

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

FIRST APPEAL NO. 390 OF 2002

1. Khurshidbi w/o Ashraf Ashfak
Age-27 years,
2. Firdos d/o Ashraf Ashfak
Age-9 years,
3. Majhar Mohammad s/o Ashraf Ashfak
Age-7 years,
4. Farheen d/o Ashraf Ashfak
Age-5 years,
5. Iram s/o Ashraf Ashfak
Age-3 years,
6. Ranakausar d/o Ashraf Ashfak
Age-2 years,
7. Navid s/o Ashraf Ashfak
Age-8 months

Nos.2 to 7 minors
through their guardian
applicant no.1 Mother.

APPELLANTS

(Ori. claimants)

VERSUS

1. Narni Payarao Manguraju
Age-30 years, Occ : Driver,
R/o Vasti-Kodes, Post Asna,
Tal.Pondur, Dist- West Godwari (A.P.)
(Appeal dismissed as against
R.No.1 vide Registrar's order
dated 17.01.2006)

2. N.V. Durgarao,
Age-45 years
R/o Murli Krishna Lorry
Transport Co.,
Kanol road, Vasti Palacoal Mandalum
Tal.Naspur, Dist-West Godwan (A.P.)
3. Oriental Insurance Co. Ltd.,
Branch Office, Dhule.
4. Yuvraj Fula Sawant
Age-40 years, Occ-Driver,
R/o Umabrti, Tal.Sakri,
Dist-Dhule.
5. Maharashtra State Road Transport
Corporation, through Divisional
Controller, Dhule.
6. New India Insurance Co.
Branch Surat.
(summons be served on
Dhule branch).

**RESPONDENTS
(ORIG. OPPONENTS)**

**WITH
FIRST APPEAL NO. 699 OF 2002**

1. Faimida w/o Mh. Siddhi
Age-20 years, Occ-Household,
2. Yasir s/o Mh. Sedik,
Age-10 months, Minor through
his guardian applicant
No.1 mother-in-law
3. Gulam Mohiyudin
Age-61 years, Occ-Retired,

4. Jayabbi w/o Gulam Mohiyuddin
Age-55 years, Occ- Household,

All resident of Moglai,
Dhule, Taluka and Dist. Dhule.

APPELLANTS

(Ori. claimants)

VERSUS

1. Narni Payarao Manguraju
Age-30 years, Occ : Driver,
R/o Vasti-Kodes, Post Asna,
Tal.Pondur, Dist- West Godwari (A.P.)
(Appeal dismissed as against
R.No.1 Registrar's order
dated 26.07.2005)
2. N.V. Durgarao,
Age-45 years
Murlikrishna Lorry Transport Co.,
R/o Kanol road, Vasti-Palacoal Mandalum
Tal.Naspur, Dist-West Godwan (A.P.)
3. Oriental Insurance Co. Ltd.,
Branch Office, Dhule.
4. Yuvraj Fula Sawant
Age-40 years, Occ-Driver,
R/o Umabrti, Tal.Sakri,
Dist-Dhule.
5. Maharashtra State Road Transport
Corporation, through Divisional
Controller, Dhule.

RESPONDENTS

(ORIG. OPPONENTS)

WITH
FIRST APPEAL NO. 501 OF 2002

1. Sk. Salim Sk. Haidar
Age-42 years, Occ-Govt.Service,
R/o-House No.3649, Gali No.7,
Moglai, Dhule, Dist. Dhule.

APPELLANT
(Ori. claimant)

VERSUS

1. Narni Payarao Manguraju
Age-30 years, Occ : Driver,
R/o Vasti-Kodes, Post Asta,
Tal.Pondur, Dist- West Godwari (A.P.)
(Appeal dismissed as against
R.No.1 vide Registrar's order
dated 21.12.2004)
2. N.V. Durgarao,
Age-45 years
Murlikrishna Lorry Transport Co.,
R/o Kanol road, Vasti-Palacoal Mandalum
Tal.Naspur, Dist-West Godwan (A.P.)
3. Oriental Insurance Co. Ltd.,
Branch Office, Dhule.
4. Yuvraj Fula Sawant
Age-40 years, Occ-Driver,
R/o Umabrti, Tal.Sakri,
Dist-Dhule.
5. Maharashtra State Road Transport
Corporation, through Divisional
Controller, Dhule.

RESPONDENTS
(ORIG. OPPONENTS)

Mr.P.R. Patil a/w Ms. Kalyani Deshmukh, Advocate for the Appellants.

Mr. A.A. Joshi, Advocate for Respondent No.3.

Mr.P.K. Joshi, Advocate for Respondent No.4.

Mr. Dipesh Pande holding for Mr. D.S. Bagul, Advocate for Respondent No.5.

Mr. S.L. Kulkarni, Advocate for Respondent No.6.

Appeals against Respondent No.1 are dismissed as per the order of the Hon'ble Registrar (Judicial).

Respondent No.2 served.

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CORAM: V.L. ACHLIYA, J.

DATED : 10th August, 2018

JUDGMENT:

All these appeals are taken up for disposal together, as the challenge raised in these appeals, is one and the same and arising out of the same judgment and order passed by the Member, Motor Accident Claims Tribunal, Dhule.

2. The appellants-original claimants have preferred these appeals, challenging the common judgment and order dated 24th May, 2000 passed by Member, Motor Accident Claims Tribunal, Dhule, thereby dismissing the M.A.C.P. Nos. 68 of 1993, 69 of 1993 and 68

95 of 1993 as against Respondent No.4 – driver of S.T. bus and Respondent No.5 – M.S.R.T.C., in the respective Petitions.

3. Heard learned counsel for the appellants and learned counsel appearing for the respondents. Perused the record and proceedings.

4. Mr.P.R. Patil, learned counsel appearing for the appellants assailed the reasons and findings recorded by the Tribunal in dismissing the Claim Petitions as against Respondent Nos.4 and 5 in respective Appeals with the contention that the Claims Tribunal should not have adopted the hyper technical approach, while dealing with the Claim Petitions, and dismissing the Claim Petitions as against Respondent Nos.4 and 5. By referring to the overall facts of the case, learned counsel submits that though the

Claims Tribunal has held the driver and owner of the S.T. bus liable to pay the compensation in equal proportion, in respect of the Claim Petitions filed by other claimants arising out of the same accident, but rejected the Claim Petitions filed by the appellants-original claimants, on the ground that the appellants had entered into compromise with Respondent Nos.1 to 3 and settled their claims. So also the Claims Tribunal has held that as per the case pleaded by the appellants-claimants no act of negligence has been attributed to the driver of S.T. bus so as to claim compensation against Respondent Nos.4 and 5. It is submitted that the Claims Tribunal ought to have considered the pleadings liberally and ought not to have adopted the hyper technical approach while considering the pleadings made by the appellants-claimants attributing no

specific negligence to the owner and driver of the S.T. bus. It is submitted that as the Claim Petitions filed by other claimants were allowed as against M.S.R.T.C. and its driver, making them liable to pay compensation jointly and severally along with other respondents, the Claim Petitions of the present appellants ought to have been allowed as against Respondent Nos.4 and 5.

5. Learned counsel in support of the submission that while dealing with the applications seeking compensation under the provisions of Motor Vehicles Act, 1988 the Tribunal should not adopt technical approach, referred to and relied upon the decision of the Apex Court in the case of **Rajesh and others V/s Rajbir Singh and others** reported in (2013) 9 SCC 54.

6. On the other hand, learned counsel

representing Respondent Nos.4 and 5 have supported the judgment and order passed by the Claims Tribunal and submitted that there is no perversity in any of the reasons and findings recorded by the Tribunal in rejecting the Claim Petitions against Respondent Nos.4 and 5.

7. By referring to overall facts of the case, learned counsel pointed out that as per the facts pleaded in the respective Claim Petitions, no act of negligence has been attributed to the driver of the S.T. bus. It is the case of the claimants themselves that the offending truck owned, driven and insured with Respondent Nos.1 to 3, was driven in an excessive and unmanaged speed first gave dash to S.T. bus. After giving dash to S.T. bus, the offending truck went ahead and gave dash to Jeep in which the injured/deceased were

travelling. In an accident, two persons travelling in Jeep died and one has injured. These three Petitions are filed on account of death/accidental injuries sustained by occupants of the Jeep. It is further pointed out that the appellants have compromised the claim with Respondent Nos.1 to 3 and received the compensation. The Tribunal has rejected the claim as against Respondent Nos.4 and 5 in respective Claim Petitions on reaching to the conclusion that there was no act of rash and negligent driving or any fault that can be attributed to the driver of S.T. bus for causing the death and injuries to the occupants of the Jeep. It is specifically noted that the dash was given to Jeep by the offending truck and not by the S.T. bus.

8. So far as claim awarded as against the driver of S.T. bus and the M.S.R.T.C. in

respect of other claimants are concerned, they were travelling in S.T. bus and not occupants of the Jeep. It is submitted that the reasons and findings recorded by the Tribunal being in consonance with the pleadings and evidence adduced in the case, the judgment and order passed by the Tribunal calls for no interference in exercise of appellate jurisdiction.

9. I have carefully considered the rival pleadings, evidence adduced as well as the reasons and findings recorded by the Tribunal in dismissing the Claim Petitions filed by the appellants as against Respondent nos.4 and 5 in respective Claims Petitions.

10. Perusal of the Claim Petition No. 68 of 1993 filed by the appellant in Appeal No.501 of 2002 spell out that the appellant had filed the Claim petition as against the

owner, driver and insurer of truck bearing registration No. ATK 9936 as well as Respondent Nos. 4 and 5- the driver and owner of S.T. bus, seeking compensation of Rs. 1,00,000/- to make them liable to pay the compensation jointly and severally on account of accidental injuries sustained by the appellants. In the Claim Petition itself, the appellant has pleaded that at the time of accident, he was proceeding in Jeep bearing registration No. GJ-15-8482, the truck bearing registration No. ATK-9936 driven, owned and insured with Respondent Nos. 1 to 3 respectively, driven in excessive and unmanaged speed, gave dash to S.T. bus coming from opposite direction and thereafter gave dash to Jeep in which the appellant was travelling. It is specifically pleaded that the truck was driven in an excessive and unmanaged speed and driver of the truck. He

completely came to his wrong side and gave dash to the S.T. bus, and thereafter to the Jeep. In para no.21, the appellant – original claimant has specifically pleaded that the accident was occurred solely on account of fault on the part of driver of offending truck, and there was no fault on the part of the drivers of S.T. bus as well as Jeep.

11. During pendency of the proceedings, the appellant in F.A. No.501 of 2002 compromised the claim with Respondent Nos.1 to 3 and accepted the compensation of Rs.35,000/- towards full and final settlement of the claim as against Respondent Nos.1 to 3. The claim proceeded against Respondent Nos.4 and 5, which came to be rejected on the ground that there was no impact between S.T. bus and Jeep in which the appellant was travelling so as to foist liability against

the driver of S.T. bus and consequential liability as against M.S.R.T.C.

12. Similarly, the appellants in First Appeal No.699 of 2002 and First Appeal No.390 of 2002 filed the Petitions as M.A.C.P. Nos.69 of 1993 and 95 of 1993 claiming compensation on account of death of the deceased, who were travelling in Jeep in an accident occurred on 13th October, 1992. The appellants in First Appeal No.390 of 2002 claimed compensation of Rs.3,50,000/- on account of death of Ashraf alias Ashfak Ahmed, the husband of appellant No.1, father of Respondent Nos.2 to 7. The appellants in First Appeal No.699 of 2000 filed the Claim Petition on account of accidental death of the deceased husband of appellant no.1, father of appellant no.2 and son of appellant nos.3 and 4. Both the appellants have filed

the Claim Petitions making the driver, owner and insurer of truck bearing registration No.ATK-9936 as Respondent Nos.1 to 3 and further made the driver and owner of S.T. bus as Respondent Nos.4 and 5.

13. If we consider the pleadings made in the Claim Petition Nos.69/1993 and 95/1993 then both the claimants have pleaded that the deceased were travelling in a Jeep bearing registration No.GJ-15-8482. They have pleaded that the accident was occurred solely due to the fault on the part of driver of truck bearing ATK-9936. It is stated that at the relevant time, the deceased was travelling in Jeep bearing registration No.GJ-15-8482. The truck bearing registration No.ATK-9936 driven, owned and insured with Respondent Nos.1 to 3 came from opposite direction and gave dash to S.T. bus. The dash given by the

said truck to S.T. bus was so severe that the number of passengers in the S.T. bus died on the spot and some of passengers sustained serious injuries. After giving forceful dash to the S.T. bus driver of the truck could not control the truck and gave further dash to Jeep, which was ahead of the bus, which resulted into death of two persons on account of whom the claimants have claimed the compensation.

14. If we consider the pleadings made in the Claim Petitions, though Respondent Nos.4 and 5 i.e. the driver and owner of the bus are made parties to the Claim Petitions, no act of negligence or fault attributed to them so as to claim compensation as against them. Thus the pleadings made in the Claim Petitions by the respective appellants make out no case to claim the compensation as

against Respondent Nos.4 and 5.

15. Since the claim Petitions filed by the appellants made under Section 166 of the Motor Vehicle Act, 1988, it is incumbent upon the claimants to plead and prove negligence to claim the compensation. If we consider the evidence adduced in the case then there is absolutely no evidence to hold Respondent nos.4 and 5 in respective claim Petitions liable to pay the compensation to the appellants-claimants. The Tribunal while analyzing the evidence has held that there was no impact between S.T. bus and Jeep in which the deceased persons as well as injured were travelling. The death of both the deceased and injuries sustained to the claimants in First Appeal No. 501 of 2002, solely on account of rash and negligent driving on the part of drivers of trucks and

claimed compensation as against Respondent Nos.1 to 3 in the respective Petitions with whom the respective claimants have compromised the matter in Lokadalat.

16. The appellants in First Appeal No.390 of 2002 has compromised the claim as against Respondent Nos.1 to 3 for Rs.90,000/-. Similarly, the appellants in First Appeal No. 699 of 2000 have settled the claim with Respondent Nos.1 to 3 for Rs.68,000/-. The appellant in First Appeal No. 501 of 2002 has settled the claim for Rs.35,000/- with Respondent Nos.1 to 3. Although the claim was settled against Respondent Nos.1 to 3 and claim proceeded as against Respondent Nos.4 and 5. On conclusion of trial, the Tribunal has found that no liabilities can be fastened as against the driver and owner of the bus in absence of any

act of rash and negligent driving and impact between S.T. bus and Jeep. So far as the compensation awarded to other petitioners as against the driver and owner of S.T. bus is concerned, they were not the occupants of Jeep bearing registration No.GJ-15-8482. The claimants in other Petitions decided by Tribunal were travelling in S.T. bus driven by Respondent No.4 and owned by Respondent No.5.

17. The reasons and findings recorded by the Tribunal to dismiss the Claim Petitions filed by the appellants are reasoned and based upon due appreciation of rival pleadings and evidence adduced in the case. In para nos.15 to 17, the Tribunal has recorded the reasons for dismissal of Claim Petitions filed by the appellants and the same reads as under :-

"15. Issue Nos.2 to 5 in Petition No.68/93.
issue Nos.2 to 4 in Petition No.69/93.
and issue Nos.2 to 4 in Petition
No.95/93:-

The petitioner in Petition No.69/93 is examined at Exh.64, the petitioner in Petition No. 95/93 is examined at Exh.65 and the petitioner in petition No.58/93 is examined at Exh.66. Petition No.68/93 is the personal injury claim of the petitioner, whereas the petition No.69/93 and 95/93 are the death claims of the deceased Ashraf and Mohammad Sadik. Both the deceased and the injured petitioner Sk. Salim were at the relevant time were passengers passing by jeep bearing No.GJ-15-8482 . While considering issue No.1 I have already come to a conclusion that S.T. Bus bearing No.MH-12-F-2882 is not involved in the accident which resulted into the injuries to the petitioner Sk. Salim and the death of the deceased Ashraf and Mohammad Sadik. The facts on

the record indicates that it is only truck bearing No.ATK 9936 after giving a dash to S.T. Bus went ahead and gave a dash to the jeep in question by which both these deceased and the injured petitioner were proceeding. Since there was no involvement of S.T. Bus No.MH-12-F-2882, it cannot be said that the driver of S.T. Bus is responsible for the death of the deceased and the injuries to the petitioner. Therefore, all these petitioners are not entitled to any amount of compensation from the driver and owner of S.T. Bus. Since all these petitioners have settled the claims with the opponent No.2 i.e. the insurer of the truck I find that all these claim petitions deserves to be dismissed. It is not disputed that the truck bearing No.ATK 9936 was duly insured with the respondent No.3. Since the driver of S.T. bus was not responsible for the death of the deceased and injuries to the petitioner, I find that these petitioners are not entitled to any compensation from the driver and owner

of the S.T. bus. This takes me to answer the issue No.2 in Petition No.68/93 in affirmative. Further I find that the liability of the opponent Nos.1 to 3 i.e. the driver, owner and insurer of Truck No.ATK 9936 is 100%. In short, I find that the petition No.68/93 so far as against the opponent Nos.4 and 5 deserves to be dismissed.

16. Since I have already come to the conclusion that the driver of S.T. bus is not responsible for the death of the deceased Ashraf, the petitioners in petition No.69/93 are not entitled to any compensation from the opponent Nos.4 and 5. Therefore, there is no question of considering the quantum of compensation to which the petitioners are entitled to. Hence I find that the petition No.69/93 also deserves to be dismissed.

17. On the same analogy I find that the petitioners in petition No.95/93 are not entitled to any compensation from the opponent Nos.4 and 5 the driver and

owner of S.T. Bus. It is only the opponent Nos.1 to 3 who are liable to pay the compensation to the petitioners. Since the opponent No.3 has settled the claim, with the petitioners, I find that there is no question of considering the quantum of compensation to which the petitioners are entitled to from the opponent Nos.4 and 5. Therefore, I find that the petition No.95/93 also deserves to be dismissed."

18. Thus on due consideration of the submissions advanced in the light of rival pleadings, the evidence adduced by the parties and the reasons and findings recorded by the Tribunal, I am of the view that no case is made out to call for interference with the judgment and order passed by the Tribunal in respective appeals filed by the appellants. The decision in the case of **Rajesh and others V/s Rajbir Singh and others**

(**supra**) relied upon by learned counsel appearing for the appellants have no bearing upon the facts of the present case. The dismissal of the Petitions as against Respondent Nos.4 and 5 in respective Claim Petitions not based on any niceties or technicalities adopted on the part of the Tribunal. It is purely based upon the rival pleadings and evidence adduced in the case. In absence of any act attributed to the driver of S.T. bus being pleaded and proved the Tribunal was fully justified in dismissing the Claim Petitions as against Respondent Nos.4 and 5.

19. In absence of any perversity in the judgment and order passed by the Tribunal, no case is made out to call for interference in exercise of appellate jurisdiction of this Court. Appeals filed devoid of merits and

liable to be dismissed. Accordingly First Appeal No. 390 of 2002, First Appeal No. 699 of 2000 and First Appeal No.501 of 2002 are dismissed with no orders as to costs.

[V.L. ACHLIYA]
JUDGE

SGA