

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****FIRST APPEAL NO. 631 OF 2023**

Maharashtra State Road Transport Corporation
Through the Divisional Manager,
MSRTC Divisional Office, Solapur.
Having office at Budhavar Peth, Solapur-413 002
(S.T.Bus No. MH-12/EF-6480)

... Appellant

Versus

1. Balika Rajaram Mehtre
Age – 52 years, Occ – Household,
Residing at Shahu Nagar, Behind Talathi Office,
Majalgaon, District – Beed.
At present Residing at H.No.27/5, Murarji Peth
Near Niralevasti Samaj Mandir, Solapur.
 2. Bajaj Allianz General Insurance Corporation Ltd.
The Branch Manager,
Near City Hospital, Old Employment Chowk,
Solapur
(Ins. Company of Car No. MH-40/AC-2554)
 3. Anita @ Supriya Sachin Mehtre
Age – 26 years, Occ-Housewife
Residing at Shahu Nagar, behind Talathi Office,
Majalgaon, District – Beed.
At present Residing at H.No.27/5, Murarji Peth
Near Niralevasti Samaj Mandir, Solapur.
 4. Raghunath Gulabrao Mane
Age – 59 years, Occ – Driver,
Residing at Dahivadi, S.T.D Depot, Dahivadi
Taluka and District Satara
- ... Respondents

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Mr. Amit Gharte a/w. Mr. Ansari Faiyaz Ahmed, Advocate for Appellant.
Mr. R. S. Alange, Advocate for Respondent Nos. 1 and 3.
Mr. S.S.Diwan, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 23rd JANUARY, 2024.

JUDGMENT :

1. The issue involved in this appeal is deduction of amount for contributory negligence of driver.
2. It is contention of learned counsel for the appellant that the Tribunal has fixed 60% liability on the appellant and 40% on the driver of offending vehicle in which claimants were traveling. While calculating compensation, the Tribunal has not deducted 40% amount from the compensation of the claimant, which is not proper, hence requested to allow the appeal.
3. It is contention of learned counsel for the respondent Nos. 1 and 3/claimants that claimants were occupants in the offending vehicle so no question of deduction of 40% amount arises in respect of the claimants and requested to dismiss the appeal.
4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, - (for short “**the Tribunal**”). While deciding the claim petition filed by the claimants the Tribunal has observed that accident was caused due to 60% negligence of the bus driver and 40% negligence of the car driver in which the claimants were travelling. It is contention of learned counsel for the appellant that the Tribunal should have deducted 40% amount from compensation of the claimants as 40% negligence is fixed on car driver. In my view, the

claimants were the occupants in the car, so no question of deduction of 40% amount for negligence of car driver arises. The appeal is devoid of merit and I pass following order:

ORDER

- (i) The appeal is dismissed. No order as to cost.
- (ii) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- (iii) The statutory amount along with interest accrued thereon be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.

(SHIVKUMAR DIGE, J.)