

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

FIRST APPEAL NO. 12 OF 2002

Director,
Vehicle Research and Development
Establishment,
Ministry of Defence,
R & D Organisation
PO Vahan Nagar,
Ahmednagar

...Appellant

versus

1. Shri Rajendra Santosh Patil,
Age 25 years, Occ. Agricultural
2. Smt. Sundrabai Santosh Patil,
Age 44 years, Occ. Household
3. Sau. Ranjana Rajendra Patil,
Age 22 years, Occ. Household,
4. Shri Sanjay Santosh Patil,
Age 22 years, Occ. Student,

All R/o. Dattane, Tq. Sindkheda
District Dhule

5. Shri Sawidersingh Udham Singh Vrde
(appeal dismissed as against
R.No.5 by order dated 15.3.2005)

...Respondents

**WITH
FIRST APPEAL NO. 13 OF 2002**

Director,
Vehicle Research and Development
Establishment,
Ministry of Defence,
R & D Organization
PO Vahan Nagar,
Ahmednagar

...Appellant

versus

1. Smt. Jijabai Nilkanth Patil,
Age 22 years, Occ. Household
2. Smt. Kamalajabai Puna Patil
Age 55 years, Occ. Household
3. Shri Rakesh Nilkanth patil,
Minor, Age 3 years,
U/g of respondent No.1

All R/o. Dattane, Tq. Sindkheda
District Dhule

5. Shri Sawidersingh Udham Singh Vrde
Residentail Complex
Po Vahan Nagar
Ahmednagar 414 006

...Respondents

.....
Advocate for the appellant: Mr. D.G. Nagode,
None for the respondents-original claimants
.....

CORAM : V. K. JADHAV, J.
DATED : 30th MARCH, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the common judgment and award dated 21.01.2000 passed by learned Member, M.A.C.T. Dhule in M.A.C.P. Nos. 116 of 1994 and 117 of 1994, the original respondent No.2 preferred both these first appeals.

2. Brief facts, giving rise to the present appeals, as as follows:-

a) The accident had taken place on 1.3.1994 at about 3.30 p.m. on Bombay Agra Highway within the jurisdiction of village Gavhane. At the time of accident, deceased Santosh Patil

alongwith deceased Nilkanth Patil were proceeding to village Dattane on moped Bajaj M-80 bearing registration No. MJV 2386. Deceased Santosh Patil was riding the said Bajaj M-80 while deceased Nilkanth Patil was pillion rider. Bombay Agra highway runs north-south in direction and they were proceeding in northern direction. At that time, one bullet proof military van bearing registration No. V-583 was coming from northern side. It was alleged that respondent No.1 was riding the said military van in rash and negligent manner and gave dash to the said Bajaj M-80 being driven by deceased Santosh Patil, in consequence of which, both of them were thrown away on the western side of the road and died on the spot. Legal representatives of deceased Santosh Patil filed claim petition No. 116 of 1994 whereas, legal representatives of deceased Nilkanth Patil filed claim petition No. 117 of 1994 for grant of compensation, before the M.A.C.T. Dhule.

b) Learned Member of the Tribunal has partly allowed M.A.C.P. No. 116 of 1994 and directed the respondents, jointly and severally, to pay Rs.1,50,000/- to the claimants with interest and cost, whereas, in M.A.C.P. No. 117 of 1994, learned Member of the Tribunal has directed the respondents, jointly and severally, to pay an amount of Rs.2,50,000/- to the claimants therein, with interest and cost. Being aggrieved by

the same, original opponent No.2 has preferred these two separate appeals.

3. Learned counsel for the appellant submits that deceased Santosh Patil was driving Bajaj M-80 in fast speed and in rash and negligent manner. Learned counsel submits that deceased Santosh Patil was trying to overtake one truck, which was going ahead of said Bajaj M-80 at the time of accident. He was trying to overtake the said truck in fast speed. Learned counsel submits that on noticing the same, original opponent No.1, who was driving the military van, lowered down the speed of his vehicle and, in fact, stopped his vehicle by the side of road i.e. eastern side of Bombay Agra highway. Learned counsel submits that military van was stopped on left side of the road. Learned counsel submits that spot panchnama fully supports the case of the appellant. Learned counsel submits that the moped Bajaj M-80, which deceased Santosh Patil was riding, gave a dash to the stationary Military van. The Tribunal has not considered this aspect and erroneously recorded finding that the driver of military van alone is responsible for the accident. Learned counsel submits that deceased Santosh Patil and deceased Nilkanth Patil were agriculturists by occupation. Learned counsel submits that corpus of agricultural land remained as it is after their death and the Tribunal, at the most, should have considered the loss in terms of supervisory charges. Learned counsel submits that the Tribunal has not

considered the loss of agricultural income and awarded exorbitant amount of compensation. Learned counsel submits that the common judgment and award passed by learned Tribunal in the said two claim petitions is thus, liable to be quashed and set aside by allowing both the first appeals.

4. None present for the respondents-original claimants.

5. The following points arise for my consideration and I record my findings thereon for the reasons mentioned below:-

Sr.No.	Points	Findings
1	Whether the claimants prove that death of Santosh Patil and Nilkanth Patil was caused due to rash and negligent driving of the driver of military van (original opponent No.1) bearing registration No. V-583 on 1.3.1994 on Bombay-Agra highway.	In the Affirmative.
2	Whether the Tribunal has correctly assessed the compensation?	In the affirmative.
3	Whether the impugned judgment and awards calls for an interference?	In the negative.
4	What order?	As per final order.

REASONS

6. **Point No.1** : On careful perusal of the spot panchnama I find

that Bombay-Agra highway is south-north in direction. It is not disputed that at the time of accident, deceased Santosh Patil was driving Bajaj M-80 from southern side towards northern side and the Military van was going from opposite direction i.e. from northern side and proceeding towards southern direction. It is thus clear that for the vehicles coming from northern side and proceeding towards southern side, the correct left side is eastern side of the road. As against this, for the vehicle coming from southern side and proceeding towards northern side, the correct left side is western side of the road. It is the case of the appellant-original opponent No.1 that the driver of military van involved in the accident had stopped the said van by the side of the road i.e. towards eastern side of the said road and said Bajaj M-80 gave dash to the cleaner side of the Military van. On perusal of the inquest panchnama as well as copy of spot panchnama, it appears that the said vehicle Bajaj M-80 was lying at a distance of 15 paces in a curve direction on the western side of the military van. Even dead bodies of deceased Santosh Patil and Nilkanth Patil were found lying on the western side of the road. This fact itself indicate that the accident had occurred in different manner than deposed by the driver of the Military van. In the event, if the said Bajaj M-80 gave dash to cleaner side of the stationary military van by going wrong side i.e. eastern side of the road, then the said moped Bajaj M-80 would have found towards eastern side in damaged

condition alongwith dead bodies of the rider of moped Santosh Patil and the pillion rider Nilkanth Patil.

7. The Tribunal has thus rightly observed that the driver of the vehicle military van has not approached the Tribunal with clean hands in respect of the manner of accident. In light of the contents of spot panchnama Exh.24, only irresistible inference that could be drawn is that the driver of military van alone is responsible for the accident and none else. I do not find any fault in the findings recorded by learned Tribunal. It is difficult to digest that deceased Santosh Patil, who was riding the moped Bajaj M-80, was trying to overtake the truck on the said road. The documents placed on record does not support the case of appellant that said Bajaj M-80, in the process of overtaking the said truck, went in wrong direction and gave dash to the stationery vehicle military van. In view of this, in my considered opinion, death of Santosh Patil and Nilkanth Patil took place due to rash and negligent driving of the driver of military van bearing Registration No. V-583 on 1.3.1994 on Bombay Agra highway. I accordingly answer point No.1 in the affirmative.

8. **Point No.2 :** So far as the quantum in both the claim petitions is concerned, it appears that learned Member of the Tribunal has considered notional income of deceased Santosh Patil as well as deceased Nilkanth Patil. Learned Member of the Tribunal has

considered the notional income of deceased Santosh Patil as Rs.1500/- p.m. and considered the notional income of deceased Nilkanth Patil as Rs.2000/- p.m. Learned Member of the Tribunal, after deducting 1/3rd amount from their income towards their personal expenses, applied correct multiplier as per their respective ages. Learned Member of the Tribunal has correctly assessed the loss of dependency and also awarded compensation under non pecuniary heads. I do not think that learned Member of the Tribunal has awarded exorbitant amount of compensation in both the claim petitions. I accordingly answer the point No.2. I do not find any substance in both the appeals. Both the first appeals are thus liable to be dismissed with costs. Hence, I pass the following order:-

ORDER

- I) First appeal Nos. 12 of 2012 and 13 of 2012 are hereby dismissed with costs.
- II) In response to the order passed by this Court, the appellant has deposited statutory amount and part of compensation amount before this Court. The respondents-claimants are permitted to withdraw the said amount.

(V. K. JADHAV, J.)