus has not reported the accident to MSRTC. Learned counsel submits that on the other hand, it was convenient for the MSRTC to call upon its own driver to explain about the happening of the accident. Instead of doing that, respondent MSRTC has simply denied the involvement of S.T. bus in the accident by ignoring the police papers placed on record. The claimants have to establish their case merely on the touch stone of preponderance of probabilities and it is not that the claimants are required to prove their case beyond reasonable doubt. Learned counsel submits that the principle of “res-ipsoliquitor” squarely applies in the facts and circumstances of the present case and it was for the Respondent MSRTC to discharge the burden of proving the fact that driver of the S.T. bus was not at fault in bringing up the accident in question. The Tribunal ought to have allowed the claim petition by considering the income and age of the deceased. Learned counsel submits that the Tribunal ought to have considered grant of

compensation under non pecuniary heads.

5. In order to establish his submissions, the learned counsel for the appellants-claimants relies on the following judgments.

1. ***Rajesh and others vs. Rajbir Singh and others***, reported in **2014 (1) Mh.L.J. 79**,
2. ***Oriental Insurance Co. Ltd., Aurangabad vs. Babulal s/o Chunilal Somani and others***, reported in **2015(1) Mh.L.J. 71**,
3. ***Oriental Insurance Co. Ltd. Vs. Premlata Shukla and others***, reported in **2007 AIR SCW 3591** and
4. ***Bimla Devi and others vs. Himachal Road Transport Corporation and others***, reported in **AIR 2009 Supreme Court 2819**.

6. Learned counsel for respondent MSRTC submits that the claimants have to prove their own case. The driver was not impleaded as a party to the claim petition and since the driver of S.T. bus died by a natural death in the month of December, 2005 itself, the respondent

MSRTC had no opportunity to examine him. Even considering the documents placed on record, only on the basis of those documents negligence on the part of the driver of S.T. bus cannot be considered. Claimant no.1 was not an eye witness to the accident and therefore, it cannot be said that the S.T. bus was involved in the said accident as F.I.R. was filed belatedly. Assuming that S.T. bus was involved in the said accident, deceased Pratapsingh was riding his motor cycle on road and he was also responsible to some extent to the accident. Only considering the size of vehicle, it cannot be said that driver of S.T. bus was alone responsible for the accident and motor cycle rider had not contributed negligence in any manner. Mere proof of accident is not sufficient and as compared to the provisions of Section 163-A of the Motor vehicles Act, in a claim under Section 166 of the said Act under fault liability, claimants have to prove their case to fasten the liability on respondent MSRTC.

7. In view of the provisions of sub-section (4) of Section 166 of the Motor Vehicles Act, the Tribunal is

required to treat any report of the accident forwarded to it under sub-section (6) of section 158 of the Act as an application for compensation under the said Act. In the case in hand, original form component 'AA' is placed on record before the Tribunal and the same is marked at Exh.23. It is true that name of the driver is not mentioned in the said form component 'AA', however, registration number of the S.T. bus is clearly mentioned in it. In view of the provisions of sub-section (6) of Section 158 of the Motor Vehicles Act, as soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal. It thus appears that registration number of the S.T. bus is mentioned in form Component "AA" and also in F.I.R. Exh.19. Learned counsel for respondent MSRTC submits that the driver of the S.T. bus had not reported the accident to respondent MSRTC. However, after receiving notice of

claim petition alongwith the documents as referred above, it was incumbent upon respondent MSRTC to call upon its own employee to explain about the alleged accident and the huge claim of compensation submitted by the claimants before the Tribunal against respondent MSRTC. Instead of doing that the respondent MSRTC has conveniently denied the involvement of S.T. bus in the accident under the pretext that driver of S.T. bus has not reported the accident to respondent MSRTC. This Court has directed the respondent to place before this Court the file of inquiry conducted against said driver of MSRTC, however, shockingly, learned counsel for respondent MSRTC, on receiving the said file from the corporation submitted that, no such inquiry was ever held against the said S.T. bus driver. It appears from the charge sheet produced before this Court that after due investigation, police submitted charge sheet against the S.T. bus driver and said charge sheet was submitted during the life time of said driver who died a natural death in the month of December, 2005. In view of this, involvement of the S.T. bus in the accident is undoubtedly proved.

8. So far as negligence on the part of driver of respondent MSRTC is concerned, the claimants have produced on record certified copies of F.I.R. Exh.19, spot panchnama Exh.20, inquest panchnama Exh.21, provisional postmortem report cum death certificate Exh.22 and the charge sheet which is produced before this Court and the same is now marked as Exh.24A. In view of production of the above documents and facts and circumstances of the case, as discussed in the foregoing paragraphs the principle of “*res-ipsa-liquit*” squarely applies in this case. Considering the fact that respondent MSRTC had no opportunity to examine its own driver to discharge the burden, even then spot panchnama Exh.20 and the map drawn on it speaks for itself.

9. On careful perusal of the contents of spot panchnama and the map drawn on it, it appears that said Aurangabad Vaijapur Road, i.e. the spot of accident, is east-west in direction. Said road is 25 ft in width having mud pans on both sides of road five ft in width. Deceased Pratapsingh was coming to

Aurangabad that is from west to east. Thus, for the vehicles coming from western side and proceeding towards eastern side, northern side of the road is the correct left side. The S.T. bus was proceeding in the western direction and southern side is the correct left side for the S.T. bus proceeding towards west. As per the contents of spot panchnama and the map drawn on it, the blood stains are appearing on the northern side of the tar road and even the particles of brain also found near the spot. Furthermore, broken brake rod of the motor cycle also found near the blood spot. It is thus clear that accident had taken place towards northern side of the road which was the correct left side of the road for the motor cycle coming towards Aurangabad. On a tar road having a width of 25 Ft, there was no reason for the S.T. bus to give dash to the motor cycle coming from the opposite side by going to the wrong side of the road. In view of the above discussion, in my considered opinion, the accident had taken place due to rash and negligent driving of the S.T. bus by its driver alone and deceased Pratapsingh was not responsible for the accident in any manner.

10. According to the claimants, deceased Pratapsingh was working as driver and earning Rs.4,000/- to Rs.5,000/- p.m. In order to substantiate the same, the claimants have not produced any documents on record. It was expected from them at least to produce on record the driving licence of deceased Pratapsingh. In absence of any income proof, the notional income of deceased Pratapsingh is to be considered as Rs.3,000/- p.m. After deducting 1/3rd of personal expenses, his monthly income comes to Rs.2,000/- which corresponds to Rs.24,000/- per year. According to the claimants, deceased Pratapsingh was 40 years of age at the time of his accidental death. In the inquest panchnama, his age is mentioned as 40 years. The same is also not disputed by respondent MSRTC as respondent MSRTC has not cross examined the claimants on this point. Thus, by applying the proper multiplier '15' which is rather appropriate considering the age of the deceased at the time of his accident, loss of future income/dependency comes to Rs.3,60,000/-.

11. The claimants are also entitled for compensation

under the heads of non pecuniary loss. Claimant no.1 is entitled for compensation of Rs.25,000/- for loss of consortium, claimants no.2 and 3 are entitled to Rs.10,000/- each for loss of love and affection, the claimants are entitled for Rs.10,000/- for loss of estate. The claimants are also entitled for the amount of Rs.10,000/- as funeral expenses. Thus, the brake up of compensation under various heads which can be broadly categorized as under :-

1. Loss of future dependency/income.	Rs. 3,60,000/-
2. Loss of consortium	Rs.00,25,000/-
3. Loss of love and affection	Rs.00,20,000/-
4. Loss of Estate	Rs.00,10,000/-
5. Funeral expenses	Rs.00,10,000/-
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	Rs.4,25,000/-.

12. Learned counsel for the appellants-claimants fairly submits that the appeal was filed after a long delay and at the time of condonation of delay, the appellants-claimants were directed to file an undertaking to the effect that they would not claim interest for the period for which delay is sought to be condoned.

13. In view of the above, the appellants-claimants are not entitled for interest of the period for which delay was condoned. Hence, excluding the said period, the appellants-claimants are entitled for interest from the date of registration of the first appeal before this Court till realization of the amount. Hence, following order is passed.

O R D E R

- I. First Appeal is hereby allowed with proportionate costs.
- II. The Judgment and Award dated 12.12.2007 passed by the Chairman, Motor Accident Claims Tribunal, Aurangabad in MACP No.540/2005 is hereby quashed and set aside.
- III. MACP No.540/2005 is hereby allowed with costs.
- IV. The respondents MSRTC is hereby directed to pay the compensation amount of Rs.4,25,000/- (Rs. Four lacs twenty five thousand only) alongwith interest @ 9% p.a. from the date of filing the claim petition till its dismissal by the Tribunal and, from the date of registration of First Appeal before this court till realization of the entire amount.

V. The appellants-claimants to pay the deficit court fees within four weeks from the date of this order.

VI. Award be drawn up accordingly.

VII. First Appeal is accordingly disposed of.

(V.K. JADHAV, J.)

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