

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO.241 OF 2015
WITH
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FIRST APPEAL NO.245 OF 2015**

Sumit Vinit Magar (A minor through
his father Vinit Sitaram Magar) & Others ... Appellants
vs.
Satish Dinkar Lokhande and Another ... Respondents

Mr. Ashok Gade, for the Appellants.
Mr. Devendra Joshi, for the Respondent-Insurance Company.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 2nd MARCH, 2016

P.C.:

. Admit. Heard finally at the stage of admission by consent.
The learned counsel for the Respondents waives notice.

2. All the five Appeals are directed against the judgments
and award dated 12th November, 2014 passed by the learned Member,

Motor Accident Claims Tribunal, Nashik in M.A.C.P. Nos. 736, 737, 849, 848 and 850 of 2009 thereby dismissing all the Petitions for compensation filed by the original claimants i.e. Appellants. Though the separate judgments and award passed in all the Petitions and the claims are different but the reasoning given in all the judgments and the ground for dismissal is one and the same, therefore all the present Appeals are decided by a common order.

3. The accident had taken place on 15th May, 2009 between a Maruti car bearing No. MH-15-BD-2807 and a luxury bus bearing No. MH-15-AK-2000 on Nashik-Pune road. The Maruti Car was going from Sangamner to Nashik and when it reached near Bodhale Shivar, Nashik-Pune Road, near Rajesh Dhaba the offending vehicle a luxury bus coming from the opposite direction dashed Maruti car and due to the impact four passengers in Maruti car died on the spot and one small boy aged 8 years was seriously injured. The said boy has filed the injury claim and the dependents of the four deceased persons have filed separate claims under Section 166 of Motor Vehicles Act for different compensation against the owner of the luxury bus and the Insurance Company with whom the bus was registered.

4. The following chart will clarify the position of Appeals.

<u>First Appeal</u>	<u>M.A.C.P.</u>	<u>Claimants /Appellant</u>	<u>Age of the victim</u>	<u>Death claim/ for</u>
241 of 2015	736 of 2009	Sumit Magar	8 Yrs.	-
242 of 2015	737 of 2009	Vinit and Sumit Magar	Wife aged 32 Yrs.	5 lacs for death of wife of Vinit and mother of Sumit.
243 of 2015	849 of 2009	Anil Chothave	-	5 lacs for death of father.
244 of 2015	848 of 2009	Anil Chothave	-	4 lacs for death mother.
245 of 2015	850 of 2009	Meena, Sandip & Rani Jadhav	-	5 lacs for death of husband of Meena & father Sandip & Rani.

5. The learned Member of the Tribunal has dismissed all the claims of the claimants on the ground that the claimants failed to prove that the luxury bus was running in rash and negligent manner which caused the accident. The learned Member did not take into account or discussed any other evidence tendered by the applicants/ original claimants on the point of quantum, dependency etc. The only evidence on the point of negligence is discussed by the Member is of the driver of offending vehicle namely Sunil Sangle. Hence, the point of determination in all the Appeals is formulated as follows:

Whether the finding of the learned Member, Motor Accident Claims Tribunal, Nashik in all the Petitions that the applicants failed to establish the rash and negligent driving of the luxury bus driver is legal and correct ?

In the negative

6. On the point of accident, the original claimants have stepped in the box and deposed about the travel of the injured/deceased persons in the Maruti car and also stated that the accident caused the injury to the claimants, so also the death of the victim. However, the claimants in all the four Appeals filed for death claim were not present at the time of accident and therefore they have not seen the accident. The only witness i.e. Sumit Magar who has filed application for injury claim was present at the spot of incident who was 8 years old at the time of accident i.e. in the year 2009. The evidence of the witnesses was recorded in the year 2014. That mean Sumit Magar was 13-14 years old at the time of recording evidence. However, he could not come to the Court as he is bedridden and not in a position to talk or even move. The claimants therefore produced and relied on the documentary evidence i.e. First Information Report dated 15th May, 2009 recorded by API. Khalkar, Vavi police station, Nashik in C.R. I-46 of 2009 and the spot panchanama.

7. The learned Member of the Tribunal has held that the claimants did not attend the Court to examine the complainant and therefore these documents are not proved. It is mentioned that at

least the panch witnesses of spot panchanama could have been examined by the complainant to prove the case. The learned Member has relied on the evidence of the driver of the bus namely Sunil Sangle who was examined by the Insurance Company on oath. He deposed that the accident had took place because of rash and negligent driving of the driver of Motor car. He has also stated that he was prosecuting only because the persons travelling in Maruti car died and his vehicle was bigger vehicle. He has stated that while overtaking, driver of Maruti car gave dash to the bus and accident had taken place exclusively due to mistake of driver of the Maruti car.

8. The learned counsel for the Applicants/claimants has submitted that the finding of the Tribunal is incorrect. He ought to have considered the First Information Report and spot panchanama. In the First Information Report, the driver of the luxury bus is held responsible and he is also facing prosecution under Motor Vehicles Act and certain sections of the Indian Penal Code.

9. In reply, the learned counsel for the Insurance Company has supported the judgment of the Tribunal and argued that it was

necessary for the claimants to examine the investigating officer who recorded First Information Report. However, no efforts were taken by the claimants to examine the relevant witnesses. The Insurance Company has examined the driver of the bus who emphatically stated that the accident had taken place due to mistake and rash and negligent driving of the driver of Motor Car. He submitted that the burden is entirely on the claimants to prove the fact of negligence. However, they could not discharge the same. In support of his submission, the learned counsel for the Insurance Company has placed reliance on the following cases:

(1) Minu B. Mehta and Another vs. Balkrishna Ramchandra Nayan and Another¹. (2) Lachoo Ram and Others vs. Himachal Road Transport Corporation². (3) Pukh Raj Bumb vs. Jagannath Atchut Naik and Others³.

10. In reply the learned counsel for the Applicants submit that the negligence was required to be proved by the evidence and preponderance of probability and relied on the ratio laid down in the case of “Dulcina Fernandes and Others vs. Joaquim Xavier Cruz.

1. (1977) 2 Supreme Court Cases 441.
2. Supreme Court Cases (2014) 13 SCC.
3. 2013(6) Bom. C.R. 783.

and Another”⁴. He also relied on the judgment in “Kishan Gopal and Another vs. Lala and Others”⁵.

11. Heard the learned counsel for both the parties. Perused the impugned judgment and award.

12. In the present case, the evidence of the bus driver is tendered. The driver of the Motor car is dead. The only person who survived in the accident is 8 years old boy and due to the fatal accident he is bedridden and he is neither in a position to move and to come to the Court nor to talk and give evidence. Under such circumstances, no witness is available to the Applicants to lead evidence on their side. The investigating officer who recorded the First Information Report would have been a good witness on the point that he has recorded the First Information Report. The names of the witnesses are mentioned in the First Information Report however, it is to be noted that it is difficult for the claimants who have already suffered a blow of destiny by losing their near and dear one to find out the witnesses and request them to come to the Court by making

4. AIR 2014 SC. 58

5. JT 2013 (11) SC 563.

all the arrangements. It is necessary for the Tribunal to examine the investigating officer to prove the First Information Report. The learned Member of the Tribunal should have issued the summons to the police officer to attend the Court. The Applicants/claimants should be treated sympathetically and with respect as they are before the Tribunal for their rightful and legal claim. It is difficult for a common man to approach the police and bring them as a witness. Under such circumstances, the Tribunal may take initiative by sending summons to the police officer. In fact, it is an obligation on the part of the judicial officers who are functioning under this Act to see that the claimants are getting just and adequate compensation or not. The Tribunal has completely erred in believing the evidence of bus driver Sunil Sangle for want of other evidence from the side of Applicants. The driver of the offending vehicle is bound to save him by denying that he was not rash and negligent and he is bound to give blame to the driver of the other vehicle especially when the driver of the other vehicle is died in the accident. When the oral evidence is not available to the claimants then under such circumstances the testimony of the driver of the offending vehicle cannot be accepted totally. It is necessary for the Tribunal to construct the accident on the basis of the

contents in the spot panchanama and First Information Report. While appreciating the evidence led in the motor accident claim cases, the strict rules of Evidence Act are not to be applied but the Court can rely on the documentary evidence such as First Information Report, spot panchnama etc. unless those documents are found fabricated and doubtful *ex facie*.

13. *In the case of “Minu Mehta”* (supra) it is held that “it is necessary for the claimants to prove the negligence which is essential to support the claim of compensation. This is the liability under the common law and the Insurance Company cannot be held liable unless negligence is proved”. *In the case of “Lachoo Ram”* (supra), the bus driver involving in the accident was earlier standing at the Red light when it runs upto 100-150 yards and the accident took place and therefore it was accepted that the bus could have started at a high speed and therefore, it was rejected that the driver of the bus was rash and negligent in driving. The facts of this case are different than the facts of the present case as in the present case bus was going to Pune from Nashik-Pune road.

14. In view of the above discussion, I am of the view that the finding given by the learned Member of the Motor Accident Claims Tribunal, Nashik in the judgments and award dated 12th November, 2014 on the point of negligence is illegal, incorrect and inconsistent. Hence, the finding of the Tribunal on the point of negligence of the driver of the Motor car solely is hereby set aside. The Tribunal to record further oral as well as documentary evidence and consider all the matters a fresh.

15. In view of the above, all the First Appeals are disposed of with the following order:

(a) The judgments and award dated 12th November, 2014 passed by the learned Member, Motor Accident Claims Tribunal, Nashik in M.A.C.P. Nos. 736, 737, 849, 848 and 850 of 2009 are hereby set aside.

(b) All the Appeals be remanded to the Tribunal, Nashik. The learned Member, M.A.C.T., Nashik to keep in mind the direction of finding given by this Court and record additional oral as well as documentary evidence. The evidence of the investigating officer

who recorded the First Information Report also to be recorded if he is available, by issuing witness summons.

(c) The learned Member, M.A.C.T., Nashik to dispose of all the matters within two months from the date of appearance of the parties before the Tribunal.

(d) The parties to appear before the Tribunal on 21st March, 2016 at 11.00 a.m.

(MRS.MRIDULA BHATKAR, J.)