

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 1274 OF 2005

1. Smt. Ushakiran @ Mirabai w/o Ramakant Bhalsing, Age : 37 years, Occ : Household,
2. Ketaki d/o Ramakant Bhalsing, Age : 19 years, Occ : Education,
3. Ketak s/o Ramakant Bhalsing, Age : 13 years, Occ : Education.
4. Ashwini d/o Ramakant Bhalsing, Age : 11 years, Occ : Education, Nos.3 to 4 are minors, through their guardian mother-applicant no.1., all r/o. Wagholi, Tq. Shevgaon, District : Ahmednagar.

... **APPELLANTS**
(Ori. Claimants)

VERSUS

1. Shri Sambhaji s/o Eknath Pakhare, Age : Manor, Occ : Driver, r/o. Newasa S.T. Depot, Newasa, Tq. Newasa, Dist. Ahmednagar.
2. Maharashtra State Road Transport Corporation, Mumbai, Through its : Divisional Manager, Kothala Maidan, Sarjepura, Ahmednagar.
3. Shri Kisan s/o. Tatyaba Bhalsing, Age : 68 years, Occ : Agri.,
4. Sou Prayagbai w/o. Kisan Bhalsing, Age : 63 years, Occ : Agri., r/o. Wagholi, Tq. Shevgaon, District : Ahmednagar.

(Deleted as per Court order dated 11/07/2017.)

... **RESPONDENTS**

...

Mr. Amol P. Khedkar, Advocate for Appellants.

Mr. M K Goyanka, Advocate for Respondent Nos.1 & 2.

Mr. A. A. Mukhedkar, Advocate for Respondent No.4.

...

CORAM : **V. K. JADHAV, J.**

DATE : 11th July, 2017.

ORAL JUDGMENT:

. Being aggrieved by the judgment and award passed by the learned Chairman of the Motor Accident Claims Tribunal, Ahmednagar dated 5th August, 2005 in MACP No.394 of 1997, the original Claimants have preferred this appeal.

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

- a) On 21st March, 1997, deceased Ramakant was riding his motorcycle on Nagar-Aurangabad road. He was proceeding towards Ahmednagar from Aurangabad. On way, within the limits of village Dhangarwadi, one S.T. Bus bearing registration No.MH-12-F-2621 came from the opposite

direction. The bus was in very high and uncontrollable speed. The driver of the S.T. Bus had driven the said bus in rash and negligent manner and given dash to the motorcycle. In consequence of which, deceased Ramakant had sustained serious injuries and died on the spot. The Appellants / Claimants approached the Motor Accident Claims Tribunal by filing MACP No.394 of 1997 for grant of compensation under the various heads. It has been contended in the claim petition that deceased Ramakant was 34 years of age at the time of his accidental death and he was in Government service and also getting the income from the agriculture. He was a permanent employee serving as Social Welfare Inspector at Ahmednagar on monthly salary of Rs.12,000/-. The Appellants / Claimants were entirely depending upon his income and they have no independent source of income. Thus, the Appellants / Claimants have claimed the

compensation of Rs.33,85,000/-, however, restricted their claim to the tune of Rs.10,00,000/-.

- b) Respondent No.2 / MSRTC has strongly resisted the claim petition by filing the written statement. It has been contended that at Aurangabad – Pune road is a straight way and there is usually heavy traffic on this road. The S.T. Bus driver was driving the bus in a moderate speed by following the traffic rules and regulations. It has been contended that on the spot of accident, the vehicle motorcycle coming from the opposite direction was in speed. The rider of the motorcycle started overtaking some other vehicles without taking into consideration that the bus was coming from the opposite direction. There was no sufficient time for the rider of motorcycle to overtake the said vehicles. Even the rider of the motorcycle failed to notice the signal given by the driver of the vehicles, to which he was about to overtake. The said motorcycle unexpectedly and abruptly came on the

road from the back side of the vehicles in high speed. On seeing the S.T. Bus, the rider of the motorcycle could not control the speed of the motorcycle and given dash to the bus. It has been contended that the accident occurred due to sole negligence of deceased Ramakant and there was no fault on the part of the driver of S.T. Bus. It has also been contended that the police authorities have not done proper investigation and purposely drawn vague Panchanama to help the family of deceased Ramakant. Further, false charge-sheet came to be submitted against the driver of the S.T. Bus.

- c) The Appellants / Claimants have adduced oral and documentary evidence in support of their contentions. The Respondent / MSRTC has also examined its driver. The learned Chairman of the Motor Accident Claims Tribunal vide its impugned judgment and award dated 5th August, 2005 partly allowed the claim petition and thereby directed the

Respondent / MSRTC to pay jointly and severally an amount of Rs.4,10,000/- (inclusive of NFL) with interest at the rate of 9% per annum from the date of filing of the application till realization of the entire amount. The learned Chairman of the Tribunal has recorded the finding to the effect that the rider of the motorcycle as well as the driver of the S. T. Bus contributed the negligence equally and as such, the Respondent / MSRTC is liable to pay the compensation to the extent of 50% as worked out by the Tribunal. Being aggrieved by the said finding of contributory negligence as well as quantum of compensation as awarded by the Tribunal, the Claimants preferred this appeal.

3 The learned counsel for Appellants / original Claimants submits that the Appellants / Claimants have examined the Investigating Officer in this case and further placed their reliance on the spot Panchanama Exhibit 31. The learned counsel submits that the spot Panchanama was drawn in presence of the said driver of

S.T. Bus and it has been specifically recorded in the spot Panchanama that the spot of the accident was shown by him. The learned counsel submits that the road on the spot of accident is east-west in direction and the Aurangabad is situated towards east and Ahmednagar is situated towards west. On perusal of the spot Panchanama Exhibit 31, it appears that the accident spot is towards southern side of the road i.e. correct left side of the motorcycle, which was proceeding towards Ahmednagar (towards west). In the present case, the driver of the S.T. Bus has put forth a false story before the Tribunal about overtaking of other vehicles by the motorcycle. However, the contents of spot Panchanama and evidence of the Investigating Officer falsify the stand / defence raised by the MSRTC. The learned counsel submits that by any stretch of imagination, negligence or contributory negligence on the part of deceased Ramakant cannot be inferred. The Tribunal has thus, erroneously recorded the finding, which is contrary to the evidence on record that the rider of the motorcycle has equally contributed the negligence. The learned counsel submits that the Tribunal has not awarded just and reasonable compensation in this case. The learned counsel submits that the Tribunal has not considered the income of deceased

Ramakant from agriculture source though 7/12 extracts Exhibits 60 and 61 respectively are produced on record. Deceased Ramakant was personally cultivating the agricultural land and the Tribunal ought to have considered the loss in the income of agriculture due to the lack of supervision by an experienced person like deceased Ramakant. Further, the Tribunal has not awarded just and reasonable compensation under the non-pecuniary heads such as, loss of estate, loss of consortium and loss of love and affection. The Tribunal has awarded meager amount for funeral expenses and not awarded anything under the head of cost of litigation. The Tribunal has also erroneously deducted 1/3rd amount from the income of deceased Ramakant towards his personal and living expenses instead of 1/4th in consonance with six dependents. The Tribunal has not made any addition in the salaried income of deceased Ramakant towards future prospects. Deceased Ramakant was a permanent employee and the Tribunal ought to have made addition to the extent of 30%, which is in consonance with the age of deceased Ramakant towards his future prospects.

4 The learned counsel for Respondent / MSRTC submits that Respondent / MSRTC has examined its driver Sambhaji Eknath

Pakhare. Appellants / Claimants have not examined any eye-witness to the accident and the driver of S.T. Bus was the best witness to tell the cause of accident. The said witness Sambhaji has deposed that two motor vehicles / tankers were coming from opposite direction and one motorcycle had tried to overtake the said tankers. He has further deposed that on seeing the motorcycle coming from the opposite direction overtaking the said tankers, he slowed down the speed of the bus and stopped his S.T. Bus on the left side of the road. However, the motorcycle had given dash on the center portion of bumper of the S.T. Bus and as such, the accident had taken place. The learned counsel submits that the Appellants / Claimants have examined Investigating Officer Witness No.2 ASI Ashok Shivram Dinkar who has also admitted in his cross-examination that it was transpired in his investigation that the motorcycle rider was trying to overtake the vehicle which was in his front and during the said overtaking the said the accident taken place. The learned counsel submits that thus, the defence raised by Respondent / MSRTC and the oral evidence of the driver of S.T. Bus, corroborated by the evidence of witness ASI Ashok Dinkar. The learned counsel submits that the Investigating Officer has drawn the spot Panchanama Exhibit

31 in collusion with the Appellants / Claimants. The Investigating Officer has incorrectly carried out the investigation and submitted false charge-sheet against the driver of the S. T. Bus. The learned counsel submits that the rider of the motorcycle i.e. deceased Ramakant was entirely at fault. However, after considering the entire evidence on record, the Tribunal has correctly recorded the finding to the effect that the rider of the motorcycle had contributed the negligence to the extent of 50%. So far as the finding about contributory negligence on the part of deceased Ramakant is concerned, no interference is required. So far as the quantum of compensation as awarded by the Tribunal, the learned counsel submits that the Appellants / Claimants have not adduced any evidence about the income of deceased Ramakant from his agricultural source and therefore, the Tribunal has not considered the income of deceased Ramakant from the agriculture source. Further, the corpus of the land remained as it is and there cannot be any loss from the agriculture source. The learned counsel submits that though Respondent / MSRTC has not preferred any appeal or cross-appeal, the Tribunal has erroneously applied multiplier 15 instead of 14 and the same is required to be corrected. The learned counsel for

Appellants / Claimants has also fairly conceded the same. The learned counsel submits that even Claimant No.1 has admitted in her cross-examination that deceased Ramakant was serving in Aurangabad and he was cultivating the land through the servants. The learned counsel for Respondent / MSRTC submits that in the given set of facts, the Tribunal has awarded just and reasonable compensation. No interference is required. There is no substance in the appeal and as such, the appeal is liable to be dismissed.

5 On perusal of the pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the Tribunal has not correctly appreciated the evidence on record to arrive at a finding of contributory negligence on the part of deceased Ramakant. On perusal of spot Panchanama Exhibit 31, it appears that the accident had taken place at Aurangabad – Nagar road, which is situated east-west in direction at the spot of accident. It further appears from the spot Panchanama that the spot of accident was shown by the driver of S.T. Bus i.e. witness Sambhaji. It further appears from the contents of spot Panchanama that the width of the road is 22 feet at the spot of accident and there are 5 feet Kaccha road on both the sides of the road. Witness ASI Ashok Dinkar has stated in his cross-examination

that Nagar – Manmad road is north-south and Nagar is at south side and Aurangabad is at north and the bus was proceeding from south to north. However, on perusal of the contents of spot Panchanama Exhibit 31, it appears that Nagar – Aurangabad road on the spot of accident is shown as east-west in direction. It appears that witness ASI Ashok Dinkar has deposed about the direction of Nagar – Manmad road and not about the Nagar – Aurangabad road. As per the contents of spot Panchanama Exhibit 31, if the road is 22 feet in width, east-west in direction and when Aurangabad is situated towards east and Ahmednagar is situated towards west, the correct left side of the road for the S.T. Bus, would be towards north and correct left side of the motorcycle proceeding toward west, would be southern side. On perusal of the contents of spot Panchanama, it appears that the spot of accident is shown as 9 feet away from the southern side of the tar road whereas the remaining portion of the tar road towards northern side is shown measuring 13 feet. If at all, the theory of overtaking is accepted then the spot of the accident cannot be towards southern side of the said road. If the motorcyclists started overtaking the other vehicles proceeding in the same direction then obviously he would go to the northern side of the road in the process

of overtaking the said vehicles. On the other hand, as per the spot of accident shown in the spot Panchanama Exhibit 31, the said S.T. Bus went towards southern side of the road i.e. to the wrong side of the road and given dash to the motorcycle coming from the opposite direction. I do not find any substance in the submissions made on behalf of Respondent / MSRTC that the rider of the motorcycle has contributed the negligence. Deceased Ramakant was riding his motorcycle from the correct left side of the road and it appears from the location of the accident spot that the S.T. Bus went to the wrong side of the road and gave dash to the motorcycle of deceased Ramakant from its right driver side. Though witness Investigating Officer Ashok Dinkar has given certain admissions in his cross-examination, he has further denied that the accident had taken place due to the sole rash and negligent driving on the part of the rider of motorcycle and there was no negligence on the part of the driver S.T. Bus. It is also a part of record that after due investigation, witness ASI Ashok Dinkar has submitted the charge-sheet against the driver of S.T. Bus alone. Even assuming that deceased Ramakant had started overtaking some other vehicles as deposed by witness Sambhaji driver of S.T. Bus, witness Sambhaji has further stated that he took

his vehicle towards extreme left side of the road and stopped it. However, the spot of accident is shown towards southern side of the road and not towards northern side of the road. Thus, the only irresistible inference could be drawn that the driver of S.T. Bus had driven the bus in rash and negligent manner and given dash to the motorcycle, which is comparatively very small in size, by going to the wrong side of the road. The Tribunal has erroneously recorded the finding, which is contrary to the evidence on record that deceased Ramakant had contributed the negligence to the extent of 50%. In view of the above discussion and considering the entire evidence on record, I hold that the accident had taken place on account of rash and negligent driving on the part of the driver of S.T. Bus alone and deceased Ramakant was not responsible for the accident. Deceased Ramakant had not contributed the negligence in any manner. I record the finding to issue No.1 accordingly.

6 So far as the quantum of compensation is concerned, though deceased Ramakant was a permanent employee, getting fixed salary, the Tribunal has not made any addition in his income towards future prospects. Deceased Ramakant was 43 years of age at the time of his accidental death and as such, 30% addition in his income

is required to be made. Further, considering the number of dependents, the Tribunal should have deducted $\frac{1}{4}$ th of the amount towards personal and living expenses of deceased Ramakant instead of $\frac{1}{3}$ rd. Deceased Ramakant was getting salaried income of Rs.7,390/- corresponds to Rs.88,680/- per annum. After deducting $\frac{1}{4}$ th of the amount towards his personal and living expenses, the annual loss of income comes to Rs.66,510/-. The relevant multiplier would be 14 and as such, the loss of future income comes to Rs.9,31,140/- and by making addition of 30% towards future prospects, the total loss of future income / dependency comes to Rs.12,10,482/-. So far as the agricultural income is concerned, deceased Ramakant was not cultivating the land personally and as admitted by the Claimant that he was serving at Aurangabad and he was cultivating the land through the servants, the Claimants are not entitled for any compensation towards loss, if any, from the agriculture source. Even the Appellants / Claimants have not given any details as to the loss in the agriculture income due to the lack of supervision on the part of deceased Ramakant.

7 So far as the compensation awarded under non-pecuniary heads is concerned, the Tribunal has awarded *lump-sum* amount of

Rs.25,000/- . The Appellant / Claimant No.1 is entitled for an amount of Rs.1,00,000/- towards loss of consortium. The Appellants / Claimant Nos. 2 to 4 are entitled for an amount of Rs.50,000/- each towards loss of love and affection and Respondent Nos.3 and 4 are also entitled for an amount of Rs.50,000/- each towards loss of shelter. The Claimants are also entitled for an amount of Rs.20,000/- for funeral expenses and Rs.10,000/- towards loss of estate and Rs.10,000/- for litigation costs.

8 In view of the above discussion, the break up of compensation under the various heads, which can be broadly categorized is as under:

Sr. No	Particulars of the head	Amount in Rupees
1)	Towards loss of future income / dependency <u>(7759 X 12 X 14) = 1303512</u> [The above figure includes 30% addition of income towards future prospects after deducting 1/4 th of the amount towards personal and living expenses] (As against Rs.4,10,000/- awarded by Tribunal)	Rs.13,03,512/-
2)	Towards loss of consortium	Rs.1,00,000/-
3)	Towards loss of love and affection to minor Claimant Nos.2 to 4 (Rs.50,000/- each)	Rs.1,50,000/-
4)	Towards loss of shelter to Respondent Nos.3 & 4 (Rs.50,000/- each)	Rs.1,00,000/-

5)	Towards funeral expenses	Rs.20,000/-
6)	Towards loss of estate	Rs.10,000/-
7)	Towards litigation costs (as against Rs.25,000/- awarded by Tribunal under the heads of loss of consortium, loss of love and affection to minor Claimants, loss of shelter to Respondent Nos.3 & 4, funeral expenses, loss of estate and litigation costs)	Rs.10,000/-
	Total =	Rs.16,93,512/-

9 The Appellants / Claimants are entitled for the total amount of compensation as worked out hereinbefore. The impugned judgment and award requires modification. Hence, the following order:

ORDER

- I. The appeal is hereby allowed with costs.

- II. The judgment and award passed by the learned Chairman of the Motor Accident Claims Tribunal, Ahmednagar dated 5th August, 2005 in MACP No.394 of 1997, is hereby modified in the following manner:

“Opponents 1 and 2 do pay jointly and severally an amount of Rs.16,93,512/- (Rupees Sixteen Lacs Ninety-Three

Thousand Five-Hundred and Twelve Only)
(inclusive of NFL) with interest at the rate of
9% per annum from 22nd May, 1997 i.e. the
date of filing of application till realization of
the entire amount.”

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up as per the above modification.
- V. If any amount is paid as per the judgment and award passed by the Tribunal, the same shall be the part of the award after modification.
- VI. On realization of the entire amount, an amount of Rs.8,00,000/- (Rupees Eight Lacs Only) shall be kept in FDR in the name of Appellant No.3 / Claimant No.3 Ketak Ramakant Bhalsing in any nationalized bank for five years and Rs.1,00,000/- (Rupees One Lac Only) each shall be paid to Appellant Nos.2 and 4 / Claimant Nos.2 and 4 i.e. Ketaki and Ashwini respectively and Appellant No.1 / Claimant No.1 Ushakiran @ Mirabai Ramakant

Bhalsing is entitled to withdraw quarterly interest on the said FDR, if desired.

VII. Out of the balance amount, 75% amount shall be paid to Appellant No.1 / Claimant No.1 Ushakiran @ Mirabai Ramakant Bhalsing and 25% remaining amount shall be paid to Respondent No.4 Prayagbai Kisan Bhalsing.

VIII. The Appellant shall pay the deficit Court fees, if any, within four weeks from the date of this judgment.

IX. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]