

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

FIRST APPEAL NO. 892 OF 2004

Maharashtra State Road  
Transport Corporation,  
Aurangabad Division  
through its Divisional Controller,  
Aurangabad

...APPELLANT

VERSUS

1. Ashabai W/o Sarjerao Amrute  
Age : 39 years, Occ : Nil,
2. Vaishali D/o Sarjerao Amrute  
Age : 14 years, Minor,
3. Dinesh S/o Sarjerao Amrute  
Age : 12 years, Minor
4. Santosh S/o Sarjerao Amrute  
Age : 10 years, Minor

Respondent nos.2 to 4 under  
guardianship of the respondent  
no.1

All R/o Near Balaji Prathamik  
School, Avalewada, Chikalthana,  
Aurangabad.

5. Abdul Razzak S/o Abdul Shakeer  
Age : Major, Occ : Driver,  
R/o Depot No.1, Rilway Station,  
Aurangabad.  
(Appeal abated as against respondent  
no.5 vide Registrars order dated  
17.10.06)

6. Sonabai W/o Bhikaji Amrute  
Age : 74 years, Occ : Nil,  
R/o Gandheli, Tq. & Dist. Aurangabad
7. Laxmibai @ Nagarbai W/o  
Sarjerao Amrute, Age – 39 years,  
Occ : Nil, R/o Chikalthana,  
Taluka and District – Aurangabad  
presently resides at  
Manjarsumbha, Taluka and  
District Beed.

**...RESPONDENTS**

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Advocate for appellant : Mrs.Ranjana D. Reddy  
Advocate for Respondent Nos. 1 to 4 : Mr. D.G. Nagode  
Advocate for respondent no.7 : Mr.G.D. Kale

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**CORAM : S. G. DIGE, J.**

**RESERVED ON : 30.08.2022**

**PRONOUNCED ON : 11.10.2022**

**JUDGMENT :**

. Being aggrieved and dissatisfied with the judgment and award passed by the Member, Motor Accident Claims Tribunal, Aurangabad (For short, “the Tribunal”), this appeal is preferred by the appellant – respondent no.1.

2. Brief facts of the case are as under :-

On 14<sup>th</sup> May, 1999 at about 12.00 noon on Jalna-Aurangabad road near Bhagirath Company the accident took

place. At the relevant time and place of accident, deceased Sarjerao was traveling by S.T. Bus driven by respondent no.5. Respondent No.5 drove the same rashly and negligently in high speed. As a result when the said Bus came to the spot of incident deceased Sarjerao fell on road, sustained head injuries and wheels of the S.T. Bus run over his body. Immediately, injured Sarjerao was admitted in GHATI Hospital, but he was declared dead. Crime was registered against the Bus driver.

3. The claim petition was filed by (original claimants) respondent nos.1 to 4, 6 and 7 for getting compensation before the Motor Accident Claims Tribunal, Aurangabad (for short, "the Tribunal"). The Tribunal has awarded compensation. Against the said judgment and order, this appeal.

4. It is the contention of the learned counsel for the appellant that deceased died in the said accident due to his negligence. He tried to alight from the running Bus before the Bus stop and came under the wheels of the Bus, but the Tribunal has wrongly concluded that there was negligence of

respondent no.5. The learned counsel further submits that Bus driver is acquitted from the offences leveled against him. It proves that he was innocent. The appellant's Bus was insured with the insurance company, but the Tribunal has fastened liability on the appellant without considering this fact. Hence requested to allow the appeal.

5. It is the contention of the learned counsel for the respondents that the first information report was lodged against the Bus driver i.e. respondent no.5. Deceased was standing in front door of the Bus. Respondent no.5 was driving the Bus in rashly and negligently and he suddenly applied brakes due to which deceased fell on road, got injured and died. It shows the negligence of respondent no.5. The Tribunal has held that the accident was occurred due to negligence of respondent no.5.

6. I have heard all the learned counsel. Perused the judgment and order passed by the Tribunal.

7. The issues involved in this appeal are whether

there was negligence of the deceased in the said accident and non-adding insurance company as party.

8. Admittedly, the first information report is lodged against respondent no.5. To prove negligence of the deceased, respondent no.5 – Adbul Razak Abdul Shakur the driver of the offending Bus examined himself at Exhibit-55. He states that when his bus reached Bhagirath Company he heard screams from the passengers that the passenger has got down without waiting for the spot. He stopped his bus and found that one of the passenger fell from the Bus and has sustained injuries. He further stated that the deceased hurriedly tried to get down from running bus and came under the wheels of the Bus. In cross examination this witness admitted that there were passengers standing on the foot board at entrance door as well as exist door of the Bus. The passengers had entered in the bus by backdoor and had come towards the exist door i.e. to front door side and were standing on the foot board. From the evidence of this witness, it appears that this witness came to know, deceased fell down from the Bus when he heard the screams of passengers. It shows that the bus was in high speed.

Had there been a stop ahead, the Bus would have been in slow speed, but respondent no.5 came to know about the incident after screaming of other passengers in Bus. Moreover, front exist door is near the driver's seat. There was no Bus stop near the accident spot that's why the bus was in high speed, so no question of attempt of deceased getting down hurriedly from Bus arises. It is significant to note that the appellant has not examined any passengers from the Bus to prove that it was negligence of the deceased and not the Bus driver i.e. respondent no.5. Mere acquittal of the Bus driver-respondent no.5 from criminal charges cannot be a ground to absolve him to fasten the liability under Motor Accident Claim. Hence I do not find any merit in the contention of the learned counsel for the appellant that there was negligence of the deceased in the said accident.

9. Other issue in respect of not adding the insurance company as party, it is the contention of the learned counsel for the appellant that all the vehicles of the appellant-Corporation are having insurance which are plying on the road. Respondents-original claimants had not added or made

answerable party to the insurance company. The Tribunal has not considered this fact and directly fastened liability on the appellant. The vehicle is insured or not is within the knowledge of the owner. The appellant-respondent no.1 has filed its written statement at Exhibit-35 before the Tribunal. In the said written statement, the appellant has not stated that the offending Bus was insured, so it was duty of the appellant to mention in the written statement or file proper application before the Tribunal stating that the offending vehicle was insured with the insurance company. In absence of it, liability cannot be shifted on the original claimants.

10. In view of the above, the appeal is devoid of merit. Hence I pass the following order:-

**ORDER**

- (i) The appeal is dismissed.
- (ii) No order as to costs.

**(S. G. DIGE)**  
**JUDGE**

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SGA/-