



(1)

38fa2456.21

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

38 FIRST APPEAL NO. 2456 OF 2021

Maharashtra State Road Transport
Corporation Through Its
Divisional Controller,
Divisional Office, Jalna Road,
Beed, Tq. & Dist. Beed

...APPELLANT

VERSUS

1. Sonali W/o. Satish Ghumre,
Age-22 years, Occu- Household,
R/o. Kuslamb, Tq. Patoda,
Dist. Beed,
Now At Abangali Pimple, Tq. Georai,
Dist. Beed

...RESPONDENTS

2. Rajendra S/o. Kachru Thosar,
Age-Major, Occu- Service,
R/o. Ukhanda, Tq. Patoda,
Dist. Beed

3. Rambhau S/o. Dnyanoba Ghumre,
Age-Major, Occu-Agri,
R/o. Kuslamb, Tq. Patoda,
Dist. Beed (Father of deceased)

4. Taramati S/o. Rambhau Ghumre,
Age-major, Occu-Household,
R/o. As above (Mother of deceased)

Mr. A. D. Wange, Advocate for the appellant

Mr. S. R. Shirsat, Advocate for the respondent Nos. 1,3 and 4

Mr. S. E. Shekade, Advocate for respondent No.2

CORAM : KISHORE C. SANT, J.

DATE : 14th JUNE, 2024

JUDGMENT:

1. Heard the learned advocates for the parties.
2. The appeal is filed by the MSRTC challenging the judgment and award passed by the learned MACT, Beed allowing the MACP No. 190/2017 by the judgment dated 05-12-2019. The claim was filed by widow of the deceased Satish who died in an accident.
3. The facts in short are as below:
 - a] The deceased was riding on the motor cycle. He was proceeding from Jamkhed alongwith his friend Gulab Pawar on motorcycle bearing No. MH-23-GS-4151 on Beed road. He met with an accident with ST bus bearing registration No.MH-20-BL-2821 which was coming from the opposite side. It is the case of the claimants that the bus driver was negligent in driving the

bus. He was overtaking a tractor on the road. While overtaking the tractor, he came on the extreme right side of the road and this is how the accident occurred. She, therefore, filed claim petition.

4. It is the defense of the appellant MSRTC that deceased was in drunken condition while driving the motorcycle. He suddenly came in front of the bus and this is how the accident took place. Therefore, appellant is not liable to pay any compensation. The claimants in support of her case examined 2 witnesses including herself and pillion rider riding on the motorcycle to prove her case. The appellant also examined 2 witnesses i.e. bus driver and one passenger from the bus Babanrao Tipale who was sitting in the bus just on the seat behind the bus driver.

5. Learned Member of the Tribunal accepted the evidence of the claimants. He held that it was sheer negligence of the bus driver alone which caused an accident. So far as the

contributory negligence is concerned, the court recorded that there is no evidence to show that the deceased was in drunken condition and had allowed the claim. The court also awarded 40% amount towards future prospects. Considering the age of the deceased as 22 years, the court allowed the claim by directing the appellant to pay the amount to the claimants and respondent Nos. 3 and 4 to pay an amount of Rs.10,78,000/- including the amount towards no fault liability.

6. Learned advocate for the appellant vehemently argued the appeal on two counts. Firstly; there is contributory negligence and secondly that the court has awarded interest @ 8% per annum instead of 6% per annum without any justifiable reason. No reasoning is given for awarding interest at the higher rate.

7. Learned advocate for the respondents/ original claimants opposed the appeal stating that there is no case made out of contributory negligence. There is no evidence to show

that the deceased was in drunken condition. He submits that even the interest awarded cannot be said to be higher at the rate.

8. This court has gone through the evidence of witnesses examined by the claimants. Claimants have proved the income of the deceased and that he was earning member of the family. She deposed about as to how she received the knowledge about the accident. After the accident took place, she was informed by the witness No.2 Jeevan Ghumre who was riding as a pillion rider on the motorcycle behind the motorcycle of the deceased proceeding towards Jamkhed. This is how he saw the incident and filed a complaint with the police.

9. PW-2 Jeevan, who lodged the FIR stated that he was following the deceased on his motorcycle. When they reached near Rameshwar Petrol Pump, he saw the offending bus was coming in high speed on the wrong side and overtaking a tractor gave dash to the motorcycle. Bus came on the extreme right side

of the road and stopped in ditch on the right side. From the cross-examination of both these witnesses nothing is brought on record to disbelieve their version.

10. This court has no difficulty in accepting the versions of these two witnesses. The court finds no error committed by learned tribunal in accepting the evidence of these two witnesses.

11. So far as the evidence of witnesses for MSRTC is concerned, respondent examined Rajendra i.e. driver of the offending vehicle who filed an affidavit stating that the deceased suddenly came on the road in the middle of the road and dashed the ST bus. In the cross-examination, it is put to him that he was overtaking a tractor. He accepted that his bus went on the right side of the road and that he is facing the prosecution for rash and negligent driving. So far as the evidence of witness No.2 for the appellant is concerned, he has stated on the lines of the driver. He was a person who was sitting behind the seat of the

bus driver. In his cross-examination this witness also accepted that the ST bus went on the extreme right side of the road after the accident.

12. Learned trial court considering the evidence held that there is nothing on record to show that the deceased was in drunken condition. In the postmortem report there is nothing to indicate that deceased was in drunken condition. This court thus finds that trial court has rightly appreciated the evidence. No perversity is pointed out in the judgment of the trial court. This court thus, clearly finds that there is no case made out for contributory negligence. So far as interest is concerned, this court finds that while awarding the interest at the rate of 8% the court has not given any reasoning as to why the interest is awarded at the rate of 8% instead of 6%. Thus, this court finds that the judgment of the trial court needs to be modified only to the extent of interest part. First appeal is thus, partly allowed. Hence, the following order:-

ORDER

- a] The appeal is partly allowed.
- b] Clause 2 of the operative part of the order dated 05-12-2019 be modified and read as under:

Respondent Nos. 1 and 2 do pay Rs.10,28,000/- jointly and severally to the claimant, exclusive of the amount of 'no fault liability' with interest @ 6% p.a. from the date of institution of the petition i.e. 24-08-2017 till the date of payment of the said amount into the court.

- c] Award be modified accordingly.
- d] Office to disburse the amount to the claimants in the proportion given in the order passed by the learned tribunal.
- e] Amount of interest of 2% be refunded to the appellant MSRTC.

(9)

38fa2456.21

f] Needless to say that amount of no fault liability is already paid to the claimants and said amount be deducted from the amount of Rs.10,28,000/-

[KISHORE C. SANT, J.]

VishalK/38fa2456.21