

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

FIRST APPEAL NO.1351 OF 2016

1. Santram s/o Babaji Shinde,
Age : 64 years, Occu. Agri.
2. Shashikalabai w/o Santram Shinde,
Age : 61 years, Occu. Household
3. Pooja d/o Machindra Shinde,
Age : 20 years, Occu. Education
4. Pratiksha d/o Machindra Shinde,
Age : Minor, Occu. Education
5. Mahesh s/o Machindra Shinde,
Age : Minor, Occu. Education

Appellant Nos.4 and 5 being
minor, u/Guardianship of
Appellant Nos.1 and 2

All R/o Chikhali (Nath)
Tq. Patoda, District Beed

**APPELLNT
(Ori. Claimants)**

VERSUS

1. Anmol Travels,
through its Proprietor
Shaikh Pasha s/o Shaikh Nabi,
Age : Major, Occu. Owner of
Luxury Bus, R/o Sagar Complex,
In front of Bus Stand, Beed,
District Beed
2. Saleem Rasheedkhan Pathan,
Age : Major, Occu. Driver,
R/o Sagar Complex,
In front of Bus Stand, Beed,
District Beed
3. The United India Insurance Co.Ltd.,
through its Branch Manager,
Chattrapati Sankul, 1st Floor,
Subhash Road, Beed,
District Beed

**RESPONDENTS
(Ori. Respondents)**

Mr.Sushant B. Choudhari, Advocate for the appellants
Mr.S.R. Bagal, Advocate for respondent No.3

CORAM : SUNIL K. KOTWAL, J.

JUDGMENT RESERVED ON : 15th APRIL, 2019
JUDGMENT PRONOUNCED ON : 24th APRIL, 2019

JUDGMENT :

This appeal is directed by the claimants in Motor Accident Claims Petition ("MACP", for short) No.123 of 2009 against the judgment and award dated 9th December, 2015, passed by the Motor Accident Claims Tribunal ("Tribunal", for short), Beed, whereby compensation of Rs.10,92,000/- was awarded to the claimants, with interest at the rate of 7.5% from the date of application till realization excluding the period of four years. Respondent No.1 is owner of offending luxury bus No.MH-23/5910 and respondent No.2 is driver of the bus. Respondent No.3 is insurer of the offending bus.

2. Facts leading to institution of this appeal are that deceased Machindra Shinde was riding his motorcycle bearing registration No.MH-12/FG-7693 on 20th May, 2009 from Jamkhed-Beed road at about 3.00 p.m. That time, his wife Shivganga was the pillion rider. When that motorcycle came near the field of Dagdu Yadav, that time, the offending bus came from opposite direction i.e. from northern direction towards southern side in high speed and by coming towards wrong side of the road i.e. towards western side of the road, gave dash to the motorcycle of the deceased, resulting into death of Machindra and his wife Shivganga on the spot. The accident occurred due to rash and negligent driving of the bus by respondent No.2. The bus was insured with respondent No.3. Therefore, the claim petition for compensation was filed by five dependents of the deceased before the Tribunal at Beed.

3. Respondent Nos.1 and 2 though served did not file written statement and they were proceeded without written statement. Only respondent No.3 - insurer of the bus filed written statement and denied all contents of the application. The insurer raised defence that the owner of the offending bus committed breach of policy of the insurance as driver of the bus did not hold valid and effective driving licence at the time of accident.

4. Next contention of respondent No.3 is that the accident occurred due to head-on collision between bus and motorcycle due to contributory negligence of the deceased.

5. The Tribunal framed issues at Exh-24 and after considering the evidence placed on record by both the parties, held that the deceased and driver of the offending bus contributed 50% negligence each. In the result, the compensation was equally apportioned between the deceased and

respondent Nos.1 to 3.

6. Heard Shri S.B. Chudhary, learned counsel for the appellants and Shri S.R. Bagal, learned counsel for the insurer of the offending bus.

7. Learned counsel for the appellants assailed the judgment and award passed by the Tribunal on the ground that though contributory negligence of the deceased was not established, the Tribunal fastened only 50% liability to pay compensation against respondent Nos.1 to 3. He submits that the police papers together with evidence of eye witness Balasaheb Shirole (PW3) is sufficient to prove that the accident occurred only due to sole negligence of the driver of offending bus. He has pointed out that even the spot of the accident is not on the middle portion of the road, whereas it was towards western side of the road which indicates that the offending bus came towards wrong side of the

road and gave dash to the motorcycle.

8. Next contention of learned counsel for the claimants is that the driver Salim (DW1) did not file written statement, but at the stage of evidence, new theory has been developed, regarding occurrence of the accident, while overtaking one jeep by the deceased, which is also not corroborated by spot panchanama or the police papers. He submits that the Tribunal erroneously disbelieved the evidence of Balasaheb Shirole (PW3), who is eye witness of the accident.

9. Next contention of learned counsel for the claimants is that the Tribunal awarded inadequate compensation to the claimants and without reasonable cause, did not award interest on the compensation amount for the period of four years.

10. Learned counsel for the insurer submits that the spot panchanama shows that

head-on collision between two vehicles took place on the middle portion of the road, which indicates equal contributory negligence on the part of the bus driver and the deceased. H submits that evidence of driver Salim (DW1) is totally reliable.

11. Next contention of learned counsel for the insurer is that the Tribunal awarded somewhat exorbitant compensation. However, in absence of Cross-objection, it cannot be reduced.

12. Next contention of learned counsel for the insurer is that in respect of contributory negligence on the part of the deceased, after framing of the issues, evidence was not laid by the claimants for a period of four years and therefore, interest was excluded on compensation amount for the period of four years. He supported the judgment passed by the Tribunal.

13. After hearing learned counsel for both sides, following points arise for my consideration. I have recorded my findings against each point, for the reasons stated hereinbelow :-

Sr. No.	Point	Finding
i	Does the insurer of offending bus prove 50% contributory negligence on the part of the deceased in the occurrence of the accident ?	Negative
ii	What is the just and reasonable compensation payable to the claimants ?	Rs.18,71,280/-
iii	Whether interest can be excluded on compensation amount, for the period of four years on account of delay and laches on the part of the claimants ?	No

As to point No.(i) :

14. Contention of the claimants is that accident occurred due to sole negligence of the driver of the luxury bus, which gave dash to the motorcycle by coming to the wrong side

of the road. On the other hand, contention of insurer of the offending bus is that even the deceased contributed negligence by riding his motorcycle by middle portion of the road.

15. On behalf of claimants, though three witnesses are examined, claimant Santaram Shinde (PW1) is not eye witness of the occurrence of accident and therefore, his oral evidence is of no help to prove the sole negligence of the driver of the offending bus. Ramesh Sukhdeo Londhe (PW2) is the employee of Rohan Builders Private Ltd., Pune, who stepped into witness box only to prove the monthly income of the deceased. Therefore, his evidence is not relevant while determining whether the deceased contributed negligence in the occurrence of accident.

16. However, on behalf of claimants, Balasaheb Namdeo Shirole (PW3) stepped into witness box as one of the eye witnesses of the occurrence of accident. On behalf of

respondent No.3 - Insurance Company, driver of the luxury bus namely Salim (DW1) stepped into witness box. The learned Member of the Tribunal disbelieved the evidence of Balasaheb Shirole (PW3) only on the ground that his name was not included as prosecution witness in the chargesheet filed against the driver of offending bus.

17. However, after going through the record and proceeding, it emerges that copy of the chargesheet is not placed on record to ascertain whether name of Balasaheb Shirole (PW3) was included in the list of prosecution witnesses or not. Thus, the reason assigned by the Tribunal for discarding the evidence of eye witness Balasaheb Shirole (PW3) is obviously erroneous. Even assuming that name of Balasaheb Shirole (PW3) is not included in the list of witnesses by the police, then it can be treated as fault on the part of the Investigating Officer and on that count

alone, the evidence of Balasaheb Shirole (PW3) cannot be discarded, if no other reason is on record to disbelieve him. So also, because in connected M.A.C. Petition No.207/2011, Balasaheb Shirole is not examined as eye witness, on that count also, his evidence cannot be disbelieved.

18. It is to be noted that in Motor Accident Claim cases, the rules of pleading and Evidence Act are not strictly applicable. Claimants have to prove their contention only on the touchstone of preponderance of probability. In the case at hand, the claimants have filed copy of F.I.R. (Exh-15), lodged by Mahadu Chandrabhan Shinde, which recites that on 20th May, 2009, on Jamkhed to Beed road, the accident occurred only due to sole rash and negligent driving of the driver of the offending luxury bus, resulting into the death of deceased Machindra and his wife Shivganga. Even the spot panchanama of the

spot of accident (Exh-51) shows that on the spot of accident, the road passes in north-south direction. The deceased was riding his motorcycle from southern side towards northern direction while returning from Jamkhed and the offending bus was coming from opposite direction i.e. from northern side towards southern direction. It means that the bus driver was expected to drive his bus by his left side of the road i.e. from eastern side of the road. Western side of the road is wrong side of the bus driver. On the other hand, western portion of the road is the correct side for the deceased for proceeding towards northern side. The spot panchanama (Exh-51) shows that the motorcycle of the deceased was lying on western side by the side of the road and the headlights and right side portion of the motorcycle was totally damaged. Damage to the right portion of petrol tank of motorcycle indicates that the bus had given dash to the motorcycle

towards right side of the motorcycle. The spot panchanama also shows that the offending bus was found at the distance of 100 mtrs. from the spot of impact and tyre marks were visible on the road. Even the right side headlight of the bus was broken. This indicates that from the right side of the bus, it gave dash to the motorcycle, resulting into damage to the right headlight. The tyre marks of bus on road as well as its distance from the spot of impact, in between two vehicles indicates, that it was in high speed. Even the sketch map, which is part and parcel of the spot panchanama, does not show that the spot of collision between two vehicles was exactly in the middle portion of the road. On the other hand, the sketch map and above discussed position of the motorcycle indicates that the offending bus came towards wrong side of the road and gave dash to the motorcycle of the deceased. This spot situation is also corroborated by oral

testimony of eye witness Balaasaheb Shirole (PW3), who categorically deposed that though the deceased was riding the motorcycle in proper manner by his correct side of the road, the offending bus came towards wrong side of the road and gave dash to the motorcycle. Despite the searching cross-examination of Balasaheb Shirole (PW3), nothing could be elicited from his cross-examination to doubt his presence on the spot of accident.

19. The learned Member of the Tribunal disbelieved the evidence of Balasaheb Shirole (PW3) only on the ground that his name is not included in the list of witnesses in the chargesheet filed against the driver of the offending vehicle. However, this observation of the Tribunal is not at all supported by police papers placed on record. The certified copies of police papers placed on record show that in fact, copy of the

chargesheet is not available on record to ascertain whether name of Balasaheb Shirole (PW3) was included in the list of witnesses or not. Even assuming that name of Balasaheb Shirole (PW3) is not included in the list of witnesses by the Investigating Officer in the chargesheet filed against the driver. However, not including one of the important eye witness in the list of witnesses is the fault of Investigating Officer and it will never adversely affect the reliability of testimony of Balasaheb Shirole (PW3), which is otherwise free from all infirmities.

20. In rebuttal, on behalf of Insurance Company, bus driver Salim Pathan (DW1) is examined, who deposed that when the offending bus reached on the spot of accident, that time, a jeep came from opposite direction and motorcycle of the deceased was behind that jeep. According to this witness, while overtaking the jeep, deceased took his

motorcycle towards wrong side of the road and collided with the offending bus from front side. However, from the cross-examination of Salim (DW1), it emerges that on the spot of accident, width of the road was 20 to 25 feet and it was plain road on both the sides of spot of accident. Though this witness has denied that on such straight road, the approaching vehicle from opposite side is visible from one Km., it is a matter of common sense that on 25 feet wide, plain and straight road, the vehicle coming from opposite direction would be certainly visible from reasonable long distance. As observed above, Salim (DW1) was driving the offending bus in high speed and therefore, he was expected to take the note of approaching vehicles from opposite direction. Had he noticed the approaching jeep from opposite direction and motorcycle of the deceased behind that jeep, he should have decreased the speed of his bus as well as he should

have driven the bus by his left side of the road, when he claims that deceased was overtaking the jeep.

21. Otherwise also, it cannot be ignored that despite service of summons, neither the owner of the offending bus nor driver Salim Pathan (DW1) filed their written statement to bring on record the circumstances in which the accident occurred. The conduct of driver Salim Pathan (DW1), who did not file written statement, is sufficient to infer that he admitted the contents of claim petition that the accident occurred due to rash and negligent driving by driver of the offending bus.

22. On the other hand, the theory put up by Salim Pathan (DW1) regarding the occurrence of the accident when the deceased was trying to overtake one jeep, which was in front of the motorcycle of the deceased, is not at all supported by copy of FIR or any

other police paper. Even respondent No3 did not file copies of the statements of eye witnesses in support of statement of Salim Pathan (DW1). For the first time before the Court, Salim developed new theory, regarding contributory negligence of deceased, by driving his motorcycle from the wrong side of the road, while overtaking the jeep. In the circumstances, the uncorroborated version of Salim Pathan (DW1) is not at all reliable to hold that accident occurred due to contributory negligence of the deceased.

23. On the other hand, as version of Balasaheb Shirole (PW3) is also supported by police papers on record, including the spot panchanama and sketch map, applying the principle of preponderance of probability, I have no hesitation to hold that the claimants have proved that the accident occurred only due to sole negligence of Salim Pathan (DW1) - respondent No.2. I hold that respondent

No.3 - Insurance Company miserably failed to prove that the accident occurred due to contributory negligence on the part of the deceased. I answer point No.(i) in negative.

As to point No.(ii) :

24. In view of my finding against point No. (i), the abovesaid motor vehicle accident occurred only due to sole negligence of driver of the offending bus. Therefore, respondent Nos.1 to 3 are jointly and severally liable to pay the entire compensation to the claimants. It is needless to say that at the stage of appeal, the insurance of offending bus with respondent No.3 is undisputed fact.

25. While determining the quantum of compensation, the age of deceased, his occupation and his income play important role. The driving licence of the deceased [Exh-4 (10)] shows that his date of birth is

17th January, 1968. Thus, it can be inferred that on the date of accident, the deceased was 41 years old. By examining Ramesh Londhe (PW2), who used to work as Senior Executive in H.R. and I.R. Department in Rohan Builders Private Ltd., Pune, the claimants have brought on record clinching evidence regarding monthly salary of the deceased as Administrative Officer in Rohan Builders Private Ltd. Ramesh Londhe (PW2) has duly proved monthly salary slips of the deceased (Exh-79 to Exh-82). He has also given explanation that in the month of March, 2009, salary of Rs.6096/- was paid because the deceased was absent for some days in that month. Otherwise also, salary slips of the month of January, 2009 (Exh-80) and February, 2009 (Exh-81) show that total monthly salary of the deceased was Rs.13,500/-. In the month of February, working days were 28. In the month of January, working days were 31. Thus, for proper assessment, salary slip of

January, 2009 (Exh-80) if considered, it emerges that including different allowances, conveyance allowance of Rs.2040/- was paid to the deceased and Professional Tax of Rs.200/- was deducted from the salary of the deceased. Thus, from the total salary of Rs.13,500/-, conveyance allowance of Rs.2240/- is to be deducted, which is personal allowance, with Professional Tax of Rs.200/- p.m. Thus, monthly income of deceased comes to Rs.11,260/- and his annual income comes to Rs.1,35,120/-. The Form No.16 of the deceased (Exh-85) shows that in the Assessment Year 2009-2010 i.e. for the period from 1st April, 2008 to 31st March, 2009, Income Tax payable by the deceased was Rs.227/-. Thus, from the annual income of the deceased, if Income Tax of Rs.227/- is deducted, the actual annual income of the deceased comes to Rs.1,34,893/-. As the deceased was in between 40 years to 50 years, as per the guidelines issued by the Apex Court in

"National Insurance Company Limited Vs. Pranay Sethi and others" [2018 (3) Mh.L.J. SC 70],

30% amount is to be added in the actual annual income of the deceased towards loss of future prospect. Thus, after adding 30% additional amount, the annual income of the deceased comes to Rs.1,75,360/-.

26. In the family of the deceased, total dependents are five in number. Therefore, as per the law laid down by the Apex Court in **"Sarla Varma and others Vs. Delhi Transport Corporation and another" (AIR 2009 SC 3104),** 1/4th income is to be deducted from the annual income of the deceased under the head of 'personal expenses' of the deceased. After deducting 1/4th income of the deceased, the total annual income of the deceased comes to Rs.1,31,520/-. As the deceased was 41 years old, multiplier of 14 is applicable in the case at hand. Thus, loss of dependency comes to Rs.18,41,280/-.

27. In addition to this, the claimants are entitled to following compensation under conventional heads, in view of law laid down by the Apex Court in "**National Insurance Company Limited Vs. Pranay Sethi and others**" (supra) :-

(i)	Loss of Estate	: Rs.15,000/-
(ii)	Funeral Expenses	: Rs.15,000/-

	Total	: Rs.30,000/-

As the wife of the deceased was not alive on the date of accident, no compensation can be awarded under the head of 'loss of consortium'.

28. Thus, the claimants are entitled to the following compensation under different heads :-

(i)	Loss of Dependency	: Rs.18,41,280/-
(ii)	Loss of Estate	: Rs. 15,000/-
(iii)	Funeral Expenses	: Rs. 15,000/-

	Total :	Rs.18,71,280/-

I hold that the just and reasonable compensation payable to the claimants is Rs.18,71,280/-. I answer point No. (ii) accordingly.

As to point No.(iii) :

29. The Tribunal excluded period of four years while awarding interest on compensation amount at the rate of 7.5% per annum, for the reason that due to laches on the part of claimants, the proceeding was delayed for the period of four years from the date of framing of the issues.

30. After going through rojnama of the original proceeding, it emerges that the issues were framed on 17th July, 2010.

Thereafter for various reasons, including the training of the Judicial Officer and summer vacation, the matter was adjourned and at last, affidavit was filed on behalf of claimant on 18th February, 2013, the matter was adjourned on 12th March, 2013 for cross-examination of claimant (PW1). However, on that date, on application (Exh-44), filed by the claimant, the time was granted for cross-examination of this witness. The matter was adjourned on 18th April, 2013. On 18th April, 2013, as the Court was busy in other work, the matter was adjourned upto 11th June, 2013. Thereafter, on application filed by claimant, matter was adjourned from time to time for cross-examination of claimant (PW1) upto 23rd October, 2013. On 23rd October, 2013, claimant and his Advocate were present, even Advocate for respondent No.3 was present, the Court could not spare time and therefore, matter was adjourned upto 19th November, 2013. Thereafter, as Court was on leave, the case

was adjourned upto 2nd January, 2014. Thereafter, for one or another reason, including leave of Judicial Officer, the matter was adjourned upto 10th March, 2014. On that date, cross-examination of claimant (PW1) was completed and on application submitted by claimant, witness summons was issued to PW2. However, the summons could not be served and again the matter was adjourned and summons were issued to the witness on 16th September, 2014, but could not be served upto 17th January, 2015. On 17th January, 2015, warrant was issued against the witness of claimant, which could not be served upto 8th October, 2015. On 8th October, 2015, PW2 was present and on that date, evidence of PW2 was recorded. On 15th October, 2015, evidence of PW3 was recorded and by filing purshis (Exh-87), claimants closed the evidence. These events on record show that the claimants were not at fault after 18th February, 2013. Subsequently, the

matter was adjourned for the reasons for which the claimants cannot be blamed. Even during the period from 17th July 2010 to 18th February, 2013, the proceeding was not adjourned only on account of negligence on the part of claimants, but it was adjourned because on some dates, the Judicial Officer was not present due to training or due to summer vacation. So also, it cannot be ignored that out of five claimants, claimant Nos.3,4 and 5 are minor children of the deceased and claimant Nos.1 and 2 are old aged parents of the deceased. Considering these circumstances, the claimants cannot be blamed for not procuring the presence of required witness even after framing of the issues. Therefore, exclusion of the period of four years for claiming interest on the compensation amount is certainly unjustified. I hold that considering the beneficial nature of the proceeding and the minor age of three claimants and advance age of two claimants,

it will be unreasonable to dis-entitle the claimants from claiming interest on compensation amount for the period of four years.

31. On the other hand, I hold that the interest on compensation amount needs to be enhanced from 7.5% per annum to 9% per annum on the compensation amount, which is usually granted in Motor Accident Claim matters. I hold that the direction given by the Tribunal to exclude four years' period for computing interest on compensation amount deserves to be set aside and the rate of interest on compensation amount deserves to be enhanced to the extent of 9% per annum from the date of filing claim petition till realization.

32. It follows that this appeal deserves to be allowed to modify the award passed by the Tribunal. Accordingly, First Appeal No.1351 of 2016 is allowed. The award passed by the Motor Accident Claims Tribunal, Beed

in Motor Accident Claims Petition No.123/2009 is modified as under:-

"(i) The petition is partly allowed with proportionate costs.

(ii) Respondent Nos.1 to 3 do jointly and severally pay compensation of Rs.18,71,280/- to the claimants with interest thereon at the rate of 9% per annum from the date of filing of claim petition till realization of the amount. The compensation shall be inclusive of "No Fault Liability" compensation.

(iii) On deposit of the compensation amount in the Tribunal, out of compensation amount, 5% amount with proportionate interest thereon shall be paid to each claimant Nos.1 and 2, respectively by separate account payee cheques through the Tribunal. The balance compensation amount together with accrued interest thereon shall be equally apportioned in between claimant Nos.3, 4 and 5.

(iv) The compensation amount of the share of claimant Nos.3, 4 and 5 shall be paid to them by separate account payee cheques, issued in their respective names through the Tribunal as by this time, they have attained the age of majority.

(v) The award be drawn accordingly."

33. The parties to bear their respective costs of appeal.

34. The appeal is disposed of in the above terms.

[SUNIL K. KOTWAL]
JUDGE

npj/fa1351-2016