

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1091 OF 2018

The General Manager. Bombay
Electric Supply And Transport
Undertaking

...Appellant

V/s.

Smt.Milly Chirag Udani And Ors.

...Respondents

Mr. Karishma Jhaveri i/b. Navdeep Vora Associates for the
Appellant.

Mr. T. J. Mendon for Respondent Nos. 1 to 3.

CORAM : RAJESH S. PATIL, J.

DATED : 8th NOVEMBER, 2023

P.C.:

1. This First Appeal is filed under Section 173 of the MACT Act by the Appellant BEST Undertaking, challenging the judgment and award dated 26 August 2016 passed by the MACT, Mumbai in MACP No.2205 of 2011, on the ground of Quantum and on the ground of Negligence.

2. On 19 August 2011 one Mr.Chirag Udani was riding his motorcycle along with his friend Virendra Desai. They were proceeding on New Link road, Ponmudi, Lingeshwar Alem Mandir, Anna Wadi Andheri (W), Mumbai. As their motorcycle reached at

Ponmudi, BEST Bus bearing MH-01 LA-5297 coming from the same direction, dashed with them and due to this impact, Chirag Udani and his friend fell down on the road and the rear wheel of BEST Bus ran over the head of the Chirag Udani.

3. Pillion rider Virendra Desai, who sustained minor injuries, lodged a police complaint to the Amboli Police Station at Andheri against the driver of the BEST bus. Mr. Chirag Udani was declared dead, when he was taken to hospital (for short 'the deceased').

4. Legal heirs of the deceased filed claim Petition for a sum of Rs.35,00,000/- with 18% interest p.a before the MACT, Mumbai.

5. BEST, the opposite party appeared in the matter and filed their written statement, thereby denying the claim of the Claimant. They Further stated that it was a negligence of the deceased who slipped over the mud mixed with sand on the road as it was raining that time.

6. Issues were framed by the MACT and thereafter evidence was lead by the parties. For the Claimants, the Claimant No.1 stepped into the witness box as witness No.1, thereafter the

pillion rider Mr. Virendra Desai gave evidence on behalf of the Claimants as witness No.2 and Mr. Mahendra Ghosalkar, Manager of the Company in which the deceased was working, lead evidence as witness No.3 on behalf of the Claimants. On behalf of the BEST, only the driver of the offending vehicle stepped into the witness box.

7. MACT Court after hearing the parties, on the basis of issue framed answered in affirmative the issue No.1 which reads as under :-

Sr. Nos.	Issues	Findings
1	1 Whether the applicants prove that Late Chirag Jaywant Udani died in a motor vehicle accident due to the rash and negligent driving by the driver of BEST Bus No.MH-01-LA-5297 ?	In the affirmative.
2	Whether the applicants are entitled for compensation? If yes, what amount?	As per final

8. As regards issue No.2 i.e. the entitlement of Claimant for compensation, the MACT Court has fixed the compensation at Rs.33,60,544/- to be awarded to the Applicant along with interest at the rate of Rs.9% p.a.

9. BEST Undertaking, being dissatisfied with the judgment and award dated 26 August 2016, has filed the present

First Appeal.

10. Mrs. Jhaveri appeared on behalf of the BEST Undertaking and made her submission.

(i) Mrs. Jhaveri submitted that the negligence was not on the part of the driver of the BEST Bus, it was total negligence on the part of the deceased who was trying to over take to the BEST Bus from left hand side and while doing so due to mud mixed with sand, he slipped and came under the left rear wheel of the offending BEST Bus. Mrs. Jhaveri further submitted that the driver of the BEST Bus was driving Bus very cautiously taking into consideration the overall condition of road.

(ii) Mrs. Jhaveri further submitted that if the BEST Bus would have dashed the motorcycle of the deceased, the deceased would have been thrown away and in no circumstances the deceased could have come in contact with the left rear tyre of the BEST Bus.

(iii) Mrs. Jhaveri further submitted that driver of the BEST Bus was examined by the opponent BEST Undertaking and he has given his evidence to the same effect, there was no negligence on his part.

(iv) Mrs. Jhaveri further submitted that as far as quantum is concerned, the age of the deceased at the time of accident was 35 years and 10 months, therefore, ideally the deceased should have been considered under the age group of 36-40 as per the judgment of SC in Sarla Verma. Mrs.Jhaveri further submitted that the witness No.3 of the Claimant has given a very casual evidence and has failed to produce any documents to show that the deceased at the relevant time was earning Rs.19,500/- as salary.

(v) To buttress her submission Mrs. Jhaveri relied upon the judgment of Sarla Verma, of the Supreme Court.

(vi) Judgment of Punjab and Haryana High Court in the case of Oriental Insurance Company Limited V/s. Suman and Ors. Reported in MANU/PH/1967/2022, and she relied upon the judgment of Single Judge Bench of this Court in Regional Manager, National Insurance Company Limited v/s. Satyapraksh Rajpur and

Ors. reported in MANU/H/0640/2021.

(vii) Ms. Jhaveri therefore submitted that the impugned award passed by the MACT should be set aside and the present First Appeal be allowed.

11. On the other hand Mr. Mendon learned counsel appearing on behalf of the Claimant submitted that the MACT Court has recorded that the negligence was totally on the part of the offending BEST Bus driver. The BEST Bus was a heavy vehicle who should have taken care while driving on a public road. According to Mr. Mendon the offending driver of the BEST Bus tried to take his vehicle towards left, and as deceased was on the left hand side, who had no space, due to truck being parked on both sides of road, unfortunately the deceased after the dash given by the offending BEST Bus fell down and rear left rear tyre of the BEST Bus ran over his head.

12. Mr. Mendon further submitted that the Applicants have examined Witness No.2, i.e., the pillion rider of the motorcycle which was driven by the deceased and the opponent were not able to shake of the evidence of pillion rider.

13. Mr. Mendon further submitted that the negligence was duly proved from the side of Claimant and the same has been held in the correct way by the MACT.

14. Mr. Mendon, further submitted that as regards the quantum the Claimants have examined the Manager of the M/s. Krishna Enterprises, in which the deceased was working at the relevant time. The salary slip of the deceased was produced on record, so also Form No.16 from ROC was produced to prove the salary of the deceased.

15. Mr.Mendon further submitted that therefore the quantum is rightly calculated taking into consideration, the judgment of the Supreme Court in Sarla Varma and hence there is no need to disturb the finding recorded by the MACT.

16. Mr. Mendon also referred to the judgment of Sarla Varma passed by the Supreme Court, so also the judgment of Supreme Court in Yerramma and others v/s. G. Krishnamurthy & Anr. reported in 2014 ACJ 2161.

17. Mr. Mendon also referred to the Division Bench judgment of this Court passed in New India Assurance Company Limited v/s. Alpa Rajesh Shah and others, reported in 2014 ACJ 1747, he also referred to the judgment of Division Bench of this Court in National Insurance Company Limited v/s. Ms. Vaishali Harish Devare & Ors, passed in First Appeal No.1068 of 2012, and

also the judgment of the Supreme Court passed in Ms. Vaishali Devare's matter.

18. Mr. Mendon further submitted that the First Appeal should be dismissed with heavy cost.

ANALYSIS AND CONCLUSION

19. The Claimants in this proceedings have not come before the Court challenging the quantum granted by the MACT Court. It is only the opponent who have challenged the impugned award on the basis of its negligence and quantum.

NEGLIGENCE

20. To prove negligence the Claimants have examined Claimant No.1 who is the wife of the deceased and also the eye witness who was the pillion rider traveling along with the deceased on the unfortunate day when the accident took place. The pillion rider has lead his evidence narrated whole facts how the accident took place. He was cross-examined by the Advocate on behalf of the opponent. However, in the cross examination nothing material, could be produced by the Respondent to show, that there was no negligence on the part of the driver of offending

vehicle. So also in the evidence, the Claimant have produced on record FIR, (Exhibit-18) Panchnama Exhibit (19), the said two documents also prove that the accident had happened due to the negligence on the part of the driver of the offending vehicle.

21. The driver of the offending vehicle was examined by the opponents, who had mentioned that there was no negligence on his part. However, he has mentioned that he did not know that there was an accident and the deceased had come under rear wheel of his bus. However, the driver has stated that the deceased had slipped and fallen down due to water and mud on the road. There was an FIR lodged against the driver of the offending vehicle, so also departmental enquiry was held against him. However, he was exonerated from the said case and was acquitted from the criminal case. The MACT has considered all the evidence on record including the fact that the driver was exonerated from the departmental enquiry and acquitted from the criminal case. The MACT held that acquittal from the criminal case will have no bearing on the issue whether the driver of the vehicle was negligent or not. The MACT, according to me has rightly held taking into consideration the documents on record and evidence of

eye witness that the negligence was on the part of the driver of the offending vehicle. Therefore, as far as negligence is concerned, I hold that it was the driver of the offending vehicle, who was negligent and rash due to which the deceased lost his life.

QUANTUM

22. As regards quantum the claimants have examined the manager of M/s. Krishna Enterprises where the deceased was working. They have also produced on record the salary certificate (Exhibit-25) and Form No.16 (Exhibit-26), copy of salary ledger account (exhibit-27). All the said documents have considered by the MACT so also the evidence given by wife of the deceased and the evidence given by the Manager to arrive at the net salary of the deceased. As regards the age of the deceased as per the postmortem report, FIR, the age of the deceased is considered as 35 years. Accordingly, as per the ratio laid down in the case of Sarla Verma, the MACT has applied the multiplier of 16. The MACT Court has awarded consortium of Rs.1,00,000/-. Ideally the consortium should have been Rs.40,000/- per claimant and 10% raise every three years after the 2017 as per the judgment of Magma General Insurance Company Limited V/s. Nanu Ram Alias

Chuhru Ram & Ors. Therefore, in the present proceeding as of today the consortium amount should have been of Rs.1,45,00/- . The MACT is considered the consortium amount as Rs.1,00,000/- . However, the MACT Court had considered lost of estate of Rs. 25,000/-, love and affection Rs.30,000/- funeral expenses of Rs.25,000/- . As per the latest judgment of National Insurance Company Limited V/s. Pranay Sethi and Ors. The amount of funeral expenses and loss of estate should be Rs.15,000/- per head with addition of 10% from 2017 after every three years. Therefore, in the present proceedings the funeral expenses and loss of estate should be Rs.18,000/- per head. And there could not be any more expenses to be awarded towards love and affection, which was granted at Rs.30,000/- therefore, after deducting and adding the over all claim compensation will come to Rs.33,60,544/- .

23. As regards the argument of learned counsel for the Appellant that the age of the deceased should come under the bracket of 36 to 40. According to me, the said issue has been rightly answered by the Division Bench of this Court and confirmed by the Supreme Court in the case Ms. Vaishali Devare (supra) and in the judgment of Alpa Rajesh Shah (supra).

24. Therefore, the quantum has rightly calculated by the MACT Court.

25. There is no merit in the argument of the learned counsel for the Appellant. Therefore, the present Appeal is dismissed. No cost.

(RAJESH S. PATIL, J.)