

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

**FIRST APPEAL NO. 128 OF 2011
WITH CA/828/2011**

Maharashtra State Road Transport
Corporation, Dhule.
Through its Divisional Controller,
MSRTC, Dhule.

... **Appellant.**

VERSUS

- 1) Smt. Shobha Daulat Shinde,
Age 42 years, Occ. Household.
- 2) Sunil Daulat Shinde, Age 16
years, Occ. Education.
- 3) Milind Daulat Shinde, Age 14
years, occ. Education.
- 4) Aarti d/o Daulat Shinde,
Age 12 years, Occ. Education.
All R/o. Pimpalner, Police Quarter
No. 2, Room No. 1, Tq. Sakri,
Dist. Dhule.
- 5) Prakash Chindhu Shinde,
Age 31 years, Occ. S.T. Bus
Driver, R/o. C/o. Sakri S.T. Depot.
Gopal Nagar, Sakri, Tq. Sakri,
District Dhule.

... **Respondents.**

...

Advocate for the Appellant : Mr. Bagul D.S.
Advocate for the respondent NoS. 1 to 4 : Mr. M.V. Dhongade, h/f
Mr. R.R. Patil.

CORAM : MANGESH S. PATIL, J.

DATE : 05/11/2019

ORAL JUDGMENT :

Appellant is the Road Transport Corporation impugning the judgment and order passed by the Motor Accident Claims Tribunal saddling it with compensation to the tune of Rs. 14 lakh in a proceeding under Section 166 of the Motor Vehicles Act, 1988 lodged by respondent Nos. 1 to 4. The respondent No. 5 is the driver who was driving the bus at the time of accident.

2. It was averred by the respondent Nos.1 to 4 that the deceased was the husband of the respondent No. 1 and father of the respondent Nos. 2 to 4. He was a Police Constable. On 15.03.2009 he was riding a motor cycle and was proceeding from Pimpalner to Tarabad. At about 8.20 p.m. when he reached Pavaldeo fata appellant's bus came from the opposite direction. The respondent No. 5 was driving the bus rashly and negligently and gave a dash to the motor cycle of the deceased. He was seriously injured and succumbed on 17.03.2009. The respondent Nos. 1 to 4 claimed compensation of Rs. 20 lakh. By the impugned judgment and order the Tribunal fixed a quantum as mentioned herein above. Hence this Appeal.

3. The learned advocate for the appellant submits that the Tribunal has not considered the evidence on the record and has reached a jumping conclusion holding the respondent No. 5 to be rash

and negligent and responsible for causing the accident. The respondents No. 1 to 4 themselves have not led any evidence as far as the aspect of the manner in which the accident had occurred. The respondent No. 5 was examined on its behalf. He specifically stated that the deceased was coming from the opposite direction on a motor cycle in a zig-zag manner. He specifically stated to have taken precaution by reducing the speed of his bus and also stated that in spite of he having reduced the speed of the bus the deceased gave dash to the bus and fell down. There is no cross-examination on all these aspects. The Tribunal had erred in appreciating his testimony in the proper perspective and has reached a conclusion by resorting to some conjectures and surmises. The accident had taken place due to rash and negligent driving of the deceased himself and the appellant ought not to have been saddled with a liability to pay compensation.

4. The learned advocate for the appellant further submits that even the Tribunal has erred in determining the quantum of compensation and the impugned judgment and order be quashed and set aside.

5. The learned advocate for the respondent Nos. 1 to 4 supports the judgment and order of the Tribunal. He points out that the testimony of the respondent No. 5 was not at all reliable and believable

and has been rightly discarded by the Tribunal. No independent witness was examined to substantiate his version regarding the manner of occurrence of accident. The Tribunal has rightly appreciated his testimony and has refuted it for the valid reasons. The learned advocate also justifies the quantum of compensation fixed by the Tribunal.

6. I have carefully gone through the record and proceeding. So far as the manner of occurrence of the accident is concerned, obviously the respondents No. 1 to 4 cannot be expected to lead any direct evidence. Naturally the respondent No. 5 who was driving the bus at the material time would be the best person to testify about it therefore his testimony needs to be scrutinized minutely. He has stated that at the material time when his bus reached near the spot he was driving the bus along his left side in a moderate speed. The motor cycle came from the opposite direction in a zig-zag manner. Having seen that he slowed down the speed of his bus and still the motor cycle rider dashed against his bus. True it is that his version as regards the manner of occurrence of the accident has not been minutely controverted during his cross-examination. However, it is necessary to appreciate the fact that no person would admit that he was responsible for causing the accident. Every attempt would be made to pass on the

bug to the other person. If his testimony is considered in the backdrop of the fact that going by the spot panchnama, it was expected of him to have explained as to why and how he was required to apply the brakes urgently when the spot panchnama reads that there were tyre marks on the tar road due to application of the brakes by the driver. If he was required to apply the brakes so suddenly, it was expected of him to have explained this circumstance as well. If really he had slowed down the speed, there was no reason why he should have been required to apply the brakes urgently. In the absence of any such explanation in my considered view his version cannot be accepted at its face value and has been rightly discarded by the learned Member of the Tribunal.

7. True it is that the learned Member of the Tribunal has grossly erred in discarding the version of the respondent No. 5 about having immediately reported the matter to police since the F.I.R. itself reads that he did report the matter to the police. However, considering the spot of the accident and the circumstance of appearance of tyre marks which remain unexplained in the testimony of the respondent No. 5, an adverse inference deserves to be drawn against him. Considering all these aspects I find no sufficient and cogent reason but to subscribe to the conclusion drawn by the Tribunal that accident had taken place

due to the rash and negligent driving of the respondent No. 5 alone and there was no contribution by the deceased.

8. Now coming to the question of quantum, the respondent Nos. 1 to 4 have examined an employee from the Police Department who has duly proved the fact that the deceased was serving as a Constable in the Police Department and was getting a salary of Rs. 11,496/- per month as per the salary sheets (Exhibits 31 and 32). The deceased was aged about 48 years. Applying the guidelines laid down by the Supreme Court in the case of **Smt. Sarla Varma and others Vs. Delhi Transport Corporation and another; 2009 (2) T.A.C. 677 (SC)** the Tribunal has taken the salary of deceased as Rs. 12,000/- per month. Taking note of the fact that there were four members in the family he has deducted 1/4th of the income towards the personal expenses of the deceased and has calculated loss of dependency at Rs. 1,08,000/- per annum. He has correctly applied the multiplier of 13 and has assessed the amount of compensation at Rs. 14,04,000/-. In addition, the Tribunal has rightly held the respondents No. 1 to 4 entitled to Rs. 15,000/- towards loss of estate, Rs. 15,000/- towards loss of consortium and Rs. 16,000/- towards funeral expenses and has reached a figure of Rs. 14,50,000/- as a total compensation inclusive of compensation received by them under 'no fault liability'. In my

considered view the quantum of compensation arrived at by the Tribunal is clearly borne out from the evidence and follows the principles laid down in the case of **Smt. Sarla Varma (Supra)**.

9. Considering the aforementioned aspects I find no sufficient and cogent reason and any apparent illegality in the impugned judgment and order.

10. The Appeal is dismissed. The Civil Application is disposed of.

(MANGESH S. PATIL, J.)

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