



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

FIRST APPEAL NO.749 OF 2011

Appellant : Maharashtra State Road Transport Corporation,
Ori. Respdt. No.1 Through its Divisional Controller,
 Railway Station Road, Nagpur

– Versus –

Respondents : 1. Amarjeetkaur wd/o Indrapalsingh Gandhi,
Ori. Petitioners on Aged about 50 years, Occupation : Household.
R.A.

2. Sukhpreet Singh s/o Indrapalsingh Gandhi,
 Aged about 20 years, Occupation : Student.

3. Puneet Kaur d/o Indrapalsingh Gandhi,
 Aged about 17 years, Occupation : Student,
 R/o Plot No.51, 002 Harambdar Apartment-II,
 Saw Mill Area, Lashkaribagh, Nagpur.

Ori. Respondent on 4. Shriram s/o Mahadeo Atakari,
R.A. Aged about 40 years, Occupation : Driver,
 R/o Telephone Nagar, Dighori, Nagpur.

WITH

FIRST APPEAL NO.587 OF 2012

Appellants : 1. Smt. Amarjeetkaur wd/o Indrapalsingh Gandhi,
On R.A. Aged 55 years, Occupation : Household.

2. Sukhpreet Singh s/o Indrapalsingh Gandhi,
 Aged 25 years, Occupation : Student.

3. Punit Kaur Indrapalsingh Gandhi,
 Aged 22 years, Occupation : Student,

R/o Plot No.51, 002 Harambdar Apartment-II,
 Saw Mill Area, Lashkaribagh, Nagpur.

– Versus –

Respondents : 1. Maharashtra State Road Transport Corporation,
On R.A. Through its Divisional Controller,
Railway Station Road, Nagpur

2. Shriram s/o Mahadeo Atkari,
Aged 45 years, Occupation : Driver,
R/o Telephone Nagar, Dighori, Nagpur.

Mr. V.H. Kedar, Advocate for the Appellant in F.A. No.749/2011
and for Respondent No.1 in F.A. No.587/2012.

Ms. Radha Mishra, Advocate for the Appellants in F.A. No.587/
2012 and for Respondent Nos.1 to 3 in F.A. No.749/2011.

Mr. Mahesh Joshi, Advocate for Respondent No.4 in F.A. No.749/
2011 and for Respondent No.2 in F.A. No.587/2012

CORAM : **M.W. CHANDWANI, J.**
RESERVED ON : **14th OCTOBER, 2023.**
PRONOUNCED ON : **19th NOVEMBER, 2024.**

COMMON JUDGMENT :

These cross appeals have been filed against the impugned award dated 27/04/2011 passed by the Motor Accident Claims Tribunal, Nagpur (*hereinafter referred to as "Tribunal" for short*) in Claim Petition No.948 of 2006. The claimants as well as the Maharashtra State Road Transport Corporation (*hereinafter referred to as "M.S.R.T.C." for short*) felt aggrieved by the findings of contributory negligence and therefore, the claimants and M.S.R.T.C. both have challenged the impugned award of the Tribunal.

02. The claimants filed the claim petition for compensation of Rs.38,06,360/- on account of death of deceased-Indrapalsingh Gandhi, an Assistant Engineer, in a vehicular accident that occurred on 06/04/2006 on

Kamptee-Kanhan Road. The petition alleges that while the deceased was proceeding from Kamptee to Kanhan on his motorcycle bearing registration No.MH-31/BN/4745 for attending his Office, a bus bearing registration No.MH-12/Q/8444 tried to overtake the motorcycle of the deceased without following proper signal and rules and gave a dash to the vehicle of the deceased. Consequently, the deceased sustained grievous injuries and while undergoing treatment, he succumbed to the injuries on the same day.

03. The Tribunal after conducting necessary enquiry, assessed the loss to the claimants at Rs.23,44,349/- including 'no fault liability'. However, the Tribunal held that the deceased contributed to the negligence in the accident to the extent of 75% and fixed the liability to pay compensation at 25% of the assessed loss to the claimants. Ultimately, the Tribunal directed the M.S.R.T.C. and the driver of the Bus to pay Rs.5,86,087/- jointly and severally along with interest at the rate of 7.5% per annum from the date of petition till its realization. Feeling aggrieved with the findings of contributory negligence, the claimants as well as the M.S.R.T.C. filed the present appeals blaming the entire negligence on each other.

04. It transpires from the record that the accident occurred near Gurukripa Colony on Nagpur-Jabalpur Road and the deceased was admitted to the hospital where he succumbed to the injuries on the same day. It is a

matter of record that the police registered an offence under Sections 337 and 279 of the Indian Penal Code against the deceased. Therefore, the M.S.R.T.C. came up with a defence of 'no fault' on the part of the driver of the bus and blamed the deceased for the accident. On the other hand, the claimants blamed the driver of the bus for the alleged accident.

05. In the written statement, the M.S.R.T.C. and the driver of the bus have come up with a case that the deceased was driving the vehicle in a very high speed and tried to overtake the bus inspite of knowing that other vehicles are coming from the opposite direction and during his attempt to overtake gave a dash to the bus. On the other hand, the F.I.R., which has been lodged by the driver of the bus, reveals that he informed the incident to the police by stating that one motorcycle was proceeding in front of his bus. Since, a truck was coming from the opposite direction, he slowed the bus down. At that moment, the deceased dashed his motorcycle to the rear portion of the bus and fell down. As a result of this, he sustained head injury and was admitted to Asha Nursing Home. Whereas, perusal of examination-in-chief of the driver and the conductor of the bus goes to show that they unfolded a different story and came up with a case that some passengers shouted that an accident has occurred and therefore, he stopped the bus by the side of the road. Thus, the defence, which has been taken by the M.S.R.T.C. and the driver in their

written statement, has not been substantiated either by the F.I.R., which has been lodged by the driver, or by the evidence of the driver and conductor of the bus.

06. The learned Tribunal did not rely on the story of the respondents which, in my view, is right for the reason mentioned in the forgoing paragraph and one that has been observed by the Tribunal that, had the deceased attempted to overtake the bus then certainly the dash should have been on the right side of the rear portion of the bus. No doubt, it is for the claimants to prove negligence on the part of the driver of the bus. In this regard, it can be stated that the petitioners examined witness viz. Ravikumar Kale, who claims to be an eye-witness of the incident, who deposed that the bus was proceeding from Nagpur to Kamptee in a high speed and the bus was being driven in a zigzag manner due to which, the left side rear portion of the bus dashed with a motorcycle. The contention of the learned Counsel for the M.S.R.T.C. is that Ravikumar Kale has not been shown as an eye-witness in the police case registered against the deceased. This factual aspect is a matter of record. This witness has specifically deposed that he along with other bypassers of the road got the deceased admitted to the hospital which was situated near the spot of the incident. This fact is substantiated by the complaint made by the claimants to the Collector in the same month of the accident alleging that a

false case has been registered against the deceased, which is at Exh.38. This complaint specifically mentioned that the deceased was admitted to the hospital by the persons, who gathered there. It appears that there is nothing on record to show that the Investigating Officer has recorded the statement of any other witness, who shifted the deceased to the hospital except Ravikumar Kale. Therefore, just because his statement was not recorded by the police, his evidence cannot be discarded. Nothing has been brought on record to suggest that witness Ravikumar Kale is related to the deceased, rather this suggestion has been denied by this witness. Version of this witness stating that he saw left side portion of the bus dashing against the motor vehicle goes to substantiate the version of the petitioners that the bus tried to overtake the vehicle and while overtaking, the left side portion of the bus dashed against the vehicle driven by the deceased. Even the F.I.R. suggests that a motorcycle was being driven ahead of the bus and just because a truck was coming from opposite direction, the bus driver slowed down the bus. In all probabilities, this might have been done by the bus driver while overtaking the motorcycle of the deceased and while giving way to the truck coming from the opposite side, the left side portion of the bus dashed against the motorcycle of the deceased. Accordingly, Ravikumar Kale would have noticed the dash to the motorcycle by the left side rear portion of the bus. At the same time, to avoid the accident, the deceased ought to have taken due care when the bus was

overtaking him. Therefore, the finding of contributory negligence cannot be faulted with except to the extent of negligence. It appears that the Tribunal failed to consider the principle of "*heavier the vehicle, heavier lies the responsibility*". Considering the manner in which the accident occurred and the fact that the bus is a heavier vehicle as compared to the motorcycle, higher percentage of negligence ought to have been fastened on the driver of the bus.

07. Considering the facts of the present case as discussed above, in my view, contributory negligence can be attributed to the bus and the motorcycle in the ratio of 2:1. Therefore, I do not find force in the argument of the learned Counsel appearing on behalf of the M.S.R.T.C. that contributory negligence cannot be attributed to the driver of the bus at all.

08. This takes me to the heads of compensation, particularly under loss of consortium, funeral expenses and loss of estate. In the case of **National Insurance Company Limited vs. Pranay Sethi and others¹**, an amount of Rs.40,000/-, Rs.15,000/- and Rs.15,000/- has been fixed under the heads of loss of consortium, funeral expenses and loss of estate respectively. Needless to mention that pendency of appeal is continuation of proceedings. Though the said observations are made in the year 2016 considering the fact that the compensation scheme is a beneficial legislation, the benefits of enhanced

1 (2017) 16 SCC 680

compensation under the abovesaid heads by the verdict of the Supreme Court in the year 2017 can be extended to the claimants.

09. So far as the submission of the claimants that the deceased was promoted to the post of Deputy Engineer in M.S.E.B. is concerned, considering the evidence of the Clerk of M.S.E.B., promotion of the deceased from the post of Assistant Engineer to Deputy Engineer has been established, but the fact remains that the claimants did not bring the details about the proposed salary of the post of Deputy Engineer on record and proved only the last drawn salary of the deceased for the post of Assistant Engineer. Therefore, in absence of this material, particularly when the petitioners did not bring on record that the deceased as an Assistant Engineer reached the starting salary of Deputy Engineer, either by way of periodical increments or by way of benefit under Assured Career Progressive Scheme and was drawing the less salary than the starting salary for the post of Deputy Engineer. Therefore, no fault can be seen with the assessment made by the Tribunal in respect of loss of future income on the basis of salary of Assistant Engineer. Thus in all, the claimants are entitled for the following compensation.

Sr.No.	Heads	Amount
1.	Loss of Future Income as assessed by the Tribunal.	Rs. 23,29,349/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Loss of Estate.	Rs. 15,000/-

4.	Loss of Filial Consortium @ Rs.40,000/- to each Claimant.	Rs. 1,20,000/-
5.	Total Compensation	Rs. 24,79,349/-
6.	Liability of M.S.R.T.C. and Driver of the Bus in the Ratio of 2:1	Rs. 16,52,899/-

10. Consequently, First Appeal No.749 of 2011 filed by the M.S.R.T.C. is hereby dismissed. First Appeal No.587 of 2012 filed by the claimants is partly allowed. Accordingly, the impugned award is modified.

11. The M.S.R.T.C. and Shriram s/o Mahadeo Atakari, driver of the Bus, are jointly and severally liable to pay total compensation of Rs.16,52,899/- (Rupees Sixteen Lakhs Fifty Two Thousand Eight Hundred Ninety Nine Only) along with interest at the rate of 7.5% per annum from the date of the claim petition till realization of the amount.

12. The M.S.R.T.C. to deposit the amount of enhanced compensation within four weeks from today. There shall be no order as to costs.

(M.W. CHANDWANI, J.)

**sandesh*