

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

FIRST APPEAL NO.877 OF 2002

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Aurangabad Division,
Aurangabad, Dist. Aurangabad.

.. APPELLANT
[Orig. Resp. No.1]

VERSUS

- 1] Chawanabai w/o. Bhagwan Chavan
Age 35 years, Occu. Household,
Resident of Kadethan, Tq. Paithan,
District Aurangabad
- 2] Namdeo s/o. Bhagwan Chavan,
Age 17 years, Occu. Education
U/g of respondent no.1.
- 3] Arjun s/o. Bhagwan Chavan,
Age 14 years, Occu. Education
U/g of respondent no.1.
- 4] Bhanudas s/o. Bhagwan Chavan,
Age 12 years, Occu. Education,
U/g of respondent no.1.
- 5] Sheela d/o. Bhawan Chavan,
Age 9 years, Occu. Education,
U/g of respondent no.1.
- 6] Kavita d/o. Bhagwan Chavan,
Age 7 years, Occu. Education,
U/g of respondent no.1.
- 7] Ambadas Kondaji Aghade,
Age major Occu. Driver,
Deot No.1, Shahgunj, Aurangabad.

- 8] Abdul Razzak s/o Shaikh Habib,
Age Major, Occu. Business,
Resident of Baijipura, Aurangabad
[Appeal dismissed as against
R.No.8 vide Court's order dt.3-10-06]
- 9] The United India Insurance Co.Ltd.
Aurangabad
Through its Manager .. **RESPONDENTS**

...

Mrs.R.D.Reddy, Advocate for the appellant.
Mr.S.K.Barlota, Advocate for respondent nos.1 to 6.
Mr.S.V.Kulkarni, Advocate for respondent no.7.

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CORAM : S.G.DIGE, J.

DATE : 04.10.2022

ORAL JUDGMENT :

1] Being aggrieved and dissatisfied by the judgment and award passed by the Motor Accident Claims Tribunal, Aurangabad, appellant – original respondent no.1 preferred this appeal.

Brief facts of the case are as under:

2] On 20th October, 1995 at about 3.30 p.m. the deceased Bhagwan along with Harising were coming from the side of Beed towards Chikalthana on Aurangabad-Beed

Road. Their motorcycle got punctured. When the deceased along with other were carrying motorcycle by pushing the said motorcycle for removing puncture at Chikalthana and when they reached opposite Kailas Hotel, at the relevant time City bus bearing registration No.MCA-7380 came from Chikalthana in rash and negligent manner and gave dash to the deceased and Harisingh. Due to the said dash, deceased Bhagwan died on the spot whereas Hari received multiple injuries. The driver of the said bus filed complaint to the police stating that the deceased was driving motorcycle in zig zag manner and given a dash to the S.T. bus.

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

4] It is the contention of the learned counsel for the appellant that though there was sole negligence of the

deceased in the said accident, the Tribunal has considered sole negligence of the S.T. bus driver. While driving the motorcycle, the deceased was in a drunken state of mind. The witness, namely, Vishnu Khose has stated that smell of alcohol was coming from the mouth of the deceased. It proves that the deceased was in a drunken state, but this fact is not considered by the Tribunal and awarded exorbitant compensation, hence, requested to allow the appeal.

5] It is the contention of the learned counsel for respondent nos.1 to 6 that the motorcycle of the deceased was punctured, hence, the deceased was holding handle of motorcycle and friend of deceased Hari was pushing motorcycle from backside and they were going on. The offending S.T. bus came from opposite side in a rash and negligent manner and gave dash to the deceased. The deceased died on the spot whereas Hari got multiple injuries in the said accident. To avoid liability, the S.T. bus driver filed a false complaint against the deceased. The

Tribunal has considered all these facts and passed the reasoned order, hence, requested to dismiss the appeal.

6] I have heard both learned counsel. Perused the judgment and order passed by the Tribunal. The issue involved in this appeal is whether the accident is caused due to sole negligence of the deceased or the S.T. bus driver. Admittedly, the first information report is filed on the complaint of S.T. bus driver. It is the case of the respondents – original claimants that the motorcycle of the deceased was punctured and he was carrying it along with his friend Hari, at that time, the S.T. bus gave dash to the deceased. The claimants have examined Hari Chavan to prove their case. Hari Chavan has stated that the motorcycle on which he and deceased were going on, was punctured and the deceased Bhagwan was holding the handle of motorcycle whereas he was pushing it from the backside, at that time the offending S.T. bus gave dash to them. This witness was cross examined at length but nothing illicited in his cross examination. The appellant has examined Vishnu

Khose to prove that there was negligence of the deceased but this witness has stated that the deceased was proceeding on motorcycle, one truck overtakes him and thereafter he gave dash to the S.T. bus. There was smell of alcohol coming from the mouth of the deceased Bhagwan. No alcohol was found in the blood of the deceased in the post mortem report. Moreover, witness Vishnu Khose in cross examination admitted that tyre of motorcycle was punctured. It is the contention of the appellant that there was negligence of the deceased Bhagwan so it was burden on the appellant to prove that the deceased Bhagwan gave dash to the S.T. bus. In FIR, it is mentioned that S.T. bus was standing near Kailash Hotel and the passengers were getting down from the bus at that time deceased Bhagwan gave dash to the S.T. bus. The appellant could have examined owner of the Kailash Hotel or any passengers from the bus to prove that there was negligence of the deceased Bhagwan. The S.T. bus driver, who has filed complaint against the deceased, has not stepped into the witness box to prove the negligence of the deceased. Hence,

I do not find merit in the contention of the learned counsel for the appellant that there was negligence of the deceased in the said accident.

7] In view of the above, I pass the following order:-

ORDER

i] Appeal is dismissed.

ii] Respondent nos.1 to 6 are permitted to withdraw the amount deposited by the appellant along with accrued interest thereon.

iii] Appeal is disposed of accordingly.

iv] In view of disposal of appeal, pending civil application does not survive and the same stands disposed of.

[S.G.DIGE]
JUDGE