

- 06 Ramdas Sahebrao Gambhire,
age: major, Occ: Service,
R/o Nirmal Nagar, Shankar
Society, Near Pipeline Road,
Ahmednagar.
- 07 Director of Horticulture,
Maharashtra State,

Near Agriculture College,
Shivaji Nagar, Pune.

08 Rambhau Chaure,
age: major, Occ: S. T. Driver,
R/o At Post: Khandala,
Tq. Beed, District Beed.

Respondents

Mr. Manoj D. Shinde, advocate holding for Mr. M. K. Goyanka,
advocate for the Appellant.

Mr. N. C. Garud, advocate for Respondents No. 1 to 5.

Mr. Indrajit Kharat, advocate holding for Mr. V. S. Bedre,
advocate for Respondent No. 6.

Respondent No.7 served.

Mr. A. D. Wange, advocate for Respondent No.8.

CORAM : SANDIPKUMAR C. MORE, J.

Reserved on : 28th March, 2023.

Pronounced on : 28th April, 2023.

JUDGMENT :

1 The appellant-MSRTC, who is original Respondent No.4 in Motor Accident Claims Petition No. 1401 of 1999, has challenged the judgment and award dated 26.10.2004, passed by the learned Member, Motor Accident Claims Tribunal, Ahmednagar (hereinafter referred to as “the learned Tribunal”) in the aforesaid Claim Petition, only because the learned Tribunal has held the appellant responsible for payment of

compensation to Respondents No.1 to 5 – original claimants to the extent of 30% on account of contributory negligence.

2 Present Respondents No.1 to 5 – original claimants are the dependents of deceased Sudhakar Dattatraya Supekar, whereas, Respondent No.6 is the driver of Jeep belonging to Respondent No.7. Respondent No.8 is the formal party, who is driver of S. T. bus owned by the appellant-MSRTC.

3 The claimants had filed aforesaid Claim Petition claiming that deceased Sudhakar Dattatraya Supekar was working as Sub Divisional Agriculture Officer in Agriculture Department at Ahmednagar. On 20.06.1999, he was going to Sangamner via Ahmednagar-Manmad road on Government duty by Government Jeep bearing Registration No. MH-12-W-4809. However, at about 08.30 a.m, in Dehere Shivar, one ST bus bearing Registration No. MH-20-D-3080 came from opposite direction in high speed and there was head on collision between the aforesaid Jeep and the ST bus and in

that accident, Sudhakar sustained severe injuries and died on the spot. The Claim Petition was filed by Respondents No.1 to 5 seeking compensation of Rs.32,72,000/-. However, the learned Tribunal, after conducting trial and considering the material on record, awarded an amount of Rs.15,29,000/- as just and fair compensation along with interest @ 9% p.a. from the date of Claim Petition till its realisation. The learned Tribunal has also shared liability of paying compensation upon Respondents No.6 and 7 to the extent of 70% and upon present appellant and Respondent No.8 to the extent of 30% of the total compensation. Thus, the appellant-MSRTC, being aggrieved by the liability to pay compensation to the extent of 30% of the total compensation, has filed this appeal.

4 The learned Counsel for the appellant submits that the learned Tribunal has miserably failed in observing that the ST bus and its driver had contributed in the occurrence of accident to the extent of 30% despite the fact that charge sheet, in respect of the accident, was filed only against the driver of the Jeep owned by present Respondent

No.7, who, in fact, had gave dash to the ST bus in attempting to overtake another vehicle by going to the extreme left side of the said bus. He pointed out that the learned Tribunal, though observed as to how the driver of the ST bus had tried to avoid the accident, but wrongly saddled liability to pay 30% of the total compensation without there being any fault on the part of the ST bus driver. He relied on the following judgment:

- (1) **Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and another**, AIR 2003 SC 4182;

5 On the contrary, learned Counsel for Respondents No.1 to 5- original claimants has supported the judgment of the learned Tribunal and submitted that the learned Tribunal has rightly apportioned the liability to pay the compensation between appellant-MSRTC and Respondents No.6 and 7. According to him, there is no point in exonerating the MSRTC from paying the compensation, which is only to the extent of 30% of the total compensation, In support of his

submissions, he relied on the following judgments:

(A) **Oriental Insurance Company Ltd., Nanded Vs. Habib Khaled Habib Mohammad and others**, 2020 (6) MH.L.J. 214.

6 On the other hand, learned Counsel for Respondents No.6 and 7 i.e. owner and driver of the Jeep owned by Horticulture Department of Government of Maharashtra has also supported the impugned judgment and award and submitted that there is no point in reversing the finding recorded by the learned Tribunal at this belated stage.

7 It would not be out of place to mention here that registration of the appeal against the present judgment, filed by Respondents No.6 and 7 is refused by this Court since the said respondents could not establish sufficient cause for condoning delay in filing the said appeal.

8 Heard rival submissions and also perused the

entire record and proceedings of original Claim Petition along with the impugned judgment.

9 The appeal is filed by the appellant-MSRTC only to the limited extent of challenging the liability saddled upon it of paying 30% of the total compensation. Therefore, the only question, before this Court, is as to whether the ST bus involved in the accident and its driver, had contributed to the occurrence of the accident.

10 It is significant to note that the quantum of compensation awarded by the learned Tribunal is not disputed. Further, it is also not in dispute that the charge sheet in respect of the accident was filed only against Respondent No.6 i.e. the driver of the Jeep and no offence was registered against Respondent No.8 i.e. driver of the ST bus. The contents of the First Information Report at Exhibit-47 clearly indicates that though Respondent No.6 – driver of the Jeep had raised a grievance that due to the water on the road, his jeep slipped and went to the wrong side of the road

and one ST bus coming from opposite direction collided with his Jeep, but the complainant Police Head Constable Akolkar, who is also Witness No.3 for the claimants, had found that Respondent No.6 – driver of the Jeep had in fact drove the vehicle negligently and went to the wrong side of the road and gave dash to the bus to the extreme left side and caused the accident. Admittedly, offence has been registered against Respondent No.6 – Jeep driver under Sections 304 (A), 279, 337, 338, 427 of the Indian Penal Code and under Section 184 of the Motor Vehicles Act. Even the spot panchanama Exhibit-46 also indicates that the offending Jeep owned by Respondent No.7 and being driven by Respondent No.6 had gone to the wrong side of the road and gave dash to the extreme left side of the ST bus coming from the opposite direction.

11 Not only this, but PHC Akolkar, who had lodged the FIR after making due inquiry, has been examined by the claimants and he has proved contents of FIR Exhibit-47 and spot panchanama Exhibit-46. He has specifically deposed

that it was transpired to him during the course of investigation, from the statements of witnesses, that the accident had taken place due to rash and negligent driving of driver of the Jeep only. Further, in the cross examination itself, he has stated that he did not find tyre marks of the Jeep on the spot. He has specifically denied the suggestion that the accident took place due to fault of ST bus driver when the said ST bus was overtaking another truck. Thus, not a single whisper is there in the evidence of PHC Akolkar, who had lodged the FIR that the ST bus driver was at fault. Though it is claimed by Respondents No.1 to 5 – original claimants that the accident took place due to rash and negligent driving of driver of the Jeep as also driver of the ST bus and Respondent No.1-claimant deposed so in her evidence, but she was not the eye witness of the accident and, therefore, not much credit can be given to her evidence of attributing negligence to the driver of the ST bus. Therefore, evidence of PHC Akolkar has gained too much credit since he had investigated the crime in respect of the accident and came to the conclusion that the driver of the Jeep was at

fault.

12 Even the learned Tribunal has also recorded certain findings in the impugned judgment itself as regards negligence. It is observed by the learned Tribunal that the driver of the Jeep had given evidence wherein he had raised that the tyres of the Jeep became slippery due to overuse and, therefore, at the time of accident, the jeep slipped and the accident took place. However, the learned Tribunal itself has discarded such evidence of the Jeep driver for want of specific pleadings. Further, the learned Tribunal has also negatived the theory of the driver of the Jeep that one truck was going ahead of his Jeep, which suddenly stopped and, therefore, he had to apply urgent breaks, but due to slippery tyres of the Jeep and rains the Jeep slipped from the road and at that time the ST bus coming from opposite direction in fast speed, collided with his Jeep, despite there being signal from him by switching the headlights on and off.

13 Further, the learned Tribunal, by considering the

spot panchanama on record, has also observed that there was no head on collision between the ST bus and the Jeep. On the contrary, it was observed that there was a brushing collision and the left side of the Jeep had collided with extreme left side of the ST bus. It has also been observed by the learned Tribunal that for the ST bus, being a bigger vehicle, it was not advisable for its driver to apply emergency breaks for the safety of the passengers, otherwise, the ST bus would have over-turned. It is extremely important to note that the learned Tribunal has further gone to the extent of observing that there were skidding marks up to the distance of 45 feet to show that the ST driver had made an attempt to avoid brushing collision. Thus, even by observing all the aforesaid facts, which indicate that the ST bus driver was not at all at any fault, the learned Tribunal has saddled liability of paying 30% of total compensation on the appellant-MSRTC. Most surprisingly, the learned Tribunal has also observed that had the opponent no.1 i.e. present respondent no.6 – driver of the Jeep followed the rules and taken precaution, the accident definitely would not have occurred at all.

14 Thus, despite such observations, the act of the Tribunal holding the ST driver liable for causing the accident to the extent of 30% cannot be justified at all. Even the FIR and spot panchanama at Exhibit-47 and 46, coupled with the evidence of PHC Akolkar, clearly indicate that the accident had taken place only due to the negligence of Respondent No.6 driver of the Jeep.

15 The learned Counsel for the appellant-MSRTC has heavily relied on the judgment of the Hon'ble Apex Court in the case of **Municipal Corporation of Great Bombay** (*supra*), wherein it is observed thus:

“The act or omission amounting to want of ordinary care or in defiance of duty or obligation on the part of the complaining party which conjointly with the other party's negligence was the proximate cause of the accident renders it one to be the result of contributory negligence.”

16 It is extremely important to note that negligence varies under different conditions and to determine the same, so many aspects are required to be taken into consideration which includes the facts and circumstances of each case. As such, there cannot be any straight jacket formula to ascertain negligence of the drivers whose respective vehicles are involved in the accident. It has to be ascertained from the circumstances on record.

17 The learned Counsel for Respondents No.1 to 5 – original claimants has relied upon the judgment of this Court in the case of **Oriental Insurance Co. Ltd.** (*supra*), wherein this Court, while determining the contributory negligence in respect of the accident between Jeep and Truck, has attributed negligence to the extent of 40% to the driver of the truck and 60% to the driver of the Jeep. Learned Counsel for Respondents No.1 to 5 – original claimants has vehemently argued that the facts of aforesaid case are identical to the facts of the instant case wherein same theory has been raised by the appellant that the driver of the Jeep, in attempting to

overtake the truck in front of it, gave dash to another truck coming from opposite direction. Though the similar theory has been raised in the instant case as raised in the case cited (*supra*), but it is extremely important to note that in the aforesaid case, relied upon by the claimants, there was an offence registered in respect of the accident against drivers of both the vehicles, which is not the case in the present matter. In this case, what had revealed after thorough investigation, that only the driver of the Jeep was negligent.

18 Thus, considering all these aspects and the observations of the learned Tribunal in respect of negligence, it is found that the learned Tribunal has definitely erred in attributing negligence to the appellant-MSRTC to the extent of 30%. On the contrary, all the circumstances on the record, coupled with evidence of complainant PHC Akolkar, clearly demonstrate that the driver of the ST bus was not at all negligent, but in fact, he had tried his level best to avoid the accident. As such, I find substance in the submissions of respective learned Counsel for Respondents No.1 to 7.

Therefore, the finding of the learned Tribunal to the extent of attributing negligence to the driver of the ST bus, though only to the extent of 30%, definitely needs to be set aside.

19 Hence, following order is passed:

(i) The appeal is hereby allowed and the judgment and award dated 26.10.2004, passed by the learned Member, Motor Accident Claims Tribunal, Ahmednagar in MACP No. 1401 of 1999, is set aside only to the extent of directing present appellant-MSRTC to pay 30% of the total compensation to Respondents no.1 to 5 – original claimants.

(ii) On the contrary, Respondents No.6 and 7 are held liable for paying entire compensation to Respondents No.1 to 5 – original claimants, as awarded by the learned Tribunal under the same apportionment.

(iii) Respondents No. 6 and 7 shall pay jointly and severally the remaining 30% of the awarded amount along

with interest @ 9% p.a. from the date of Claim Petition till its realisation to Respondents No.1 to 5-original claimants since they have already satisfied the award by paying 70% of the total compensation amount, as directed by the learned Tribunal.

(iv) The appellant-MSRTC is permitted to withdraw the amount of compensation inclusive of statutory deposit amount, which has been deposited by them at the time of filing of this appeal along with interest accrued thereon till date.

(v) The award be modified accordingly.

(vi) Pending Civil Application, if any, stands disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

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