

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

FIRST APPEAL NO.1188 OF 2018

Rameshwar s/o Satyanarayan Maniyar,
Age 49 years, Occu. Business,
R/o Nilanga, Tq. Nilanga, Dist. Latur ... **APPELLANT**

VERSUS

- 1) Nikita d/o Chandrakant Mane,
Age 14 years, Occu. Student
- 2) Neha d/o Chandrakant Mane,
Age 12 years, Occu. Student
- 3) Payal d/o Chandrakant Mane,
Age 10 years, Occu. Student,

Nos.1 to 3 are minors, under
guardian of natural grandmother
respondent No.5

- 4) Bhagyashri d/o Narsing Jadhav,
Age 25 years, Occu. Household
- 5) Vatsalabai w/o Narsing Jadhav,
Age 53 years, Occu. Household

Nos.1 to 5 all R/o Nilanga,
Tq. Nilanga, Dist. Latur

- 6) United India Insurance Company Ltd.,
Branch Latur, Tq. & Dist. Latur,
through Manager. ... **RESPONDENTS**

.....
Shri Manoj D. Shinde, Advocate for appellant
Shri Laxman H. Kawale, Advocate for respondents No.1 to 3 & 5
Shri S.R. Bagal, Advocate for respondent No.6

.....

WITH

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.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 24th August, 2021

Date of pronouncing judgment : 24th January, 2022

J U D G M E N T :

Both these appeals are being decided by this common judgment since they are inter-connected. Both these appeals arise from the judgment and award dated 6/2/2015, passed by the Member, Motor Accident Claims Tribunal (M.A.C.T.), Latur in Motor Accident Claim Petitions No.11/2010 and 161/2011 and Motor Accident Claim Petitions No.12/2010 and 162/2011. The appellant herein is the owner of the bus (No.MH-24/A-2951). He was the respondent no.2 in the claim petitions before the Tribunal. Vide impugned judgments and awards, the appellant herein has been directed to pay a sum of Rs.6,16,500/- and Rs.4,37,500/- with interest @ 7.5% p.a. as compensation on account of deaths in vehicular accident. He is, therefore, in appeals.

2. Facts giving rise to the present appeals are as under :

The appellant owns a public transport bus No.MH-24/A-2951. There was an accident between the bus and the motorcycle. Chandrakant, motorcycle rider and his wife Lata passed away as a result of the injuries suffered in the accident. The couple is survived by three minor daughters.

Four separate claim petitions came to be preferred for compensation, wherein all the three daughters of the deceased couple were petitioners along with grandparents of Chandrakant and sister and mother of deceased Lata. The Tribunal did not grant any compensation to the grandparents of Chandrakant and sister and mother of Lata. A Sum of Rs.50,000/- was, however, directed to be paid to Rukminibai (grandmother of deceased Chandrakant) out of the amount of compensation payable on account of death of Chandrakant. The petitions came to be dismissed as against the insurer of the bus since the bus is said to have been plied at the relevant time without a permit. The appellant, bus owner, came to be saddled with liability to pay the compensation awarded under the impugned judgments and awards.

3. The original claimants have not preferred appeal or cross-objection for enhancement of compensation. A short question that falls for consideration in these appeals is as to whether the bus was being taken for repairs while it met with the accident and therefore it is not a case of breach of having plied the bus sans permit.

4. Heard. Shri Manoj Shinde, learned counsel for the appellant (bus owner) would submit that, the police papers

and even the oral evidence before the Tribunal nowhere suggest that there were passengers in the bus when it met with the accident. The bus was being taken for repairs. The driver of the bus gave specific evidence in that regard. The Tribunal erred in reading the bus driver's evidence recorded in one Motor Accident Claim Petition in another one. That resulted in miscarriage of justice. According to learned counsel, the procedure for deciding the M.A.C.Ps. is summary innature. Rules of pleadings are not applicable. The learned counsel relied on Section 66(3)(p) of the Motor Vehicles Act to ultimately urge for allowing the appeals.

5. Learned counsel for the respondents – claimants would, on the other hand, submit that the deceased was a third party. The Tribunal ought to have directed the Insurance Company of the bus to satisfy the award and then recover the amount from the bus owner.

6. Learned counsel for the respondent Insurance Company would submit that, the claimants have neither preferred appeal nor cross-objections against the impugned judgment and awards. The awards thus became final so far as against the respondents– claimants are concerned. Learned counsel relied on the provisions of Order 41 Rule 22

and Rule 33 of the Code of Civil Procedure to submit that the Court has no jurisdiction to pass any order in these appeals, directing the respondent Insurance Company to first pay the amount of compensation and then recover the same from the appellant/ owner of the bus. The learned counsel has relied on the Apex Court judgment in case of **Banarasi and others Vs. Ram Phal [(2003) 9 SCC 606]**.

7. Perused the impugned judgments and the evidence relied on. Admittedly, the appellant/ bus owner did not have a permit to use the bus as a transport vehicle. Section 66 of the Motor Vehicles Act speaks of necessity for permits. It reads :-

66. Necessity for permits.—

(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

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8. Sub-section (3) of Section 66 is a proviso or exception to Section 66(1). Clause (p) thereof is relevant herein. It reads that the provisions of Section 66(1) shall not apply to any transport vehicle proceeding empty to any place for purpose of repairs.

9. The appellant, bus owner did not file his written statement in any of the claim petitions. He, therefore, cannot be heard to say that the bus was being taken for repairs. It would amount to permitting the appellant to lead evidence without pleadings. It is the basic rule that evidence without a pleading is to be ignored. Learned counsel for the appellant may be right in submitting that a holistic view ought to have been taken by the Tribunal, the Tribunal *stricto sensu* is not bound by pleadings of the parties [**Sunita and others Vs. Rajasthan State Road Transport Corporation and others, (2020) 13 SCC 486**]. Such submissions would have been accepted by this Court had it been a case to be considered for the claimants. Since the appellant did not file his written statement, he cannot be allowed to lead evidence to show that the bus was being taken for repairs and was not been

plied as a transport vehicle.

10. Even if we consider the submissions made by learned counsel for the appellant, the Tribunal has rightly appreciated the evidence of the bus driver. The bus driver was examined twice, in both the sets of claim petitions. Since the claims were arising out of one and the same accident and between the same parties, no fault can be found with the Tribunal reading the bus driver's evidence in common. It has specifically been in the evidence of bus driver that, while the bus was being taken from Nilanga to Ausa, it developed mechanical defect near Jau-Pati. The same suggests that, while the bus started from Nilanga to Latur, it had no mechanical defect. As such, when the bus met with the accident, it was being plied without a permit and all of a sudden, it is said to have developed a mechanical defect. The Tribunal has, therefore, rightly found it to be not a case falling under Section 66(3)(p) of the Motor Vehicles Act. This Court has no reason to take a different view.

11. The facts and circumstances though indicate that both Chandrakant and his wife Lata died in the accident, they are survived by their three minor daughters. The claims were preferred through their next friends. In the quarrel between

the appellant and the respondent, the minor claimants are the sufferers. The deceased was a third party. In case of **National Insurance Co. Ltd. Vs. Challa Bharathamma, 2004(9) CPSC 924**, it has been observed :

“Interpretation of statutes – Motor Vehicles Act – Section 149(2) – Plying a vehicle without permit is an infraction – Insurer need not indemnify the award of compensation – However, in view of the beneficial nature of the Act, it would be proper for the insurer to satisfy the Award, though in law it has no liability – The executing Court shall pass appropriate orders in accordance with the law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured.”

12. With a view to do complete justice, this Court is inclined to direct the respondent Insurance Company to pay the amount of compensation under the impugned awards and then recover the same from the appellant/ owner of the bus. With this the appeals stand disposed of in terms of the following order :

ORDER

(i) The appeals are dismissed.

- (ii) The respondent No.6 Insurance Company is, however, directed to satisfy/ pay the amount under the impugned awards and then recover the same from the appellant in executing proceedings.
- (iii) The amount deposited, if any, by the appellant, either with this Court or with the Tribunal, be paid to the Insurance Company along with interest accrued thereon.
- (iv) The bus of the appellant stands attached as a security.

**(R. G. AVACHAT)
JUDGE**

fmp/-