

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

FIRST APPEAL NO. 4386 OF 2016

Divisional Controller
Maharashtra State Road
Transport Corporation Division
Office at Aurangabad
For Secretary, MSRTC, Mumbai

..APPELLANT

(Original respondent No.1)

VERSUS

1. Sumanbai W/o Dividas Dhangare
Age : 50 years, Occ : Household,
R/o Phulambri, Dist. Aurangabad.
2. Sonali D/o Devidas Dhangare
Age : 31 years, Occ : Household,
R/o N-7, CIDCO, Dist. Aurangabad.
3. Monali D/o Devidas Dhangare
Age : 29 years, Occ : Education,
R/o Phulambri, Dist. Aurangabad.
4. Ashwini d/o Devidas Dhangare
Age : 24 years, Occ : Education,
R/o Phulambri, Dist. Aurangabad.
5. Arjun Dadarao Balande
Age : 35 years, Occ : Driver,
R/o Boregaon, Tq. Phulambri,
Dist. Aurangabad.
6. United India Insurance Co. Ltd.
10, Arihant Shivaji Circle,
Mahesh Nagar, Malegaon,
Dist. Nasik

7. Tousif Abdul Rehaman
Age : Major, Occ : Business,
R/o 187, Kamalapur, Islampur,
Malegaon, Dist. Nasik.
**(As per Court's order dated 14.07.2022
respondent no.7 is deleted)**
8. Shaikh Kalim Shaikh Salim
Age : Major, Occ : Driver,
R/o Chalisgaon Road, Dhule.
**(As per Court's order dated 11.10.2019
respondent no.8 dismissed)**

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...RESPONDENTS

Advocate for Appellant : Mrs. Ranjana D. Reddy
Advocate for respondent nos.1 to 4 : J.P. Legal Associates
Advocate for respondent no.5 : Mr. S.R. Bagal

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CORAM : S.G.DIGE, J.
DATE : 22.07.2022

JUDGMENT :

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

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

On 6th June, 2011 while S.T. Bus was proceeding from Nashik to Aurangabad near Padegaon the

accident occurred involving S.T. Bus and one truck. The Bus driver tried to over take the truck and gave dash to the truck from back side. Left side of the Bus was cut due to said dash and deceased Devidas Dhangare, who was conductor of the S.T. Bus got seriously injured and died in the hospital. The crime was registered against the S.T. Bus driver.

3. The heirs and legal representatives of the deceased filed Claim Petition before the Motor Accident Claims Tribunal, Aurangabad (For short, "the Tribunal") for getting compensation. Considering the evidence on record and after hearing the parties, the Tribunal has directed the appellant to pay compensation. Against the said judgment and order this appeal.

4. It is the contention of the learned counsel for the appellant that the said accident was occurred due to contributory negligence of S.T. bus driver and truck driver. The truck driver gave dash to the Bus from back side due to which injury was caused to deceased but this fact was not

considered by the Tribunal. The learned counsel further submits that the income of the deceased is considered on higher side by the Tribunal and exorbitant compensation is awarded. The learned counsel further submits that the Tribunal has exonerated the respondent nos.4 and 5 from any liability without proper reason. Hence requested to allow the appeal.

5. It is contention of the learned counsel for the respondents that there was sole negligence of the S.T. Bus driver. He tried to over take the Bus in rash and negligent manner and gave dash to the truck by left side of the Bus. Due to which the deceased and other passengers in the said Bus sustained injuries. The crime was registered against the S.T. Bus driver. It shows, there was negligence on the part of the Bus driver. The deceased was getting Rs.23,000/- salary per month. The said salary is considered by the Tribunal as income of the deceased. So no question of awarding exorbitant compensation arise. The order passed by the Tribunal is legal and valid.

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

7. The issues involved in this appeal are (i) whether there is contributory negligence of the truck driver in the said accident ? and (ii) whether the Tribunal has awarded compensation on higher side ?

8. Firstly, I deal with the issue no.1 i.e. Contributory negligence of the truck driver. It is contention of the learned counsel for the appellant that the truck driver has given dash to the Bus from back side. The first information report in respect of the accident is at Exhibit-50/C. This report was lodged by Shaikh Sattar S/o Shaikh Bashir, who was passenger in the offending Bus. In his complaint, he has stated that the offending Bus driver tried to over take to the said truck and gave dash to the said truck from back side. Due to the said dash, the left side of the Bus was cut and three passengers including the deceased got seriously injured. It is further mentioned in the

said complaint that the accident was occurred due to the negligence of the Bus driver.

9. It is pertinent to note that the first information report was lodged by the passenger of the said Bus immediately after the accident and in the said report, it is mentioned that the accident was occurred due to negligence of the driver of the offending Bus. Though the learned counsel for the appellant submits that the accident was occurred due to dash of truck driver from the back side of the Bus, it appears that it is after thought plea taken by the appellant to avoid the liability. When the passenger of the Bus, who was eye witness to the accident says that the accident was occurred due to negligence of Bus driver then mere plea of the appellant of contributory negligence cannot be accepted.

10. In respect of second issue i.e. quantum of compensation given to the deceased, it is the contention of the learned counsel for the appellant that the compensation is given on higher side. To prove the income of the

deceased, the claimants have examined Satish Yadavrao Dabhade, Accountant of Maharashtra State Road Transport Corporation. He has produced the salary slips of the deceased. These are at Exhibit-67, 68 and 69. These salary slips show that the deceased was getting average salary of Rs.23,000/- per month. He was also getting additional *Bhattas* for working more hours but the Tribunal has considered the amount of average of three salary slips i.e. Rs.23,000/-. In my view, the Tribunal has rightly considered the salary of Rs.23,000/- per month and on that basis, the calculation of the amount of compensation is done. There is no infirmity in it.

11. The learned counsel for the appellant submitted that the Tribunal has exonerated respondent nos.4 and 5 without any proper reasons, in my view, in first information report, it is clearly mentioned that the accident was occurred due to negligence of the S.T. Bus driver and there was no negligence of truck driver. Hence their exoneration is proper.

12. In view of the above, I pass the following order:-

ORDER

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

**[S.G.DIGE]
JUDGE**

SGA/-