

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1161 OF 2005

- | | | |
|----------------------------------|---|-----------------|
| 1. Smt. Vimal Baban Patil |) | |
| Age 37 yrs., Occu. Household. |) | |
| 2. Suhas Baban Patil, |) | |
| Aged 10 yrs. Occ.Nil |) | |
| 3. Miss Tejashri Baban Patil, |) | |
| Aged 12 yrs., Occu.Nil |) | |
| Nos.2 and 3 represented by their |) | |
| Guardian, Claimant No.2. |) | |
| All R/o. Karnal, Tal. Miraj, |) | ...Appellants |
| District - Sangli. |) | (Ori.Claimants) |

Versus

- | | | |
|------------------------------------|---|------------------|
| 1. General Manager, |) | |
| Maharashtra State Road Transport |) | |
| Corporation, Mumbai, |) | |
| Through Divisional Control, |) | |
| M.S.R.T.C., Sangli. |) | |
| 2. Ananda Vithoba Karande, |) | |
| Major, Occupation Service (Driver) |) | |
| Maharashtra State Road Transport |) |Respondents |
| Corporation, Sangli Depot, Sangli. |) | (Ori. Opponents) |

Mr. Tejpal S. Ingale along with Mr. Priyanka A. Babar, Advocates for the Appellants.

Mr. G. S. Hegde along with Ms. P. M. Bhansali and Ms. Dharini Jain, Advocates for the Respondent-MSRTC.

CORAM : S. G. DIGE, J.

DATE : 23rd DECEMBER, 2022.

Judgment :

1. Being aggrieved and dissatisfied with the judgment and order passed by the Motor Accident Claims Tribunal, Sangli, the appellants/original claimants (for short "the claimants") preferred this appeal.

2. The brief facts of the case are as under :

On 7th February, 1996, at about 9.30 p.m. the deceased - Baban was proceeding on his bicycle on Ugar-Kudachi road to attend fair of Goddess Mayakka along with his friend Arjun Maruti Aiwale. Both of them were proceeding on their separate bicycles. At the relevant time, a S.T.Bus No. MH-12-F-4030 was proceeding on the said road. The said bus was ahead of these two bicycles. Near Ainapur Fata, the said bus had stopped, after some time the respondent No.2-driver of the said S.T.Bus, all of a sudden took the said bus in reverse direction rashly and negligently, upon which, the said bus dashed against the bicycle of the deceased-Baban, who was coming from the backside of the bus, due to said dash the deceased came under the rear portion of the bus and sustained

injures and later on, succumbed to those injuries. Crime was registered against the driver of the bus.

3. The claimants filed the claim petition before the Motor Accident Claim Tribunal (for short “the Tribunal”) for getting compensation. The Tribunal has awarded an amount of Rs.50,000/- under No Fault Liability and dismissed the claim petition. Against the said judgment and order, this appeal.

4. It is contention of learned counsel for the claimants that the said accident occurred due to rash and negligent act of respondent No.2 as he suddenly took the bus in reverse side, due to which, the deceased fell down and was dragged by the rear portion of the bus for some distance. He sustained grievous injuries and succumbed to death but the Tribunal has not considered these facts. The said incident was witnessed by the friend of the deceased, who was driving on another bicycle, who also fell down due to the said dash, but the Tribunal has not considered the evidence of the friend of the deceased who was an eye-witness to the said accident. Instead of considering the real facts of the accident, the Tribunal on surmises and conjectures held that that the accident occurred due to the sole negligence of the deceased and

there was no negligence of respondent No.2 and dismissed the claim petition. Learned counsel further submits that the Tribunal has calculated the compensation amount but has not awarded it as there was sole negligence of deceased, but it is wrong observation. Hence, requested to allow the appeal.

5. Learned counsel for respondent Nos.1 and 2 vehemently argued that the said accident occurred due to the sole negligence of the deceased. The incident happened at 9.30 pm. The bicycles of the deceased and his friend had no headlights, so respondent No.2 was not aware that any bicycle is coming from the backside of S.T.Bus. There was no occasion for the respondent No.2 to take the bus on the reverse side. Even if it is assumed that the bus took reverse, it was the duty of the deceased and his friend to take proper care. Learned counsel for the respondents further submits that the driver-respondent No.2 is acquitted from the charges levelled against him. It shows that he was not involved in the said accident. The Tribunal has considered all the aspects and has passed a well reasoned order, no interference is required in it.

6. I have heard both learned counsel, perused the judgment

and order passed by the Tribunal. One of the observation of the Tribunal is that the bus had stopped on the side of the road as one tractor trolley was coming from the opposite direction. At that time, the deceased dashed against the wheel of the tractor and he fell on the road and he sustained injuries. I am unable to understand the observations of the Tribunal which are concluded without considering the evidence on record.

6. It appears from the documents produced on record that there were only two persons who knew about the incident, i.e. driver of S.T. bus (respondent No.2) and the friend of the deceased – Shri Arjun Aiwale who is the only eye witness to the incident. In the evidence of the friend of deceased - PW-2-Shri Arjun Aiwale at Exhibit 42, he stated that on the day of incident, he and deceased were riding bicycles on left side of the road, at that time, one bus was standing on road, all of sudden, the said S.T.bus came in reverse direction and dashed against his bicycle and deceased's bicycle. Due to the said dash, this witness and deceased fell down from their bicycles and the deceased went under the bus, this witness started shouting due to his shout's the bus stopped, and the deceased sustained grievous injuries. In cross-examination, this

witness admitted that he does not know whether any tractor trolley had come from the opposite direction. The Respondent No.2, driver of the offending bus, examined himself at Exhibit – 48, he has stated that on the day of the incident, he was going on the road of Ugar Kudachi. He took his bus on the left side of the road as at the same time, one tractor in whose trolley sugar cane was loaded was coming from the opposite direction. At that time, his bus was in slow speed. After the said tractor passed his bus, one boy came from the left side of the bus and told him that one person along with his bicycle is lying near the rear right side wheel of his bus. The said boy was accompanying the person who had fallen near the wheel of his bus. Thereafter, this witness got down from the bus and went near the rear wheels, where he found one person lying in injured condition. This witness shifted the injured person to the hospital. In cross-examination, this witness admitted that he does not know the number of the tractor or trolley which came from the opposite direction. This witness further admitted that he has not informed about the accident to his Depot nor has he lodged any police complaint about the accident. From the evidence of these two witnesses, it appears that the accident had occurred, due to dash of bus and the deceased had sustained injuries. Now the

question remains whether the said accident is caused due to sole negligence of deceased as observed by the Tribunal.

7. In my view, the eye-witness – Arjun Aiwale has stated that the deceased got injured as respondent No.2 suddenly took the bus on reverse side, due to which, the deceased fell down on the road and was dragged for some distance. The injuries sustained by the deceased which are mentioned in the postmortem reports are as under :

“injuries caused to lower side of waist, thigh region”.

These injuries show that these were caused due to dash of bus when deceased was on bicycle. There is no reason to disbelieve the evidence of PW-2- Shri Arjun Aiwale, who is eye witness of the incident, he has no reason to file false complaint against the respondent No.2. Moreover, the Respondent No.2 has not filed any report with the Depot or his superior officer. After lodging FIR also, the respondent No.2 had an opportunity to give an explanation about his innocence but he has not filed any report/counter report stating that the said accident had not occurred due to his negligence. It proves that the accident had occurred due

to the negligence of the respondent No.2. It is a settled principle of law that mere acquittal from the criminal trial cannot be a ground to absolve the driver from the liability under the provisions of the Motor Vehicles Act. From the evidence on record, it proves that the said accident had occurred due to negligence of the respondent No.2.

8. It is contention of learned counsel for Respondents that there was negligence of deceased too as he had not taken proper care when he had seen that bus is standing on the road. In my view, there was negligence on the part of deceased also. As the deceased was aware that the bus had stopped, he too should have taken proper care to stop at some distance from the bus but he did not take proper care, hence, there is contributory negligence of respondent No.2 and deceased in the said accident. Being driver of the bus, respondent No.2 should have taken proper care while taking reverse. Hence, I am fixing 75% liability on the respondent No.2, and 25% liability on the deceased.

9 The Tribunal has calculated the compensation but it has not been awarded. It has come on record that the deceased was serving as an boiler attendant in Vasantdada SSK Ltd. Sangli and he

was on permanent job as well as he had 2 and ½ acres of agricultural land, deceased was getting a salary of Rs.3354/- per month, after deduction of Rs. 40/- towards professional tax, it comes to Rs.3314/-. If it is multiplied by 12, it comes to Rs.39768/-. I am considering Rs.20,000/- amount as agricultural supervision cost, if it is added in Rs. 39768/-, it comes to Rs.59,768/-. It is the yearly income of the deceased. Out of Rs.59,768/- 1/3 amount of Rs.19,992/- is deducted for personal expenses, after deducting it, amount comes to Rs. 39,846/-. As the deceased was below 40 years age and he was permanent employee, 50% future prospects by way of increase in salary comes to Rs.59,769/- per year (Rs. 39,846 plus Rs.19,923/-). As per the view of the Hon'ble Apex Court in the case of **Magma General Insurance Co Ltd versus Nanu Ram, 2018 ACJ 2782 (SC)**, the claimants are entitled for consortium amount and amount of funeral expenses and loss of estate. Thus, the claimants are entitled for compensation as per the chart given below :

Deceased was aged 38 years, hence,	Rs.	8,96,535.00
multiplier is "15". 15 x 59,769.00		
Spousal consortium for applicant No.1- widow	Rs	40,000.00
Parental consortium for applicant No.2	Rs	40,000.00

– minor son

Parental consortium for applicant No.3 Rs. 40,000.00
– minor daughter

Loss of Estate with 10% Increase Rs. 16,500.00
from year 2017

Funeral Expenses Rs. 15000.00

Total Compensation Rs. 10,48,035.00

NFL compensation received **(less)** Rs. **50,000.00**

Total Compensation Rs. 9,98,035.00

Deduction of 25% towards contributory Rs. **2,49,509.00**
negligence of the deceased **(less)**

Total Rs. **7,48,509.00**

In view of the above calculations, the claimants are entitled for compensation of Rs.7,48,509/-.

10. I pass the following order :

1. The claimants are entitled for compensation of Rs.7,48,526/- @7.5 interest per annum from the date of filing of the claim petition till its realisation jointly and severally from the respondents.

2. The respondents are directed to deposit the compensation amount along with interest thereon within eight weeks after the receipt of this order before the Tribunal.
3. The claimants are permitted to withdraw the said amount along with accrued interest thereon.

The appeal is allowed in the above terms and disposed of.

11. Pending applications, if any, stand disposed of.

(S. G. DIGE, J.)