

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

FIRST APPEAL NO.744 OF 2022

Maharashtra State Road Transport Corporation,	}	
Thr. Its Controller, Sangli Division, Near	}	
S.T. Stand, Sangli	}	...Appellant

Versus

1. Vikas Sudam Kurade	}	
Age-36 years, Occ : Labour	}	

2. Swapnil Vikas Kurade	}	
Age-8 years, Occ : Nil	}	

3. Sanket Vikas Kurade	}	
Age-6 years Occ : Nil	}	

4. Shalan Sudam Kurade	}	
Age-52 years, Occ : Household	}	

5. Sudam Appa Kurade	}	
Age-56 years, Occ : Nil	}	
All R/at Near Swami Samarth Mandir,	}	
Krishna Ghat, Miraj, Taluka-Miraj, District-	}	
Sangli.	}	

6. Mahadev Maruti Chougule	}	
Age-46 years, Occ : Driver,	}	
R/at Gundewai, Taluka-Miraj, District-	}	
Sangli.	}	Respondents

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Mr.Nitesh V. Bhutekar a/w Mr.Prathamesh P. Mandlik and
Mr.Karan Singh Bhadaria, for the Appellant.
Mr.Kuldeep U. Nikam, for Respondent Nos.1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd APRIL 2024

ORAL JUDGMENT :-

1. The issue involved in this Appeal is accident occurred due to contributory negligence of the deceased.

2. It is contention of learned counsel for the Appellant-Corporation that, the accident occurred due to negligence/contributory negligence of the deceased, but this fact is not considered by the Tribunal. The learned counsel further submitted that no blood stains of the deceased were appearing on the tin of the offending bus. Moreover, the accident occurred due to sole negligence of the rider of the scooty motorcycle as sand particles were appearing on the road. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, the deceased was pillion rider on

scooty motorcycle, so no question of his contributory negligence arises. The learned counsel further submitted that the Tribunal has awarded consortium amount for three Claimants only and two Claimant's remained, it be awarded.

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

5. It is Claimant's case that on 4th April 2017 at about 10.30 a.m. the deceased Hema was pillion rider on the two wheeler scooty. Her friend Renu Galatage, was riding the motorcycle. When they reached Ganpati Temple at Laxmi Market, Miraj, one ST bus bearing No.MH-14-BT-1089 came from opposite side in fast speed and dashed to their scooty motorcycle from front side. The ST bus dragged the two wheeler upto 10 feet. The deceased sustained multiple grievous injuries on her body and died on the spot. The offence was registered against the driver of the offending bus. Admittedly, deceased was pillion rider on the motorcycle, hence, no question of his contributory negligence arises.

6. To prove the negligence of driver of offending bus the Claimant's have examined Renu Galatage, rider of the scooty at Exhibit-23. She has stated that the accident occurred due to sole negligence of the driver of the offending bus. In his defense the driver of the bus Mahadev Chougule, has examined himself he has stated that some construction work was going on the road and bricks and sands were scattered on the road. When he was proceeding in his bus on that road the scooty motorcycle came from other side and slipped on the sand and fell on the road. His bus was stopped on one place. The accident occurred due to sole negligence of the rider of scooty motorcycle. In cross-examination he has admitted that he ply the bus on Kurnjwar, Miraj root and he has to complete one round within 45 minutes and if the time is short they drive bus fast on empty road. He further admitted that he has not reported the Police that accident occurred due to negligence of the rider of the scooty motorcycle nor he had given any written complaint about it to his superior.

7. While dealing with the issue of negligence the Tribunal has observed that in spot panchnamma it is not

mentioned that construction material or sand were scattered on the road. Moreover, in spot panchnamma it is mentioned that driver side tin was coming out from the said bus and the colour of that part was removed. It shows that bus had given dash to the scooty motorcycle. Moreover, motorcycle was dragged for 10 feet. It shows that bus was in high and exclusive speed.

8. In my view, driver had not lodged any complaint to the police that accident occurred due to rider of the scooty motorcycle nor he informed superior about it. Hence, I do not see merit in the contention that accident occurred due to negligence of rider of the scooty motorcycle. The Tribunal has awarded consortium amount for three Claimant's only. There are five Claimant's. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*¹, each claimant is entitled for Rs.48,000/- as consortium amount. The two Claimants are entitled for consortium amount of Rs.96,000/-.

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

1 2018 ACJ 2782 (SC)

ORDER

- (i) The Appeal is dismissed.
- (ii) The Claimant is entitled for enhanced amount of Rs.96,000/- @ 7.5% interest per annum from date of the filing of the Claim Petition till realization of the amount.
- (iii) The Respondent-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within 8 weeks after receipt of this order.
- (iv) The Claimant is permitted to withdraw the deposited amount alongwith interest.
- (v) The statutory amount be transferred to the Tribunal, Sangli along with interest. The parties are at liberty to withdraw it.
- (vi) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)