

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

FIRST APPEAL NO. 2364 OF 2018

Maharashtra State Regional Transport
Corporation, through Divisional Controller,
MSRTC, Jalgaon Division,
Jalgaon.

.. Appellant

Versus

1. Vandana Subhash Ikhankar
Age : 46 years, Occu. : Household.
2. Rupali Subhash Ikhankar
Age : 31 years, Occu. : Household.
3. Kamal Chhagan Dusane
Age : 64 years, Occu. : Household.
4. Chhagan Ramdas Dusane
Age : 65 years, Occu. : Nil.

All R/o. : House No. 37, Balaji Peth,
Bharat Niwas, Asoda Bhadli Road,
Jalgaon, Tq. & Dist. Jalgaon.

.. Respondents

Mr. M. K. Goyanka, Advocate for the Appellant.
Mr. Yogesh M. Patil, Advocate for Respondent Nos. 1 to 4.

CORAM : KISHORE C. SANT, J.

DATED : 06th NOVEMBER, 2023.

P C. :-

. Heard learned advocates for the parties. Record and proceeding
is received.

2. This appeal arises out of the judgment and award dated 13.12.2017 passed by the learned Member, Motor Accident Claim Tribunal, Jalgaon in M.A.C.P. No. 242/2016 thereby partly allowing the application of the respondents. The appellant – M.S.R.T.C. is directed to pay to respondent Nos. 1 and 2/original applicant Nos. 1 and 2 compensation of Rs. 36,98,236/- (Rs. Thirty Six Lakh Ninety Eight Thousand Two Hundred Thirty Six only) inclusive of the amount of no fault liability. Rs. 10,00,000/- (Rs. Ten Lakh only) is directed to be invested in the name of respondent Nos. 1 and 2 respectively in fixed deposit in any nationalized bank for three (03) years and remaining amount to be paid to respondent Nos. 1 and 2.

3. The facts in short are that, deceased Lalit Subhash Ikhankar was driving a Jeep on 30.12.2015. He had taken the said vehicle at around 08.45 a.m. in the morning on Jawhar Alonda road. Near Jay Mata Di petrol pump at village Aunde at around 09.45 a.m. the bus from Vasai depo bearing registration No. MH-20-BL-0392 gave a dash. There was head on collision in the said accident. The deceased Lalit received injuries and he died on the spot. It is the case that the bus driver was driving the bus in negligent manner. He was overtaking a tempo and in that he came on wrong side of the road. Thus, it is stated that the deceased died only because of the rash and

negligent driving of the bus driver. Deceased was getting Rs. 24,000/- as a salary per month. There is no dispute about his income. The learned Tribunal on considering the documents such as panchanama and complaint held that there was negligence on the part of the S.T. bus driver and passed an award directing present appellant to pay the amount as directed.

4. It is the case of learned advocate for the appellant in this appeal that, since the accident was head on collision it was a case of contributory negligence. The respondents have failed to prove that the accident took place only because of the negligence on the part of a bus driver. His further submission is that the learned Court below has awarded future prospects of Rs. 6,52,800/-. He has assailed the order to the extent of grant of interest on the amount of future prospects from the date of application till date of award. He submits that the amount of future prospects is the amount which the deceased was expected to receive in future and thus, there is no question of granting interest on the amount which is to receive in future.

5. In support of his submissions learned advocate Mr. Goyanka for the appellant relied upon the judgments in the case of Bijoy Kumar Dugar Vs. Bidya Dhar Dutta and others reported in (2006) 3 SCC 242 and in the case of National Insurance Company Limited Vs. Mst. Aisha

Bano and ors. in Mac App No. 33/2022 passed by the High Court of Jammu & Kashmir and Ladakh at Srinagar.

6. In the case of **Bijoy Kumar Dugar** (supra), the Hon'ble Apex Court in paragraph No. 12 observed as under :

“12. Adverting to the next contention of the claimants, no doubt the High Court has not dealt with the point in issue. However, we have noticed the reasoning and finding of the MACT recorded under Issue No.2. It is the evidence of Rajesh Kumar Gupta-PW.2 who was travelling in the Maruti car along with the deceased Raj Kumar Dugar on the day of the accident that he also suffered some injuries in the said accident. He stated that while coming from Digboi, the Maruti car being driven by the deceased met with an accident at a place near Kharjan Pol. Before the accident, Raj Kumar Dugar noticed a passenger bus coming from the opposite direction and the movement of the bus was not normal as it was coming in a zigzag manner. The Maruti car being driven by the deceased Raj Kumar Dugar and the offending bus had a head-on collision. The MACT has not accepted the evidence of PW. 2 to prove that the driver of the offending bus was driving the vehicle in abnormal speed. If the bus was being driven by the driver abnormally in a zigzag manner, as PW. 2 wanted to believe the Court, it was, but natural, as a prudent man for the deceased to have taken due care and precaution to avoid head-on collision when he had already seen the bus from a long distance coming from the opposite direction. It was head-on collision in which both the vehicles were damaged and unfortunately, Raj Kumar Dugar died on the spot. The MACT, in our view, has rightly observed that had it been the knocking on one side of the car, the negligence or rashness could have been wholly fastened or attributable to the driver of the bus, but when the vehicles had a head-on collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident. The finding on this issue is a finding of fact and we do not find

any cogent and convincing reason to disagree with the well-reasoned order of the MACT on this point. The MACT has awarded interest at the rate of 10% per annum on the amount of compensation from the date of filing of the claim application till the date of payment. It is a discretionary relief granted by the MACT and, in our view, the discretion exercised by the MACT cannot be said to be inadequate and inappropriate.”

7. In that case, there was a head on collision accident. There was evidence brought on record of one Rajesh Kumar Gupta who noticed that the passenger bus coming from the opposite direction and the movement of the bus was not normal as it was coming in zigzag manner. It was held by the learned M.A.C.T. that there was a contributory negligence as it was expected of the driver of Maruti vehicle to take proper precaution to avoid head on collision in view of the fact the he had seen the bus coming in zigzag manner from opposite direction from a long distance. In that view of the matter, the High Court held that since there was a finding of fact recorded by the learned M.A.C.T. the said need not be interfered with. The Tribunal in that case found that there was no cogent and convincing reason to disagree with the well-reasoned order of the learned M.A.C.T. on that point. Looking to the facts of this case this Court finds that, in the judgment the learned M.A.C.T. has considered the panchanama and has specifically observed that from the Tyre marks it is seen that the bus

was totally on the wrong side holding the driver of the bus was coming from wrong side. This corroborates with other finding that the bus was trying to overtake one tempo and in that it has come on the wrong side.

8. In the case of National Insurance Company Limited (supra), the High Court of Jammu and Kashmir has observed that the interest on the future prospects need not be awarded as the deceased is to receive that income in future. The future prospects are given for entire future in lump-sum manner. The said judgment is based on the judgments reported in 2018 Supreme (Gau) 966 and 2019 Supreme (Gau) 507 and in that view the interest need not be paid on the amount which the deceased would not become entitled in future.

9. Learned advocate for respondent Nos. 1 to 4 submits that, learned Member, M.A.C.T. has rightly granted the amount by taking into consideration all the factors. The averments in the claim petition and in the evidence of respondent No. 1 would show that there is clear mention that the accident took place because of negligence on the part of bus driver. When it is the case of the appellant that there was contributory negligence, then it was for the appellant to lead evidence in that regard. No such evidence is laid by the appellant and therefore, now the ground cannot be raised. About the future prospects he submits that though the amount is granted towards future prospects the

claimants are entitled to receive on the date of filing an application. Delay may be caused in deciding the application and that should not cause prejudice to the rights of the claimants. The claimants are deprived of income from the date of death of earning member of family since they are suffering from the date of accident and for that purpose the interest is awarded.

10. This Court has considered the record. It is seen from the application and the affidavit of respondent No. 1 that there is clear averment in the petition that the accident took place because of negligence of the bus driver. In the affidavit also this fact is stated by the respondent No. 1. In the cross-examination, it could not make out the case of contributory negligence. When it was a case of the appellant that there was contributory negligence, then it was for the appellant to produce evidence to that effect. The appellant could have examined bus driver to show that there was contributory negligence, however, the appellant has not examined any other person or driver of the bus. From the spot panchanama it is seen that, the jeep driver had applied break showing that he tried to avoid the accident. There is no case made out that from long distance the driving of bus was noticed. On the contrary, it is the case that the bus driver was trying to overtake a tempo in that he came from wrong side. So,

naturally from long distance the bus could not have been seen because of tempo. It would thus find that, since learned M.A.C.T. has recorded the finding of fact, there is no convincing reason to set aside the said fact. In the case of Bijoy Kumar Dugar (supra), there was finding recorded by the learned M.A.C.T. about contributory negligence and that finding was not disturbed by the superior Court. In this case also this Court finds that, unless some convincing reason is made out, there is no reason to set aside the finding of the fact recorded by the learned M.A.C.T.

11. Coming to the interest part on future prospects this Court finds that, though the income is to be received in the future still the claimants are entitled to receive the said in view of unfortunate death on immediately happening of event. Delay in the procedure cannot be attributed to the claimants. The claimants should not be made to suffer for delay in deciding claim. Secondly, as it is the future prospects have considered only notionally which in fact may be even more than those are presumed. It is rightly granted from the date of application. Though learned advocate Mr. Goyanka for the appellant relied upon the judgment in the case of National Insurance Company Limited (supra) of the High Court of Jammun and Kashmir this Court finds that, it would be too technical an approach. The Court need not adopt such technical

approach. The benefits are already given.

12. This Court finds that, there is no ground made out for the interference in the impugned judgment. Therefore, the first appeal is dismissed. No order as to costs.

13. Needless to say that, the remaining amount would be paid to the claimants – respondent Nos. 1 and 2 along with accrued interest.

(KISHORE C. SANT, J.)

PS.B.