

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**FIRST APPEAL NO.817 OF 2008**

**APPELLANTS/  
CLAIMANTS**

- : **1.** Smt. Vanita Wd/o Vilas Bele,  
Aged 30 years, Occ : Household, R/  
o Rajura, Tah. Rajura, Tah and  
District : Chandrapur.
- 2.** Ku. Shraddha D/o Vilas Bele,  
Aged about 5 years, Occ :  
Education,
- 3.** Pratik S/o Vilas Bele,  
Aged about 4 years, Occ :  
Education.

Applicants No.2 and 3 are minor  
being represented by the Applicant  
No.1 being mother.

**..VERSUS..**

**RESPONDENTS**

- : **1.** The Divisional Controller,  
Maharashtra State Road Transport  
Corporation, Chandrapur, Tah.  
Chandrapur, Distt. : Chandrapur.
- 2.** Babu Rajan S/o Swamel Taganchar,  
Aged about 38 years, Occ : S. T.  
Driver, R/o Shivnagar Ward,  
Ballarsha, Tah. Chandrapur, District  
Chandrapur.

(Appeal is dismissed  
against R-2 as per  
Reg(J)'s order dated  
30/07/2013)

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Shri. Apurv De, Advocate for the Appellants  
Shri. R. S. Charpe, Advocate for Respondent No.1.

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**CORAM: M. S. SONAK, J.**

**DATE: 08/12/2021.**

**JUDGMENT**

Heard the learned Counsel Shri. Apurv De for Appellants and the learned Counsel Shri. R. S. Charpe for Respondent No.1.

2. This Appeal is directed against the judgment and Award dated 20.12.2006 made by the Motor Accident Claim Tribunal, Chandrapur (Tribunal) dismissing the Appellants claim for compensation on account of the accidental death of Vilas Bele, who was aged about 32 years at the time of the vehicular accident that took place on 12.11.1997. The claim petition was lodged by the widow and minor children of Vilas Bele claiming compensation of Rs.5,00,000/- along with interest at the rate of Rs.18% per annum.

3. In the impugned Award, the Tribunal has held that the Appellants were unable to prove negligence on the part of the driver of the ST Bus, and in the absence of such proof, the Appellants were not entitled to any compensation though otherwise, the Tribunal, proceeded to determine the compensation at Rs.3,50,000/-. The tribunal, by the impugned award, even directed the Appellants to refund the amount of Rs.50,000/- that they had received under the "No-Fault Liability" provision. The Tribunal also held that in such

matters the claimants have to prove that there was “100% negligence” on the part of the offending vehicle before the claim petition for compensation could be allowed.

4. On hearing the learned Counsel for the parties, perusing the record and the impugned judgment and Award, I am satisfied that the impugned Award warrants interference.

5. The Tribunal, in this case, has approached the matter as if it was dealing with a criminal case, where the driver of the ST Bus was being prosecuted for rash and negligent driving of the ST Bus. In a criminal case, no doubt, there is a requirement that the prosecution establishes rashness and negligence on the part of the accused driver beyond a reasonable doubt or 100%, to borrow the phrase from the Tribunal. However, in a claim petition dealing with civil liability, there is no such requirement. The negligence of the driver of the offending vehicle has to be established by the standard of preponderance and probabilities and nothing more. In this case, the Appellants had discharged this burden and the finding that the driver of the ST Bus was not 100% negligent, warrants interference.

6. In this case, the Tribunal has relied upon the FIR filed against the driver of the ST Bus and proceeded to conclude that the FIR, as well as the statements of the witnesses, support the case of the defence that the driver of the ST Bus was not negligent. To arrive at this finding, the Tribunal has held that the FIR (Exh-28) does not indicate that the deceased Vilas gave any signal to the bus driver before overtaking the bus. On account of the absence of such a statement in the FIR, the Tribunal has disbelieved the evidence of Jivan Butale (CW-2), an eyewitness to the accident who had, on oath deposed otherwise. This according to me, is not proper. An FIR is not an encyclopedia of events. Merely, because the FIR did not refer to the deceased Vilas giving a signal to the driver of the ST Bus that he was overtaking him, cannot be a factor to disbelieve the testimony of eye witness Jivan (CW-2), who was sitting along with Vilas in the Trax, when the Trax met with the accident. Another reason given by the Tribunal to disbelieve Jivan (CW-2) is because this witness admitted in the cross that the deceased Vilas was his neighbor. Based on this, the Tribunal concluded that Jivan was an "interested witness". Again, according to me, this is not proper. Jivan has deposed that he was travelling in the same Trax along with Vilas. Therefore, merely because Jivan may have been the neighbor of Vilas,

his testimony cannot be disbelieved or virtually discarded by styling him as an interested witness.

7. Since the Tribunal has relied on the FIR to hold that the same does not establish any negligence on the part of the driver of the ST Bus, I perused the said FIR, which is at Exh-28. The FIR in fact alleges negligence on the part of the driver of the ST Bus and invokes the provisions of Sections 304-A, 366, 338, and 279 of the Indian Penal Code. There are statements appended to the FIR including the spot of the accident Panchanama. One of the statements given by Rajesh Gourkar very clearly states that while Vilas was overtaking the ST Bus, the driver of the ST Bus suddenly turned, and to avoid a major accident, the Trax had to also swerve to the right and the Trax turned turtle and fell off the bridge. Now neither the FIR nor the statements of the witnesses constitute the evidence as such. However, since the Tribunal has relied on FIR, the Tribunal was required to look into such statements as well before concluding that the driver of the ST Bus was not *100% negligent* in driving the ST Bus and causing the accident.

8. The circumstance that an FIR was lodged against the driver of the ST Bus is something that should have been considered by the Tribunal. Besides, there was no reason to

discard the evidence of the eyewitness Jivan (CW-2). The driver of the ST Bus also deposed in the matter. However, his defense has to be considered in the context of the pending criminal trial. The driver claims that he gave a hand signal by his right hand and started the bus. He claims that he did not see any vehicle coming from behind. He claims that there was no dash to the ST Bus and the Police, who inspected the bus did not find any scratch on that bus.

9. The Tribunal has relied quite heavily on the statement of the bus driver that the Police inspected the bus, but did not find any scratch on the bus. Based on the statement of this bus driver, the Tribunal could not have concluded that the Police had indeed inspected the bus and had not found any scratch thereon. The fact that the Police filed an FIR against the driver of the ST Bus and charged him with an offense under Section 304-A suggests quite otherwise. The Tribunal, in this case, has not appreciated the oral and documentary evidence on record from the perspective of finding out whether the Appellants made out a case of rashness and negligence on the part of the driver of the ST Bus by applying the standard of preponderance of probabilities.

10. Having regard to the testimony of Jivan (CW-2) as also the investigation papers including the FIR lodged against the driver of the ST Bus, the Appellants can be said to have discharged the burden of proving that the accident, in this case, was caused on account of negligence on the part of the driver of the ST Bus. There is no requirement in such matters that the claimants must prove that the driver of the offending vehicle was *100% negligent* before any claim can be allowed. As long as the case of negligence is made out by applying the standard of preponderance of probabilities, the claim will have to be considered and allowed.

11. The Tribunal has quite correctly held that the responsibility on the driver of the heavy vehicle is much larger than the responsibility expected from a driver of the lighter vehicle. The Tribunal, however, overlooked this factor by simply observing that since the Trax was behind the ST Bus, the duty of care and caution expected from the driver of the Trax i.e. Vilas was much greater than the driver of the ST Bus. Again, at least based on the evidence on record, such an approach cannot be held to be proper. Jivan (CW-2) had deposed that Vilas had given a proper signal to the driver of the ST Bus about overtaking. Further, while he was in process of overtaking, the driver of the ST Bus turned the ST Bus quite suddenly and without giving any signal. This clear and

cogent evidence has been overlooked or unduly or unjustifiably discarded by the Tribunal.

12. For all the aforesaid reasons, I am satisfied that the finding of the absence of negligence on the part of the ST Bus driver warrants interference. This finding is therefore set aside. Once this finding is set aside and it is held that the driver of the ST Bus was indeed negligent and consequently responsible for the accident in which Vilas died, the claim petition of the Appellants will have to be partly allowed.

13. The Tribunal, in this case, has already determined compensation of Rs.3,50,000/-. Such determination is quite appropriate in the circumstances and further, the same was not even challenged in this Appeal.

14. This Appeal is therefore allowed and the Respondents are held jointly and severally liable to pay the compensation of Rs.3,50,000/- to the Appellants together with interest @ 6% from the date of filing the claim petition i.e. 28.02.2000 till the date of payment of the compensation. The Respondents to pay/deposit this amount of compensation in this Court within two months from today. Upon deposit, the Appellants are permitted to withdraw the same.

15. There shall be no order for costs.

**(M. S. SONAK, J.)**

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