

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

FIRST APPEAL NO.997 OF 2004

1. Madhukar s/o Mugaji Bhise
Age: 44 years, Occu: Agri.,
R/o: Talwat Borgaon, Tq. Georai,
Dist. Beed.

2. Satyabhamabai w/o Madhukar Bhise
Age: 42 years, Occu: Household,
R/o: 42 years, Occu: Household,
R/o: Talwat Borgaon, Tq. Georai,
Dist. Beed.

... Appellants
[Orig. Claimants]

Versus

. Maharashtra State Board Transport
Corporation, through: Deport,
Manager, Beed, Dist. Beed.

... Respondent
[Orig. Respondent]

...

Mr. Vivek Dhage, for the Appellants
Mr. A. B. Dhongade, Advocate for Respondent-sole

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 10.02.2023

PRONOUNCED ON : 20.02.2023

JUDGMENT :

1. The present appeal is filed under Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act' for short]. The appellants are the original claimants in Motor Accident Claim Petition

(MACP) No.236/2000 filed under Section 166 of the Act before the Motor Accident Claims Tribunal (MACT) at Beed. The Tribunal dismissed the claim petition vide judgment/award dated 23.03.2004.

2. On 19.06.2000, Sudhakar, son of the claimants was travelling in a Jeep bearing Registration No.MTP-6847. The MSRTC Bus bearing Registration No.MH20-D-3932 dashed on rear side of the Jeep. The Sudhakar suffered fatal injury in the said accident. The FIR had been lodged with Police Station, Georai on complaint given by one Kashinath Bhise, which attributes fault of the Bus driver. Accordingly, Crime No.64/2000 had been registered against the Bus driver. The spot panchnama was drawn which show condition of three vehicles involved in the that accident. Apart from MSRTC Bus and the Jeep, one more Jeep bearing Registration No.MH23-B-635 was also seen to be damaged.

3. The claimants filed MACP No.236/2000 under Section 166 of the Act seeking compensation of Rs.150,000/- against the MSRTC/owner of the Bus with contention that the Bus driver was the author of the said accident. They avers that deceased Sudhakar was 18 years of age and earning Rs.1500/- per month. They were dependent on his income.

4. The respondent/MSRTC opposed the claim petition contending that the Jeep No.MTP-6847 brushed to the Bus, then collided to another

Jeep MH23-B-635. The deceased was a passenger in the Jeep No.MTP-6847. They denied allegation of negligence on the part of the Bus driver. After hearing the parties, the Tribunal dismissed the claim petition observing that accident resulted because of negligence of the driver of Jeep No.MTP-8647 and no case of negligence could be made out against MSRTC Bus Driver.

5. I heard the learned Advocates appearing for respective parties, perused the record and proceeding of Tribunal.

6. The contents of the FIR as well as spot panchnama show that three vehicles involved in the accident were extensively damaged. The spot panchnama depicts position of the vehicles after the accident. The FIR had been lodged by an eye witness of accident. It states that the Bus collided to rear side, while jeep (MTP-8647) was taking a turn, as such Bus driver was negligent and responsible for accident. The spot panchnama shows that the Bus as well as the Jeep (MPT-8647) were facing towards North while standing on Western plank of the road. The third Jeep (MH23-B-655) was found on same side while facing towards South and all the three vehicles had suffered the extensive damage.

7. The Bus driver stepped into the witness box and deposed about the manner of the accident. As per his deposition, the Jeep No. MTP-

8647 came from Padalsingi side and scratched to his Bus and then dashed to another Jeep coming from the opposite side. However, looking to damage on front portion of the Bus as has been depicted in spot panchanama, his self-interested testimony is liable to be discarded being contrary to documentary evidence. The claimants relied on evidence of eye witness Babasaheb Gaikwad (CW-2). He deposed about negligence of Bus Driver. His testimony is challenged by respondent.

8. The evidence on record is not conclusive to hold particular Driver responsible for the accident. However, applying principle of *res ipsa liquitur*, it can be safely concluded that the Bus driver as well as drivers of the Jeeps have contributed in the cause of accident. The deceased being the occupant of the Jeep, the case in hand would be governed by the principles of composite negligence. The Supreme Court of India in the matter of **Khenyei Vs. New India Assurance Company Limited & Ors.** reported in **2015 (9) SCC 273** laid down as under:

“(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.”

9. In the present case, the claimants have chosen to prosecute their remedy under Section 166 of the Act seeking compensation from the respondent/MSRTC. Though the Bus driver has stepped into the witness box, his testimony is inconsistent with the contents of the FIR and the spot panchnama. Naturally, he would tend to defend himself from the liability. In that view of the matter, the contention of the respondent/MSRTC that the Bus driver has no contribution in the cause of accident cannot be accepted. The Tribunal has committed blatant error while recording the finding that the Bus driver was not at all responsible for the accident and consequently, dismissing the claim petition. The claimants are, therefore, entitled to raise claim for compensation from the respondent/MSRTC.

10. The claimants are the parents of deceased who was 18 years of age at the time of his death. They have pleaded that the deceased was earning Rs.1500/- per month and providing financial assistance to them. There is no difficulty in accepting the case of the claimants on this point. Even the Tribunal has observed that the estimated income of deceased can be safely assessed to Rs.50/- per day i.e. Rs.1500/- per month. The Supreme Court of India in the matter of **National Insurance Company Limited Vs. Pranay Sethi and Ors.** reported in (2017)16SC C 680 settled parameters for grant of compensation applying those parameters, the amount equal to 40% of his income needs to be added towards future

prospects. Since the deceased was Bachelor, 50% amount needs to be deducted towards his personal and living expenses. The multiplier of 18 would be applicable in the facts of the case. The claimants are therefore entitled to the compensation of Rs.2,26,800/- towards the loss of dependency. The claimants are also entitled for the compensation of Rs.30,000/- towards loss of estate and funeral expenses. As per law laid down by the Supreme Court of India in the matter of **Magma General Insurance Compant Limited Vs. Nanu Ram Alias Chuhru Ram & Ors.** reported in **(2018) 18 SCC 130**, the claimants being parents are entitled for loss of filial consortium to the tune of Rs.40,000/- each on account of death of their son.

11. In that view of the matter, the claimants are entitled for total compensation of Rs.3,36,800/- along with interest @ 6% per annum from the date of filing claim petition. Hence, I pass the following order: -

ORDER

- (i) The Appeal is allowed with proportionate costs.
- (ii) The judgment/award dated 23.03.2004, passed by the Motor Accident Claims Tribunal, Beed in Motor Accident Claim Petition No.236/2000 is quashed and set aside.
- (iii) The respondent/MSRTC shall pay the compensation of Rs.3,36,800/- to the claimants/appellants along with interest @ 6% per annum from the date of filing of the claim petition till realization of the award.

(iv) On deposit of compensation, the claimants would be entitled to withdraw the amount in equal proportion on payment of deficit court fees if any.

(v) Award be drawn accordingly.

(S. G. CHAPALGAONKAR, J.)

Sameer