



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.400 OF 2025
WITH
CIVIL APPLICATION NO.1359 OF 2025**

Maharashtra State Road Transport
Corporation, Mumbai
Through Divisional Controller,
Ahmednagar, Kothla Road,
Sarjepura, Tq. & Dist. Ahmednagar.

..Appellant
(Orig. Respondent)

Versus

1. Smt. Shital Shashikant Dange,
Age : 36 years, Occu. : Household.
2. Miss. Sanskruti Shashikant Dange,
Age : 13 years, Occu. : Education.
3. Miss. Shrushti Shashikant Dange,
Age : 08 years, Occu. : Education,

Applicant no. 2 and 3 are minor
Through natural guardian mother-
Applicant no. 1.

4. Arvind Bhaskar Dange,
Age : 58 years, Occu. : Nil.
5. Sakharbai Arvind Dange,
Age : 54 years, Occu. : Household,

All are R/o. : Chitali Railway Station,
Rahata, Tal. Rahata,
Dist. Ahmednagar.

..Respondents
(Orig. Claimants)

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Mr. D. S. Bagul, Advocate for the Appellant.
Mr. A. C. Darandale, Advocate for Respondent Nos.1 to 5.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 19th MARCH, 2025.
PRONOUNCED ON : 01st APRIL, 2025.

ORDER:-

1. The appellant (original respondent) impugns judgment and award dated 06.04.2024 passed by Motor Accident Claims Tribunal, Ahmednagar in M.A.C.P. No.61/2018. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The respondent nos.1 to 5 (original claimants) instituted M.A.C.P. No.61/2018 under Section 166 of the Motor Vehicle Act, 1988 claiming compensation of Rs.1,09,32,455/- towards accidental death of late Shashikant Arvind Dange. The claimants contend that on 29.05.2017, Shashikant was driving his Maruti Omni Van from Shrirampur to Puntamba as per traffic rules. One Daulat Malve was accompanying him in car. Suddenly offending bus came from opposite direction and gave forceful dash to van. In result, Shashikant suffered serious injuries. He was hospitalized and after long drawn medical treatment, succumbed to the injuries on 18.10.2017. According to claimants, Shashikant was running grocery shop. As per his last Income Tax Returns, he earned profit of Rs.4,04,887/- out of business. The claimants were dependents on his income. The family suffered loss of dependency. As such, claim for compensation of Rs.1,09,32,455/- was raised.

3. The respondent/MSRTC took a plea of sole negligence on the part of deceased Shashikant while driving his car. It is contended that postmortem is not conducted. The death is not proximate to

injuries suffered in accident. Rest of averments regarding income, dependency etc. were denied.

4. The Tribunal framed issues, recorded evidence of parties. The claimants in their endeavour to prove their case relied upon six witnesses and documentary evidence like police papers, medical bills, discharge card, Income Tax Returns, injury certificate, 7/12 extract, charge-sheet etc. Per contra, respondent/MSRTC relied upon evidence of its driver Kishor Vasant Kudale.

5. The Tribunal upon evaluation of evidence, allowed claim vide judgment and award dated 06.04.2024 directing respondent/MSRTC to pay compensation of Rs.63,58,630/- to claimants alongwith interest @ 9% per annum from the date of filing of claim petition till actual realization of amount.

6. Mr. Bagul, learned Advocate appearing for appellant assails impugned judgment and award firstly on the ground that findings recorded by Tribunal on the point of negligence is contrary to record. Secondly, assessment of compensation is excessive and exorbitant. The death of deceased is not attributable to injuries suffered in accident and in absence of postmortem report, Tribunal could not have drawn such presumption.

7. Per contra, Mr. Darandale, learned Advocate appearing for respondents/claimants would submit that claimants have proved

negligence of bus driver by leading adequate evidence. Relying upon First Information Report and charge-sheet, he would submit that during police investigation, bus driver was found responsible for accident. The evidence of CW-5 Shubham Malve/eye witness further supports plea of negligence against bus driver. By inviting attention of this Court to Exhibits 46 and 47 i.e. death report coupled with evidence of Dr. Chetan Pradhan (CW-6), he submits that deceased was under continuous medical treatment and lastly succumbed to injuries suffered in accident. Therefore, it can be safely presumed that death of deceased was attributable to accidental injuries. Mr. Darandale would further submit that evidence of CW-2 is sufficient to prove income of deceased, which is supported by Income Tax Returns at Exhibits 28, 29 and 30. He, therefore, urges that there is no merit in Appeal and same deserves to be dismissed.

8. I have considered submissions advanced by learned Advocates appearing for respective parties and perused record and proceedings. Undisputedly, there was accident between Maruti Omni Van and ST Bus. Late Shashikant was driving his Maruti Van. There was collision between Van and Bus. In this background, to prove negligence of bus driver claimants have relied upon police papers. The FIR and charge-sheet demonstrate that police investigation concluded about fault of bus driver in cause of

accident. Eventually, filed charge-sheet against him. The evidence of CW-5-Shubham Malve, who was accompanying deceased in the Van also supports claimants' case. Per contra, Kishor Kudale/driver of bus contends that car driver was at fault. Except self-interested testimony of bus driver, there is no material to draw inference as to negligence or contributory negligence of deceased in case of accident. Mr. Bagul, learned Advocate by inviting attention of this Court to spot panchanama Exhibit 23 submits that accident occurred at the curve and there is head on collision. However, on the basis of spot panchanama, only position of vehicle after accident can be ascertained that itself would not constitute evidence as to actual manner of accident. It is difficult to draw inference of negligence or contributory negligence on the part of deceased on the basis of contents of panchanama. The Supreme Court of India in case of ***Jiju Kuruvila and others Vs. Kunjujamma Mohan and others***¹, observed in paragraph no.24, which reads thus:

“24. The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In

¹ AIR 2013 SC 2293.

absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.”

9. The Tribunal on appreciation of evidence, concluded that bus driver was at fault. There is nothing on record to show that such finding is inconsistent with evidence or not plausible. This Court while sitting in appeal would not disturb finding of fact arrived by Tribunal, which is consistent with the evidence on record. In that view of matter, there is no force in contentions of appellant that deceased was either negligent or contributed in cause of accident.

10. Mr. Bagul, learned Advocate appearing for appellant submits that deceased had suffered injuries to his leg. He was hospitalized for about five months and lastly breathed on 18.10.2017. According to him, in absence of postmortem report, his death cannot be attributed to injuries suffered in accident.

11. It is trite that, if death of victim occurred in continuation of medical treatment, unless evidence is brought on record depicting any other concrete reason of death, it would be presumed that death is in deference to accidental injuries. In present case, claimants relied upon evidence of Dr. Chetan Pradhan coupled with certificate at Exhibit 46 issued by Sancheti Hospital, wherein it is certified that deceased was admitted to their hospital from 30th May 2017 to 20th September 2017 and readmitted on 26th September 2017 to 18th October 2017. He died due to “*Sigmoid*

colon perforation with D.I.C. with Septicaemia with Hepato renal failure in an old case of polytrauma sustained in a Road traffic accident". The injury certificate dated 29.06.2017, Exhibit 45, which is proved in evidence of CW-6 shows that deceased had suffered six fractures. Two of them were comminuted fractures, apart from blunt trauma on chest, abdomen and CLW over forehead. The CW-6 Dr. Chetan Pradhan clearly states that cause of death was well known to doctors, therefore, postmortem was not required. The witness was one of the member of treating doctors team. During cross-examination, he specifically denied that accidental injuries were not instrumental for cause of death. Although respondents are challenging aforesaid evidence, no contra material is brought on record to dislodge claimants' evidence on aforesaid aspect. In that view of matter, findings recorded by Tribunal holding that death of deceased was in deference to accidental injuries need not be disturbed.

12. So far as income of deceased is concerned, claimants have relied upon evidence of Mr. Dipen Dilip Devi (CW-2), Chartered Accountant from Ahmednagar. He submits that for Assessment Year 2014-15 net profit of deceased was Rs.3,02,793/- and for Assessment Year 2015-16 it was Rs.2,91,141/-. It was increased in the Financial Year 2016-17 to Rs.4,04,887/-. The copies of Income Tax Acknowledgment are made part of record and Exhibited as 28,

29 and 30. The last Income Tax Returns for Assessment Years 2016-17 and 2017-18 are supported by balance-sheet. The Tribunal is, therefore, right in accepting claimants' contentions as to income of deceased. Mr. Bagul, learned Advocate submits that Tribunal has erroneously granted exponential compensation towards transportation, attendant charges and consortium. However, looking to the nature of injuries, period of hospitalization, compensation towards general damages is appropriately awarded. Even compensation against consortium is rightly awarded in terms of law laid down by *Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram*², which is further approved by three Judges Bench of Supreme Court of India in case of *United India Insurance Company Limited Vs. Satinder Kaur @ Satwinder Kaur and Other*³.

13. In result, Appeal sans merit. Hence, stands dismissed. The amount of compensation as deposited by appellant be disbursed to claimants as per apportionment indicated in award passed by Tribunal.

14. In view of dismissal of Appeal, pending Civil Application also stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE