

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

**FIRST APPEAL NO.3007 OF 2009
WITH
CA/15608/2016 IN FA/3007/2009**

The Maharashtra State Road
Transport Corporation/M.S.R.T.C.
Division-Jalna, District-Jalna,
THROUGH Division Controller.

...APPELLANT..
(Orig. Respondent)

VERSUS

1. Indubai W/o. Uttamrao Deore,
Age.38 Years, Occu.House-hold,
R/o. Samta-nagar, Basmath,
District-Hingoli.
2. Vibha D/o Uttam Deore,
Age.12 Years/Minor, U/g
real mother i.e. Indubai
Respondent No. 1.
3. Banti D/o Uttam Deore,
Age. 5/½ Years/Minor,
U/g. Real mother i.e.
Indubai Respondent No.1.

...RESPONDENTS..
(Orig. Petitioners)

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Advocate for Appellant : Mr A D Wange
Advocate for Respondents 1-3 : Mr U.M.Mhaske Patil h/f
S B Gatol

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CORAM : V.K. JADHAV, J.

Dated: April 20, 2017

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ORAL JUDGMENT :-

1. Being aggrieved by the judgment and Award

passed by the Member, Motor Accident Claims Tribunal, Basmathnagar, dated 7.3.2009 in M.A.C.P. No.37/2005, the original Respondent-MSRTC has preferred this appeal.

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

a] Deceased Uttam had been to Nanded for his personal work and after completing his work, he returned to Basmath by a S.T. Bus bearing registration No.MH-20/8960. When the said ST Bus reached the Bus-stand of Basmath and while he was getting down from the bus, at that time, one Rashid Khan, who was a porter of the appellant/original respondent was unloading the goods from the top of the bus, at that time cloth bundle fell down on the person of the deceased Uttam. In consequence of which deceased Uttam sustained multiple injuries. He was immediately shifted to Rural Hospital, Basmath and therefrom to Nanded Hospital. However, due to his critical condition, when he was being shifted to Aurangabad Hospital, he succumbed to the injuries during transit. The

claimants, legal representatives of the deceased Uttam approached the Tribunal by filing MACP No.37/2005 for grant of compensation under various heads. It has been contended in the claim petition that, said accident had taken place on account of the negligence on the part of driver and conductor of the said S.T.Bus and as such, appellant-MSRTC is liable to pay the compensation. Deceased Uttam was in private service on monthly salary of Rs.3,000/- and the claimants were depending on his income.

b] Appellant-MSRTC has strongly resisted the claim petition by filing its written statement. It has been contended that said porter Rashid Khan was not an employee of MSRTC and claim petition in the present form itself is not maintainable. It has also been contended that no crime is registered against the driver/conductor of the said bus and there is no negligence as such on the part of the driver or conductor of the bus.

c] The claimants have adduced oral and

documentary evidence in support of their contentions and appellant-MSRTC has examined the then Traffic Controller Posted at S.T. Bus stand Basmath. The learned Member of the Tribunal by its impugned judgment and Award dated 7.3.2009 partly allowed the claim petition and thereby directed the respondent MSRTC to pay Rs.2,38,500/- to the claimants alongwith interest @ 7% p.a. from the date of petition till its realization inclusive of No Fault Liability under Motor Vehicles Act. Hence, this appeal.

3. Learned counsel for appellant-MSRTC submits that the claim petition as in the present form is not maintainable. Deceased Uttam had not sustained injuries, out of the use of the motor vehicle S.T.Bus bearing registration No.MH-20/8960. Learned counsel submits that, if at all said accident as alleged had taken place on account of negligence of one Rashid Khan, who is not a porter appointed by the MSRTC, appellant-MSRTC is not liable to pay the compensation. Learned counsel submits that the claimants have utterly failed to prove the negligence if any on the part of the

driver/conductor of the said S.T.Bus in causing death of deceased Uttam. The Tribunal has erroneously fastened the liability on the appellant-MSRTC to pay the compensation. Learned counsel for the appellant, however, has not made any submissions with regard to the quantum of the compensation, in the alternate.

4. Learned counsel for the appellant, in order to substantiate his contentions, placed his reliance on a case **Lachoo Ram and Ors. Vs. Himachal Road Transport Corporation, reported in AIR 2014 SC (Supp) 1218.**

5. Learned counsel for respondents-claimants submits that, on the basis of the F.I.R., though, registered against the said porter Rashid Khan, spot panchnama, inquest panchnama and other police documents, the claimants have succeeded in proving that said accident had taken place out of the use of the S.T.Bus bearing registration No.MH-20/8960. The claimants have proved that deceased Uttam was getting down from the S.T. bus at S.T. Stand Basmath. At that

time, on person by name Rashid Khan was unloading the goods from the top of the Bus. At that time, one bale of clothes fell down on the head of the deceased Uttam and accordingly he sustained injuries and succumbed to the same on the next day in the hospital. Learned counsel submits that in terms of the provisions of section 165 of the Motor Vehicles Act, 1988, application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 can be filed by the persons as detailed in the provisions of Section 166 of the Motor Vehicles Act. In terms of the provisions of Section 165 of the Motor Vehicles Act, compensation in respect of the accidents involving the death of, or bodily injury to, persons arising out of the use of the motor vehicles, or damages to any property of a third party so arising, or both can be claimed. Claimants have fully established that death of Uttam occurred out of the use of the motor vehicle and it was the duty of the driver/conductor of the said S.T.Bus to carefully monitor the departure of each and every passenger from the bus. It is thus apparent on the face of the record that the driver/conductor of the said bus

had not taken any care. The claimants have proved the factum of accident in the manner as detailed above and as such, the burden shifts on the appellant-MSRTC to prove that even after taking due care/caution by the driver/conductor of the said Bus, the accident had taken place for which appellant-MSRTC is not responsible. Learned counsel submits that, the Tribunal has, therefore, rightly awarded just and reasonable compensation. There is no substance in the appeal and the appeal is thus liable to be dismissed.

6. Learned counsel in order to substantiate his contentions placed his reliance on following judgments :-

1. *New India Assurance Co. Ltd., Vs. Lakshmi reported in ACC 2001 1 117 (High Court of Kerala).*
2. *Shivaji Dayau Patil and another Vs. Smt. Vatchala Uttam More reported in 1991 (2) G.L.H. 536.*
3. *M.Rajamma Vs General Manager, APSRTC, Hyd. Reported in ACC 2001 1 2.*

7. On perusal of the pleadings, evidence and the judgment and Award passed by the Tribunal, it appears that the claimants have approached the Tribunal with a

specific pleadings that on the date of accident, deceased Uttam was travelling by the S.T.Bus bearing registration No.MH-20/8960 and, when said S.T.Bus reached at S.T.Stand and while he was getting down from the bus, at that time, one porter of the appellant-MSRTC, while unloading the goods from the top of the bus, one bale of clothes fallen down on the head of deceased Uttam and as a result of which, he had sustained severe injuries. The claimants have proved factum of accident as per their pleadings on the basis of the police report placed before the Tribunal. It is thus clear that, while getting down from the S.T.Bus, deceased Uttam sustained injuries due to fall of bale clothes on his head from the Top of the S.T.Bus. The appellant-MSRTC has not come with any other case but simply denied the happening of the accident as well as manner in which the accident allegedly taken place. On the other hand, appellant-MSRTC has raised a defence that said Rashid Khan was not a porter appointed by the MSRTC, and, as such, appellant-MSRTC is not liable for the act of a person who is not employed by it.

8. Section 165 sub-section (1), which is relevant for the present discussion is reproduced herein below :-

165. Claims Tribunals.- (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising or, both.

Explanation.- For the removal of doubts, it is hereby declared that the expression “claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles” includes claims for compensation under section 140 [and section 163-A].

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9. In a case *New India Assurance Co. Ltd., Vs. Lakshmi (supra)* relied upon by the learned counsel for the respondents, in paragraph No.2 of the judgment, the Kerala High Court has observed that, jurisdiction under section 165 of the Act is attracted if there is an accident involving death of or bodily injury to a person arising out of use of the motor vehicle. The word “use” is used

in the section in wider sence. It covers all the employment of the motor vehicles, so that whenever the vehicle is put into action or service, there is “user” of the vehicle within the provisions of section 165 of the Act, whether the vehicle was being driven, or repaired or simply parked or kept stationary or left unattended. In that sense, the vehicle is used, whenever the vehicle is driven out for some purpose or it is kept stationary, it is sufficient to attract the provisions of Section 165 of the Act.

10. In the instant case, as soon as said S.T.Bus arrived at S.T.Bus stand, Basmath, naturally, the passengers started getting down from the S.T.Bus. Deceased Uttam when started getting down from the S.T.Bus, one person by name Rashid Khan dropped cloth bundle from the top of the S.T.Bus on his head.

11. In the light of the provisions of Section 165 of the Motor Vehicles Act and the observations made by the Kerala High Court as detailed above, I do not find any substance in the submissions made on behalf of the

appellant-MSRTC that claim petition in the present form is not maintainable and the claims Tribunal has no jurisdiction to entertain the claim petition and decide the same.

12. So far as negligence on the part of the driver/conductor of the said S.T.Bus is concerned, it is needless to say that S.T.Bus remained under the control/domain of the driver/conductor as long as said S.T.Bus is not taken in the S.T.Depot and handed over to the person in-charge of S.T.Depot. It is also the responsibility of the driver/conductor of the bus to monitor loading and unloading of the goods from the top of the S.T.Bus when passengers either boarding the S.T.Bus or alighting from the S.T.Bus. In the instant case, the claimants have succeeded in proving the factum of the incident in the manner as pleaded in the claim petition. However, the appellant-MSRTC has not discharged the burden to prove that said accident had not taken place on account of the rash and negligent act on the part of the driver/conductor of the said S.T.Bus. The appellant-MSRTC has examined one Traffic

Controller of S.T.Stand Basmath. According to him, no such incident had taken place on that day at S.T.Stand Basmath and the police did not make inquiry with him. According to him, on that day, he was working as a Traffic Controller and he did not know anything about the accident. Even he has further shown his ignorance about registration of the crime against said porter Rashidkhan. After the accident, deceased Uttam was immediately shifted to Hospital. So far as traffic controller posted at S.T.Bus stand is concerned, he has many other duties. The appellant-MSRTC has avoided to examine the driver/conductor of the said S.T.Bus, who had an opportunity to witness the accident.

13. Learned counsel for the respondent MSRTC has placed his reliance on a case **Lachoo Ram and Ors. Vs. Himachal Road Transport Corporation** (supra). In the facts of the said case, the Supreme Court has not accepted plea raised by the claimants that the accident was on account of rash and negligent driving by the bus driver and in the light of those observations, the Supreme Court held that simply the involvement of the

bus in the accident cannot make respondent liable to pay the compensation unless it can be held on the basis of the material on the record that the accident was caused by rash and negligent act of the driver of the respondent no.2.

In the instant case, facts are altogether different and the observations made by the Supreme Court in the case cited above, cannot be made applicable to this case.

14. In view of the above, I do not find any fault in the findings recorded by the Tribunal to issue no.1 in the affirmative.

15. So far as quantum of compensation is concerned, the learned counsel for the appellant-MSRTC has not made any submissions on this point. On the other hand, it appears that the Tribunal has awarded just and reasonable compensation considering the age, income of the deceased and dependency of the claimants on his income. I do not find any substance in the appeal and the same is thus liable to be dismissed. Hence,

following order.

ORDER

1. First Appeal is hereby dismissed with costs.
2. In case, amount is deposited by the appellant-MSRTC before this Court, respondents-claimants are permitted to withdraw the same alongwith interest accrued thereon.
3. In view of dismissal of first appeal, pending civil application/s stand disposed of.

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(V.K. JADHAV, J.)

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