

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1679 OF 2005  
IN  
M.A.C.T. APPLICATION NO.845 OF 1998

**Rajesh Shantilal Sejpal (deleted),**  
since deceased through LR's:

- 1A. Maya Rajesh Sejpal,**  
Age 47 years, Occupation Housewife,
- 1B. Ketan Rajesh Sejpal,**  
Age 23 years, Occupation Student,
- 1C. Karan Rajesh Sejpal,**  
Age 16 years Occupation Student,  
Being a minor through his mother and  
Natural guardian Appellant No.1A  
Residing at Flat No.42, Ground Floor,  
Parel Co-Op. Hsg. Bldg. No.3,  
Behind Oshiwara Weigh Bridge,  
Opp. Ram Mandir, Off. S. V. Road,  
Goregaon, Mumbai – 400 104.

**..Appellants**

**Versus**

**Maharashtra State Road Transport  
Corporation, Vahatuk Bhavan,  
Bellasis Road,  
Mumbai – 400 009.**

**..Respondent  
(Orig. Opp. Party No.1)**

**AND**

**Raghunandan Das Mathur,**  
6<sup>th</sup> Sunset Heights 59 Pali Hill,  
Bandra (West),  
**Mumbai – 400 009.**

**..Respondent  
(Orig. Opp. Party No.2)**

**AND**

**The New India Assurance Co. Ltd.**  
Having their office at M. G. Road,  
Fort,

**Mumbai – 400 023.**

**..Respondent  
(Orig. Insurers)**

---

Mr. Lancelot Lewis for the Appellants.

Mr. Devendranath S. Joshi a/w. Mr. Pradyumna Thakurdesai for Respondent No.3.

None for MSRTC.

---

**CORAM : A. S. CHANDURKAR &  
JITENDRA JAIN, JJ.**

**Date on which the Arguments were heard : 21<sup>st</sup> March 2024**

**Date on which the Judgment is pronounced : 4<sup>th</sup> April 2024**

**Judgment (Per Jitendra Jain, J.) :-**

1. This first appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short “M. V. Act”) by one Mr. Rajesh S. Shejpal, who met with an accident and subsequently on his death, his legal heirs were brought on record. The present appeal challenges an order passed by the Motor Accident Claim Tribunal, Mumbai (for short “Tribunal”) dated 28<sup>th</sup> January 2005 in Application No.845 of 1998, whereby the Tribunal dismissed the Application on the ground that drivers of both the vehicles were not negligent and by applying process of elimination the accident occurred by act of God.

2. **Brief facts are as under:-**

(i) On 14<sup>th</sup> November 1997, at about 5:15 p.m., a Maruti Car bearing Registration No.MH-02-N-2364 was being driven by the original

claimant – Rajesh Shantilal Sejpal. In the said car, there were three other occupants when the said car met with an accident in view of a dash with a bus owned by the Maharashtra State Road Transport Corporation bearing No.MH-12-8852. As a result of this accident, all the co-passengers of the said car including the original claimant who was driving the car suffered injuries. Separate Claim Petitions came to be filed by the four injured persons. Kamlesh Navinchandra Patel filed Application No.571 of 1998 which came to be decided on 14<sup>th</sup> September 2010 and he was awarded compensation of an amount of Rs.2,93,800/- after holding it to be a case of composite negligence. The Insurance Company challenged the aforesaid Award by filing First Appeal No.795 of 2013, which came to be dismissed on 6<sup>th</sup> August 2013 with a finding that the negligence of the drivers of both the vehicles can be attributed to 50% each. Another co-passenger – Abhay Dattatray Deo filed Application No.572 of 1998 and on 15<sup>th</sup> September 2010, the Claims Tribunal allowed his claim granting compensation of Rs.1,58,600/- treating it to be a case of composite negligence. This Award has attained finality. The third co-passenger – Hiten Nandlal Damani, who was injured filed Application No.574 of 1998. The Claims Tribunal on 15<sup>th</sup> September 2010 awarded compensation of Rs.1,70,300/- treating it to be a case of composite negligence. This

Award has also attained finality.

- (ii) Insofar as the Original Appellant in the present case is concerned, he has been denied compensation by the Claims Tribunal by recording a finding that neither the car driver nor the bus driver were negligent and that the accident seem to have occurred due to “act of God”. It is in these facts that we are considering this Appeal that was filed by the Original Appellant and is now being prosecuted by his legal heirs.
- (iii) The Original Appellant was initially taken to Sion Hospital and, thereafter, shifted to P.D. Hinduja Hospital for a period of almost 5 ½ months. In 2000, again he was admitted for the injuries arising on account of the aforesaid accident. The hospital expenses have been reimbursed to the Original Appellant by his employer. However, even post discharge from Hinduja Hospital from 1998 till the date he passed away, he was bed ridden and had to be attended by a nurse and was on a special diet.
- (iv) The Original Appellant made an application under Section 166 of the M.V. Act seeking compensation of Rs.1 Crore which was subsequently raised to Rs.10 Crores. The Tribunal recorded the evidence of the Original Appellant, driver of the Maruti Car who also happened to be the friend of Original Appellant, driver of S.T.

Bus, etc. and computed following compensation but did not grant the same since the Tribunal gave a finding that neither the driver of the car nor the driver of the S.T. Bus was negligent but the accident occurred on account of an act of God.

| <b>Sr.</b> | <b>Nature of claim</b>                                         | <b>Amount</b>         |
|------------|----------------------------------------------------------------|-----------------------|
| (i)        | Towards dependency                                             | Rs.29,79,232/-        |
| (ii)       | Future medical expenses and home attendant charges.            | Rs.2,00,000/-         |
| (iii)      | Pain and suffering, loss of amenities and expectation of life. | Rs.1,00,000/-         |
|            | <b>Total</b>                                                   | <b>Rs.32,79,232/-</b> |

3. Being aggrieved by the aforesaid order of the Tribunal, the Original Appellant challenged the order by filing an appeal to this Court under Section 173 of the M.V. Act. The Appellant in the present appeal has pressed for compensation of Rs.10 Crores.

4. We have heard the learned counsel for the Appellant and Respondent No.3-Insurance Company and with their assistance have perused the petition and the records of the Tribunal. Although Respondent No.1 was earlier represented by the Advocate, but has subsequently chosen not to attend. The last appearance of Respondent No.1 was on 8<sup>th</sup> December 2023. Thereafter, the appeal was listed on 19<sup>th</sup> January 2024, 29<sup>th</sup> January 2024, 20<sup>th</sup> February 2024, but there was no appearance of Respondent No.1. On 28<sup>th</sup> February 2024,

Respondent No.1 appeared. Thereafter on 14<sup>th</sup> March 2024, 18<sup>th</sup> March 2024, 20<sup>th</sup> March 2024 and 21<sup>st</sup> March 2024 again there was no appearance of Respondent No.1. We therefore, propose to proceed with the appeal in the absence of Respondent No.1 who has chosen not to attend. The following points arise for our determination.

| Sr.   | Points for determination                                                                                                                                                      | Decision       |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| (i)   | Whether the Tribunal was justified in coming to a conclusion that the accident occurred due to an act of God and the Tribunal was justified in not awarding any compensation? | No.            |
| (ii)  | What is the extent of negligence attributable to the drivers of each vehicle in case of composite negligence?                                                                 | 50:50          |
| (iii) | If answer to (i) is in negative then what should be just compensation to be awarded to the Appellant?                                                                         | Rs.40,35,630/- |
| (iv)  | What should be the rate of interest to be awarded on above compensation?                                                                                                      | 6% p.a.        |

We now propose to deal with each of the aforesaid points hereinafter.

5. **Point for determination (i):-** Whether the Tribunal was justified in coming to a conclusion that the accident occurred due to an act of God and the Tribunal was justified in not awarding any compensation?

6. The Tribunal in paragraph 47 came to a conclusion that neither the car driver or the bus driver was negligent and, therefore, by

process of elimination, the Tribunal comes to a conclusion that the accident occurred due to an act of God. In our view, the finding and reasoning are erroneous. Admittedly, there was head on collision between S.T. Bus and Maruti Car, both being driven by respective drivers. Admittedly, when two cars driven by drivers collides against each other, it cannot said that neither or either of them was negligent. The negligence has to be on the part of one or both the drivers. Therefore, the reasoning adopted by the Tribunal cannot be sustained. An act of God would mean, something which is not in the control of the human being, whereas in the present case, there has been admittedly head on collision between two vehicles driven by the drivers when there is no averment on weather being foggy or other wise and, therefore, it cannot be a case of an act of God and the principle of elimination applied by the Tribunal is erroneous.

7. It is also important to note that in the Maruti Car in which the Original Appellant was travelling, there were other passengers including the person driving the Maruti Car. These passengers had also filed applications before the Tribunal under Section 166 of the M. V. Act, the Tribunal vide its order dated 14<sup>th</sup> September 2010 has come to a conclusion that the accident was a case of composite negligence and both the driver of the bus and the car were responsible for contributory

negligence. These orders of the Tribunal in the case of other co-passengers was rendered post the impugned order which is before us. The Respondent No.3-Insurance Company has accepted the orders passed by the Tribunal in the case of co-passengers, thereby accepting the said finding and rightly so, the accident occurred due to composite negligence and, therefore, the finding of the Tribunal impugned before us that the accident occurred on account of act of God cannot be upheld. We appreciate the stand of Respondent No.3-Insurance Company that in the facts of the present case, the accident cannot be attributed to act of God. Therefore, the finding rendered by the Tribunal that the accident occurred on account of an act of God is erroneous.

8. **Point for determination (ii):-** What is the extent of negligence attributable to the drivers of each vehicle in case of composite negligence?

9. Now the question arises as to the proportion attributable towards the negligence of each of the driver which resulted into the accident since this will be necessary for determination of compensation to be payable by Respondent No.3-Insurance Company with whom Maruti Car was insured. To adjudicate this issue, it is relevant to examine the evidence recorded before the Tribunal.

10. In the evidence of the Original Appellant, it is stated that the accident did not take place on account of rash and negligent driving by the driver of the Maruti Car. He further deposed that the driver of the car was not all at fault but he could have been at fault, meaning thereby that to some extent, the driver of the car was also at a fault. In the evidence of the driver of the Maruti Car, he has stated that it is not correct to say that there is no negligence on the part of the S.T. Bus. The driver also denied that he was driving with excessive speed and further denied that the accident took place because of his negligent driving. The evidence of S.T. Bus driver was also recorded, wherein in his examination-in-chief, he stated that the accident took place because of the negligence on the part of the driver of the Maruti Car but in his cross-examination, he admitted that the accident took place not because of his negligence only, thereby implying that he too was at a fault. The evidence one of the co-passengers of the Maruti Car Mr. Abhay Deo denied any act of negligence on the part of the driver of the Maruti Car for the cause of the accident. In the criminal proceedings against the driver of the S.T. Bus, the said driver was acquitted because the prosecution could not prove their case by leading evidence. The two sides of the road was divided by a white flat line and there were no barricades dividing the road. In our view and after examining the evidence on record, it cannot be conclusively said as to who exactly is

solely responsible for the accident. Both the drivers have in their cross-examination admitted that the negligence cannot be attributable solely to one of them. In such a case, it is difficult to precisely come to a conclusion as to what extent each one of them is liable and this Court is certainly not an expert on determining such attribution. Therefore, after examining the evidence, it would be just and fair that both the drivers are held to be equally liable for the accident. It is also important to note that the collision is between the small Maruti Car and the big S.T. Bus and when such two types of uneven vehicles collide, the weaker and smaller one certainly would face more damage than the higher and the bigger one. However, it would be fair to attribute the negligence to both the drivers in equally proportion.

**11.** It is also important to note that in the case of co-passengers of Maruti Car separate applications were filed before the Tribunal. The Tribunal after holding it to be a case of composite negligence awarded the compensation which was challenged by filing First Appeal and in the said order dismissing the appeal on 6<sup>th</sup> August 2013 a finding was rendered that negligence of the drivers of both the vehicles can be attributed to 50%. Similarly, in the case of other two co-passengers the finding of composite negligence has attained finality. Therefore, in the present appeal before us, composite negligence can be attributed equally

to both the drivers.

**12. Point for determination (iii):-** If answer to (i) is in negative then what should be just compensation to be awarded to the Appellant?

**13. Just and fair compensation:-** The Original Appellant was only 36 years old when the accident occurred (date of accident 14<sup>th</sup> November 1997 minus date of birth i.e. 22<sup>nd</sup> July 1962). The Original Appellant was a management graduate and was working as the Deputy Finance Manager with Reliance Industries Ltd. As per the last TDS Certificate for the financial year 1997-98 issued by Reliance Industries Limited, his gross salary was Rs.2,15,602/- and after reducing exemption under Section 10 of the Income Tax Act, 1961 and standard deduction under Section 16 of the Income Tax Act, 1961, his taxable salary income was Rs.1,86,202/- for the financial year 1997-98 and on the said amount after reducing rebate under Section 88, Tax Deducted at Source was Rs.24,014/-. In our view, therefore, for arriving at loss of income for the purpose of just and fair compensation under the Motor Vehicles Act, 1988, gross salary is to be considered since the notional deduction under Section 16 and exemption under Section 10 and rebate under Section 88 is only for the purpose of arriving at taxable income and, therefore, the reduction on account of Sections 10, 16 and 88 of the Income Tax Act is not to be considered for the purpose of Motor

Vehicles Act, 1988. Therefore, the gross salary for the purpose of Motor Vehicles Act, 1988 is considered at Rs.2,15,162/-, being the last drawn salary as per the TDS Certificate issued by Reliance Industries Limited, employer of the Appellant.

14. To the aforesaid salary, an upward adjustment is required for future prospects as per the decision in the case of *Sarla Verma Vs. Delhi Transport Corporation & Anr.*<sup>1</sup>. The Appellant being a management graduate and having worked with India's one of the top most corporate certainly had bright prospects. As per paragraph 24 of *Sarla Verma's* case, if the deceased is below 40 years then an addition of 50% of actual salary should be considered towards future prospects. The Appellant before us was only 36 years of age when accident occurred and, therefore, as per paragraph 24 of the *Sarla Verma's* case, 50% of salary is considered towards future prospects and same works out to Rs.1,07,801/- (2,15,601 ÷ 2).

15. From the aforesaid amount of gross salary + future prospects, the Appellant would be required to pay tax, if he had survived and earned the said income. Income Tax is levied on individuals on slab basis which are divided into three slabs, the higher slab being taxed at approximately 30%. However, while applying the rate of the highest

---

<sup>1</sup> (2009) 6 SCC 121

slab, the tax calculated on the portion of the income of earlier slabs are reduced. Therefore, the effective tax rate is not 30% on the total income, but it is much less. The individual also gets the benefit of investments made in various tax saving schemes which also goes on to reduce the final tax payment. Therefore, what is to be considered for the purpose of our calculation is effective average rate. It is also important to note that the trend of the Government is to reduce the tax rates more particularly for the individuals. In the instant case before us as per the TDS Certificate issued for the financial year 1997-98, on the gross salary of Rs.2,16,202/-, the tax payable was only Rs.24,014/-, which works out to 11% only. Therefore, looking at the trend of reducing the tax rates by the Government in successive budgets, 10% of the gross salary + future prospects can be considered towards payment of tax.

16. If the Appellant had survived and not met with an accident then he would have spent about  $1/3^{\text{rd}}$  of the salary received post tax towards his and family's personal expenses. Therefore,  $1/3^{\text{rd}}$  is considered towards personal expenses of the Appellant and his family members.

17. Now we come to the multiplier to be applied to the amount arrived at after reducing tax and personal expenses. As per the decision in the case of *Sarla Verma (supra)*, if the age of the deceased is between

36 to 40 years, multiplier of 15 is to be considered.

**18.** The Appellant post the accident was bed ridden and had to be cared continuously by nursing staff and was on a special diet. The Appellant before the Tribunal in its application for enhancement of the claim has claimed Rs.5,40,000/- towards nursing charges and Rs.3,60,000/- towards special diet. The Appellant had to take the service of physio-therapy on account of injuries arisen and for which the claim of Rs.1,40,000/- is made in the said application. In our view, these are the expenses which are incurred on day to day basis and it would not be appropriate to expect the bills to be retained and produced of these expenses in the facts of the present case. There is no dispute that the Appellant had suffered severe injuries which ultimately lead to his death after suffering for almost 4 to 5 years. Therefore, in our view, to call for strict evidence of these expenses on the facts of the present case would not be appropriate. Therefore, on proximate basis although the total of the said expenses is Rs.12,44,000/-, we propose to grant sum of Rs.10,00,000/- towards the same.

**19.** The Tribunal has arrived at pain and suffering, loss of amenities and expectation of life at Rs.1,00,000/-. In addition to the said figure, we propose to grant Rs.25,000/- towards the funeral expenses.

20. Therefore, the total compensation which the Appellant would be entitled to is as under:-

| Particulars                                    | Amount in Rs. |
|------------------------------------------------|---------------|
| Gross salary (A)                               | 2,15,602      |
| Plus 50% future prospects (B)                  | 1,07,801      |
| Total of A+B (C)                               | 3,23,403      |
| Less: Tax 10% (D)                              | 32,340        |
| Net of tax (E)-(C)-(D)                         | 2,91,063      |
| Less : Personal Expenses 1/3 <sup>rd</sup> (F) | 97,021        |
| Balance post personal expenses (G)<br>(E)-(F)  | 1,94,042      |
| Multiplier (H)                                 | X 15          |
| Loss of dependency (I)=HXG                     | 29,10,630     |
| Nursing, Diet, Physio (J)                      | 10,00,000     |
| Pain and suffering, funeral etc. (K)           | 1,25,000      |
| Total (L) = I+J+K                              | 40,35,630     |

21. Now we propose to deal with the compensation that will be payable by Respondent No.1-State Road Transport Corporation and Respondent No.3-Insurance Company. Respondent No.1 is the owner of the ST Bus which collided with the Maruti Car. We have already observed above that drivers of both the vehicles were equally responsible and negligent for the accident. Under Section 168 of the M.V. Act, the Tribunal can award compensation and specify the amount which shall be paid by the Insurer or owner or driver of the vehicle involved in the accident or by all or any of them. In our view, since the

drivers of both the vehicles are equally responsible, Rs.20,17,815/- will have be borne by Respondent No.1-Maharashtra State Road Transport Corporation Limited and balance 50% by Respondent No.3. Our views on apportionment of compensation between Respondent No.1 and Respondent No.3 is based on provisions of Section 168 of the M.V. Act and following decisions:

*“(i) Khenyei Vs. New India Assurance Company Ltd. & Ors.”<sup>2</sup>*

*“(ii) U. P. State Road Transport Corporation Vs. Rajani & Ors.”<sup>3</sup>*

*“(iii) National Insurance Co. Ltd. Vs. Deepali Pal & Ors.”<sup>4</sup>*

**22. Point for determination IV:-** What should be the rate of interest to be awarded on above compensation ?

**23.** The Tribunal in its order although did not grant interest because of dismissal of the application, has however observed that if they were to grant interest, same would be 6% per annum from the date of the application. We propose to accept the same rate of interest to be paid by Respondent No.3-Insurance Company and Respondent No.1. Maharashtra State Road Transport Corporation Limited from the date of the application up to the date of actual payment.

---

<sup>2</sup> (2015) 9 SCC 273

<sup>3</sup> 2007 (2) TN MAC 313 (DB) (All.)

<sup>4</sup> 2015 SCC OnLine All 9610

24. In view of above, appeal is allowed in terms of following order:-

**ORDER**

- (i) In view of above, the order of the Tribunal refusing to grant compensation is quashed and set aside order.
- (ii) The Respondent No.3-Insurance Company to pay compensation to the Appellant of Rs.20,17,815/- along with interest at 6% per annum from 3<sup>rd</sup> March 1998 to the date of payment within a period of eight weeks from today.
- (iii) Respondent No.1-Maharashtra State Road Transport Corporation Limited is directed to pay compensation to the Appellant of Rs.20,17,815/- along with interest at 6% per annum from 3<sup>rd</sup> March 1998 to the date of payment within a period of eight weeks from today.
- (iv) The parties shall bear their own costs.

(JITENDRA JAIN, J.)

(A. S. CHANDURKAR, J.)