

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**FIRST APPEAL NO.107 OF 2022**

**Appellant** : **Maharashtra State Road Transport Corporation,**  
Through its Divisional Controller, Buldhana,  
Division Office, Malkapur Road, Buldhana,  
Tq. and Dist. Buldhana.

**-- Versus --**

**Respondents** : **1] Smt. Sonam Somnath Suradkar,**  
Aged 25 yrs. Occu. Household.

**2] Ku. Rashmi Somnath Suradkar,**  
Aged 7 yrs. Occu. Nil.

**3] Ku. Suhanandi Somnath Suradkar,**  
Aged 4 yrs. Occu. Nil.

2 & 3 are minor, through guardian mother  
Res. No.1

**4] Dajiba Kaluba Suradkar,**  
Aged 66 yrs. Occu. Mason.

**5] Sau. Vimlabai Dajiba Suradkar,**  
Aged 58 yrs. Occu. Household.

All R/o Shelgaon Atol, Tq. Chikhali,  
Dist. Buldhana.

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*Shri V.P. Panpalia, Advocate for the Appellant.*  
*Shri S.W. Sambre, Advocate for the Respondents.*

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**CORAM** : **M.S. KARNIK, J.**  
**DATE** : **13<sup>th</sup> APRIL, 2022.**

**ORAL JUDGMENT:-**

The challenge in this appeal is to a judgment and award dated 25/11/2019 made by the Motor Accident Claims Tribunal, Buldhana (hereinafter referred to as “the Tribunal” for short) in MACP No.20/2017, awarding a compensation of ₹12,04,000/- including NFL compensation along with interest at the rate of 7.5% per annum from the date of petition till realization of the amount from the appellant.

02] The brief facts leading to the filing of the claim petition before the Tribunal are thus :

At around 06:45 p.m. on 03/11/2016, deceased Manoj alias Somnath along with his brother Nitin and relative Gajanan Borde were returning from Deulgaon Raja on motorcycle No.MH-28/AR/3263. The accident in question took place on the Deulgaon–Chikhli Road in front of New Ashok Beer Bar in Andhera Shivar within the jurisdiction of Police Station, Andhera. Gajanan Borde was riding the motorcycle. The ST Bus belonging to the appellant-Maharashtra Road Transport Corporation (hereinafter referred to as ‘Corporation’ for short) came from the opposite side at a high speed and dashed the motorcycle. Deceased Manoj @

Somnath died on the spot. Somnath was working as a mason. He was then 25 years of age earning ₹600/- per day. Claimant No.1 is the wife, claimant Nos.2 and 3 are the minor daughters and claimant Nos.4 and 5 are the parents of deceased Somnath. They claimed compensation of ₹1,00,000/-.

03] The claim was opposed by the appellant-Corporation. The Corporation filed written statement at Exh.17. Claimant No.1-Smt. Sonam Suradkar examined herself at Exh.17. No evidence was led by the Corporation. The Tribunal framed the following issues and recorded the findings, as under :

| Sr.No. | Issues                                                                                                                                                                                                                                                                        | Findings |
|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| 1      | Do claimants prove that the deceased Somnath Dajiba Suradkar died in a motor vehicle accident occurred on 03/11/2016 at 06:45 p.m. on Deulgaon Raja-Chikhli road in Andhera Shivar?                                                                                           | Yes      |
| 2      | Do claimants prove that the above accident occurred due to rash and negligent manner and dash given by S.T. Bus No.Mh-40-AQ-6228 to the motorcycle No.MH-28-AR-3263 on which deceased was proceeding?                                                                         | Yes      |
| 3      | Does the opponent prove that the rider of motorcycle No.MH-28-AR-3263 was rash and negligent in driving the motorcycle; and as three persons were traveling on the motorcycle including deceased, the rider of motorcycle could not control it and gave dash to the S.T. Bus? | No       |

|   |                                                                                                                 |                                  |
|---|-----------------------------------------------------------------------------------------------------------------|----------------------------------|
| 4 | Are the claimants entitled for compensation and interest, what compensation and since when interest, from whom? | As per final order from opponent |
|---|-----------------------------------------------------------------------------------------------------------------|----------------------------------|

04] The Tribunal by its impugned judgment and order allowed the claim petition and directed the Corporation to pay the amount of compensation as per the award. Learned Counsel for the Corporation, assailing the judgment and order of the Tribunal, submitted that the order passed by the Tribunal is not supported by any evidence. He further submits that the motorcycle rider Gajanan did not suffer any major injury, which belies the case of the claimants that the bus was driven at a high speed in a rash and negligent manner. Even the third pillion rider Nitin, the brother of the deceased, did not suffer any major injuries. Somnath sustained head injury, which resulted in his death. He further submits that the claimants did not examine Gajanan and Nitin who are the eye witnesses, instead, claimant No.1 is examined, who is not even an eye witness to the accident in question. According to him, the findings of the Tribunal that the bus was being driven in a rash and negligent manner only on the basis of evidence of claimant No.1, who is not an eye witness, are perverse. Learned Counsel further submits that there were three persons on the motorcycle which would disentitle the claimants to contend that the bus was driven in a rash and negligent manner. According to him,

negligence if any, has to be attributed to three riders of the motorcycle who had consumed liquor. The only inference that can be drawn is that the accident occurred due to the fault of Gajanan. Learned Counsel further submits that the Tribunal was not justified in attributing the fault to the bus driver without the claimants impleading Gajanan and Nitin as party respondents to the claim petition. It is urged that the Tribunal committed an error in calculating the compensation, in that 1/4<sup>th</sup> amount towards personal expenses should have been first deducted from the yearly income of the deceased and thereafter further calculations regarding future prospects and the multiplier should have been taken into consideration.

05] Learned Counsel for the claimants, on the other hand, supported the order passed by the Tribunal and made his submissions on the lines of the findings recorded by the Tribunal.

06] The record and proceeding has been received. With the assistance of learned Counsel, I have perused the record and proceedings.

07] Heard learned Counsel for the parties. There is no dispute that Somnath died in the accident. Further more, there also does not appear to

be any dispute that there were three persons on the motorcycle, the deceased being one of them. The question is who is at fault and whether the ST Bus was being driven in a rash and negligent manner. Somnath died in the accident whereas Gajanan and Nitin suffered minor injuries. Only because Nitin and Gajanan suffered minor injuries in the accident is no ground to conclude that the bus was not being driven in a rash and negligent manner. It is pertinent to note that no evidence was led on behalf of the Corporation. As a result of the impact Somnath sustained head injury. Merely because Nitin or Gajanan is not examined will not defeat the claim petition of the claimants in the absence there being any evidence on behalf of the Corporation. It is material to note that the bus driver was not examined. An offence came to be registered against the bus driver for rash and negligent driving. There is no evidence to indicate that the rider of the motorcycle viz. Gajanan was in an intoxicated condition. The evidence of claimant No.1 cannot be said to be untrustworthy to defeat the claim.

08]           The Tribunal, in my opinion, is justified in observing that merely because three persons were riding on the motorcycle, without anything more, would not by itself be sufficient to hold that the motorcycle was being driven in a rash and negligent manner. Three persons riding a

motorcycle, without there being any material to support that they were doing so in a rash and negligent manner, would at the highest amount to contravention of the Motor Vehicles Act and the Rules framed thereunder. The spot-panchanama does not reveal the width of the road or the damaged condition of the vehicle. Moreover, deceased-Somnath was not the rider of the motorcycle. Furthermore, merely because Gajanan and Nitin are not impleaded as parties to the claim petition will not by itself be a reason to deprive the claimants from getting the compensation under the Motor Vehicles Act which is a beneficial piece of legislation, if otherwise the evidence on record is sufficient to infer rash and negligent driving on the part of the driver of the offending vehicle. Having regard to the materials on record, I have no hesitation in agreeing with the findings recorded by the Tribunal that Somnath died in a motor vehicular accident and that the claimants have proved that the accident occurred due to rash and negligent manner in which the ST Bus of the Corporation was driven.

09]            Learned Counsel for the appellant relied upon the decision of the Supreme Court in the case of Lakkamma and others vs. Regional Manager, United India Insurance Co. Ltd. and another – 2021(6)Mh.L.J.18 to contend that the calculations made by the Tribunal are not correct. The Tribunal has determined the compensation as under :

|    |                                                    |     |   |                 |
|----|----------------------------------------------------|-----|---|-----------------|
| a] | Yearly income of deceased (5000 x 12)              |     | ₹ | 60,000/-        |
| b] | 40% future prospects                               | (+) | ₹ | <u>24,000/-</u> |
|    |                                                    |     | ₹ | 84,000/-        |
| c] | 1/4 <sup>th</sup> amount towards personal expenses | (-) | ₹ | <u>21,000/-</u> |
|    |                                                    |     | ₹ | 63,000/-        |
| d] | Multiplier                                         | (x) |   | <u>18</u>       |
|    |                                                    |     |   | ₹11,34,000/-    |

In addition to above, the claimant No.1 is entitled to ₹40,000/- for loss of consortium and claimants are entitled ₹15,000/- for funeral expenses and ₹15,000/- for loss of income. Thus, the just and reasonable compensation comes to Rs.12,04,000/- (11,34,000 + 40,000 + 15,000 + 15,000) including NFL amount. The claimants are further entitled to interest @ 7.5% p.a. from the date of application till realization of amount.

10] The objection of the learned Counsel for the Corporation is that the 1/4<sup>th</sup> amount calculated towards the personal expenses should have been deducted in the first instance from the yearly income of the deceased and then the future prospects should have been added. This, according to him, would be the correct method in terms of the Supreme Court's decision in 'Lakkamma' (supra). What has been awarded by the Tribunal as compensation to the claimants is ₹12,04,000/- along with the interest at 7.5% p.a. Even if I am to accept the contention of the learned Counsel, the

difference in the compensation would be ₹1,51,000/-. I am not inclined to interfere. The Supreme Court in the case of 'Lakkamma' (supra) was considering a case where it held that the deduction on account of dependents should be  $1/4^{\text{th}}$  as the age of the son has not been disclosed and only three dependents have been taken into account because the son has attained maturity. Their Lordships held that maturity itself would not disentitle the son as it would depend what is the exact age of son. It is in that conspectus, Their Lordships calculated the amount admissible as it did not agree with the calculations filed by the insurance company. The calculations were arrived at in terms of the judgment in National Insurance Company Ltd. vs. Pranay Sethi & others (2017 16 SCC 680), as law has been settled therein.

11] In the present case, what is deducted is  $1/4^{\text{th}}$  amount towards personal expenses from the yearly income of the deceased and the amount towards future prospects. I do not find any reason to interfere with the calculations made by the Tribunal, as the decision relied by the learned Counsel for the Corporation does not support the submission made by learned Counsel that  $1/4^{\text{th}}$  amount towards personal expenses should have been deducted in the first place from the yearly income of the deceased and

thereafter add to it the amount under the head of future prospects.  
I, therefore, do not find any merit in the appeal. Hence, the appeal is  
dismissed with no order as to costs.

**(M.S. KARNIK, J.)**

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