



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.180 OF 2024

APPELLANT : **Magma HDI General Insurance**
(Ori. Respondent 3) **Company Ltd.**, through its Divisional
Manager, Office at 81, Hill Road,
Nagpur.

..VERSUS..

RESPONDENTS : 1 **Smt. Varsha Santosh Chavan,**
(Ori. Claimants) age 35 years, Occ: Household
(On R.A.)

2 **Prithviraj Santosh Chavan,**
Age 12 years, Occ: Nil, through natural
guardian respondent 1-Mother.

3 **Bebitai Sahebrao Chavan,**
age 55 years, Occ: Household.

All are R/o. Shendola (Bk.) Tq. Tiwsa,
District: Amravati

3A **Sahebrao Gangaram Chavan (Dead)**

(Ori. Respondent 1) 4 **Deorao Dhonduji Nemale,**
(on R.A.) age Adult, Occ: Driver of Tipper, R/o
near Mehul Talkies, Shivaji Ward, Arvi,
Tq. Arvi, Dist. Wardha

(Ori. Respondent 2) 5 **Sanjay Chandrakant Thakur,**
(on R.A.) age Adult, Occ: Owner of Tipper, R/o
Ghate Shastri Ward, Arvi, Tq. Arvi,
Dist. Wardha.

Shri R. D. Bhuibhar, Advocate for Appellant.

Mr P. R. Agrawal, Advocate a/b Ms A. R. Sharma, Advocate for Respondent Nos.1
to 3.

Mr S. S. Das, Advocate for Respondent Nos.4 and 5.

CORAM : M. W. CHANDWANI, J.

DATED : 22nd AUGUST, 2024.

ORAL JUDGMENT

1. Heard.

2. By this appeal, the appellant has challenged the impugned award dated 20.10.2023 passed by the Motor Accident Claims Tribunal, Amravati in Motor Accident Claim Petition No.262 of 2014, thereby granting compensation of Rs.82,28,955/- alongwith interest @ 6 p.a. from the date of filing of petition till realization of the amount to the respondent Nos.1 to 3/original claimants.

3. Bare facts, which give rise to the present appeal, can be summarized as under :

On 19.06.2014, deceased Santosh Sahebrao Chavhan was a pillion rider on Hero Honda CD Deluxe motorcycle bearing registration No.MH-27/AQ-316, whereas his father Sahebrao was riding the said motorcycle. When they reached

near Mohitan Nala at Village Parsoda, another motorcycle (Pulsar) bearing registration No.MH-27/AU-8713 came from the opposite side in a rash and negligent manner and gave a dash to the motorcycle of deceased Santosh. At that relevant time, one Tipper Truck bearing registration No.MH-19/Z-3946 was coming from the back side of the motorcycle of deceased Santosh in a rash and negligent manner and gave a dash to the motorcycle of deceased Santosh as well as the Pulsar motorcycle. In the said accident, Santosh died on the spot, however, Sahebarao sustained severe injuries and his left leg was amputated. The claim petition came to be filed by respondent Nos.1 to 3. The Tribunal after hearing both the sides, granted compensation of Rs.82,28,955/- alongwith interest @ 6% p.a. from the date of filing of petition till realization of the amount. Feeling aggrieved with the impugned award, the present appeal came to be filed.

4. The impugned award dated 20.10.2023 has been challenged mainly on two grounds; 1) The deceased was a

Shikshan Sevak on honorarium basis getting Rs.3,000/- per month but, the Tribunal has held that he was working as an Assistant Teacher and accordingly, the Tribunal calculated his salary at the rate of Rs.35,490/- per month, which is erroneous;

2) Contributory negligence on the part of the driver of Pulsar motorcycle.

5. Mr Bhuibhar, learned counsel appearing on behalf of the appellant submitted that deceased Santosh was working as Shikshan Sevak on fixed honorarium of Rs.3,000/- per month. Though, the proposal for approval of appointment of the deceased as an Assistant Teacher was sent by the Management of the School to the Education Officer, but it was yet to be approved and in the meanwhile he died in the accident. However, while assessing the income, the Tribunal has considered the salary of deceased Santosh as Rs.35,490/- per month, which is being given to Assistant Teachers. Learned counsel for the appellant by relying on the version of the claimants' witness, the Principal of the School, vehemently

submitted that the cross-examination of this witness suggests that the proposal appointing the deceased as Assistant Teacher was yet to be approved. Further she, in categorical terms, has admitted that unless the approval is granted to the said proposal appointing the deceased as Assistant Teacher, the deceased was not entitled to the salary of Assistant Teacher. This aspect has not been considered by the Tribunal, therefore, he submits that the Tribunal has wrongly considered the monthly income of deceased Santosh as Rs.35,490/- instead of Rs.3,000/- per month and therefore, the compensation amount is required to be reduced.

6. Learned counsel for the appellant further submitted that the Tribunal did not consider the fact that the initial dash was given by the driver of Pulsar motorcycle, who was driving the said motorcycle in a rash and negligent manner. Rather, respondent Nos.1 to 3 did not join the driver of Pulsar motorcycle in the petition, who also contributed to the negligence in the accident which caused the death of Santosh.

The Tribunal ought to have considered the contributory negligence of the driver of Pulsar motorcycle and ought to have shifted the liability to the extent of 50% on him.

7. Conversely, Mr P. R. Agrawal, learned counsel appearing on behalf of respondent Nos.1 to 3 submitted that deceased Santosh was appointed as Shikshan Sevak and just 5 days prior to the accident he had completed three years of service as Shikshan Sevak and was appointed as Assistant Teacher by the Management of the School. The Management of the School had sent the proposal to the Education Officer for approval of the appointment of deceased Santosh as an Assistant Teacher. Pending the proposal, Santosh died. According to him, appointment of the deceased as an Assistant Teacher by the School is to be taken into consideration because approval by the Education Officer is only for the purpose of claiming grant-in-aid by the Management of the School. According to him, there is no substance in this ground of appeal.

8. Learned counsel for respondent Nos.1 to 3 vehemently submits that the case in hand is not of contributory negligence, but it is a case of composite negligence, wherein, the drivers of two offending vehicles were liable for the death of third party and in that scenario, the principle of composite negligence is to be considered. In that case, third party is not under obligation to add drivers of both the offending vehicles as a party. It is the choice of the third party to claim damages from any one of the drivers of the offending vehicles. To buttress his submission, he seeks to rely on the decision of the Hon'ble Supreme Court in the case of *T. O. Anthony vs. Karvarnan and others, (2008) 3 SCC 748.*

9. Perusal of the impugned award dated 20.10.2023 as well as record of the Tribunal goes to suggest that the deceased was appointed as Shikshan Sevak for a period of three years, which he completed on 14.06.2014, whereas, he died on 19.06.2014. The material available on record coupled with the version of Varsha Bhagawantrao Morshe, Principal of the

School, where deceased Santosh was working, go to suggest that he was appointed as an Assistant Teacher from 15.06.2014 and the proposal for approval of the appointment of the deceased as an Assistant Teacher was sent to the Education Officer for approval, but till the date of his death, the said proposal was yet to be approved by the Education Department. It is also a matter of record that the salary of the deceased from 14.06.2014 till the date of his death has been drawn by the School as an Assistant Teacher considering the pay scale at 9300-34800 grade pay Rs.4600/- and his pay after deduction from June - 2014 is Rs.35,490/-.

10. It is to be noted here considering the provisions of MEPS Act, 1977 that, on completion of the probation period of three years as a Shikshan Sevak, the employee is deemed to have been appointed and confirmed as a teacher. Since the appointment of Shikshan Sevak has been made by the Management of the School, the formality of approval of appointment of a teacher is for the purpose of claiming grant-

in-aid by the School from the funds of exchequer. Even if in a given case, the approval is not granted by the Education Officer, the Management of the School is liable to pay the salary to pre-teacher. The only thing is that the School will not get the grant-in-aid to the salary of that teacher, therefore, the Tribunal has rightly considered the salary of the deceased as Rs.35,490/- per month as a teacher. The submission of the appellant to that regard is without merit.

11. A reference can be made to the decision of the Full Bench of this Court in the case of *Ram Avadh Mahel Pal vs. Shivdutta Educational Trust and others, 2007 (6) ALL MR 716*. The Full Bench of this Court, while answering the issue referred to it, by referring to the amended sub-section (2A) of Section 5 and Section 12 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, has held that every person appointed as a Shikshan Sevak shall be on probation for a period of three years. He is deemed to have been appointed and confirmed as a teacher, therefore,

irrespective of the approval by the Education Officer, the deceased became a teacher as soon as he completed three years of his tenure as a Shikshan Sevak, which the deceased has completed on 14.06.2014 prior to the date of his death on 19.06.2014. Therefore, the said admission given by the Principal of the School is with respect to the fact that the deceased has not been paid salary of a teacher.

12. It is a settled principle of law that, in case of composite negligence, the injured person has the choice of proceeding against all or any of the wrongdoer, since each wrongdoer is jointly and severally liable to the injured for payment of the entire damages. A reference can be made to the decision of the Supreme Court in the case of T. O. Anthony (supra) relied upon by the counsel for respondent Nos.1 to 3, wherein it has been held in para 6 as under :

“6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages

and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.”

13. In view of the above, I do not find any substance in the appeal and the appeal fails. Accordingly, it is **dismissed**.

(M. W. CHANDWANI, J.)