

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1036 OF 2022

**Maharashtra State Regional Transport }
Corporation, Nashik Division, }
Thr. Its Divisional Controller, N.D. Patel }
Road, Shingada Talao, Nashik } ...Appellant**

Versus

NILAM
SANTOSH
KAMBLE

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**1. Smt. Dipali vinay Khairnar }
Age-27 years, Occ. Household }
2. Sureskha Bhaskar Khairnar }
Age-60 years, Occ. Household }
3. Hardik Vinay Khairnar }
Age-1, Occ : Nil }
All R/o C/o. Subhash Nathuram Shinde, }
N.42/C.C.1/24/6, Trimurti Chowk, Near }
Swadhyay Kendra, Nashik } ...Respondents**

Mr.Nitesh V. Bhutekar, for the Appellant.
Mr.Rajan S. Pawar, for Respondent Nos.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th JANUARY 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal is contributory
negligence.

2. It is contention of the learned counsel for the Appellant that, the offending bus dashed against the stationed tempo which was near the divider of the road. The accident occurred due to sole negligence of the tempo driver, but the Tribunal has not considered this fact. The learned counsel further submitted that, while considering the income of the deceased, the Tribunal has not deducted the allowances and on that basis compensation is awarded, which is not proper. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimants that, the deceased was traveling as a passenger in the offending bus of the Appellant. The offence was registered against the driver of the offending bus, the said offence was registered after investigation by the Police Authority. The eye witnesses has stated that the accident occurred due to negligence of the driver of offending bus. The learned counsel further submitted that, the annual income of deceased was Rs.33,600/- per month. The Tribunal after deducting allowance has considered his income at Rs.30,859/- which is proper and no

interference is required in it.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Nashik.

5. It is Claimant's case that, when deceased was traveling in the offending bus the driver of the offending bus gave dash to the stationed tempo. Due to said dash, the bus was completely torn. The police, after investigation filed FIR against the driver of the offending bus. The Police papers shows that police recorded the statements of passengers present in the offending bus. They have stated that the accident occurred due to sole negligence of the driver of the offending bus. To prove his defense, the driver of offending bus examined himself. He has stated that accident occurred due to negligence of tempo driver. In my view, the deceased was the passenger in the offending bus and offence was registered against the driver of the offending bus. It was burden on the Appellant to take action against the driver of the tempo, if it was wrongly stationed on road. The passengers cannot be forced to take action against the driver of the tempo.

Moreover, offence was registered against the driver of offending bus, as the deceased was passenger in bus and he had paid the fair for traveling in the offending bus. Hence, I do not see merit in the contention of the learned counsel for the Appellant that, accident occurred due to contributory negligence of driver of tempo.

6. The Appellant has disputed income of deceased. While dealing with this issue, the Tribunal has observed that, the documents produced on record shows that, the income of deceased was Rs.4,03,200/- per year, after deducting employee's Provident Fund and Gratuity and other allowances the Tribunal has considered monthly income of deceased at Rs.30,859/-. I do not find any infirmity in it.

7. In view of above, I pass following order.

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The Claimant's are permitted to withdraw amount deposited by the Appellant along with accrued interest thereon.

- (iii) The statutory amount alongwith interest be transferred to the Tribunal. The parties are at liberty to withdraw it, as per rule.
- (iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)