



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

FIRST APPEAL NO.2176 OF 2017

1. Vasudha w/o Atul Patel
Age: 51yrs, Occ: Household,
R/o: Avadhoot Bungalow, Plot no.14,
Survey no. 45/1B, Karna nagar,
Opp. R.T.O office, Peth Road, Nasik-4,
2. Tanmay S/o Atul Patel
Age: 25yrs, Occ: Student,
R/o: Avadhoot Bungalow, Plot no.14,
Survey no. 45/1B, Karna nagar,
Opp. R.T.O office, Peth Road, Nasik-4,
3. Madhukanta w/o Shantilal Patel,
Age: 85yrs, Occ: nil, R/o: Avadhoot Bungalow,
Plot no.14, survey no. 45/1B,
Karna nagar, Opp. R.T.O office,
Peth Road, Nasik-4,

..APPELLANTS
(Ori. Claimants)

Versus

1. Mr. Rana s/o Tulakraj Khurana,
Age: Major, Occ: Business,
R/o: Khurana Travels, Adalat Road,
Aurangabad.
2. The Divisional Manager,
The National Insurance Co. Ltd,
Divisional Office, Kokanwadi, Aurangabad.
3. Rameshwar s/o Devidas Kothe,
Age: Major, Occ: Driver, R/o: Nandura,
Post: Brachanwada, Tq & Dist: Amravati.

..RESPONDENTS
(Ori. Opponents)

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Shri. Abhijit C. Darandale, Advocate for the Appellants
Shri. Anand Dale h/f. Shri. Swapnil S. Rathi,
Advocate for Respondent No.1
Shir. V. N. Upadhye, Advocate for Respondent No.2

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CORAM : NEERAJ P. DHOTE, J.

RESERVED ON : 13.08.2025

PRONOUNCED ON : 04.09.2025

JUDGMENT :

. This Appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the, 'M.V. Act') is filed by the Orig. Claimants who are the Widow, Son and Mother of Atul Shantilal Patel (hereinafter referred to as 'the Deceased') for enhancement in the compensation awarded by the learned Motor Accident Claims Tribunal, Aurangabad (for short, 'Tribunal') by the Judgment and Order / Award dated 16.03.2013 in Motor Accident Claim Petition No.480/2009 (for short, 'Claim Petition').

2. The facts in brief, giving rise, to the present Appeal are as under:

2.1. On 10.05.2009 around 07:30 a.m. the Deceased was travelling on the Motorcycle bearing No.MH-15-D-5569 from Baba Petrol Pump to Kranti Chowk in Aurangabad City. When he reached near Water Tank of Samta Nagar, his Motorcycle dashed against the Stationary Bus bearing No.MH-38-F-1633. The Deceased suffered severe injuries and he was hospitalized. The accident was reported to the Kranti Chowk Police Station, Aurangabad and Crime bearing No.303/09 came to be registered against the Respondent No.3 - Driver of the said Stationary Bus. On 25.05.2009 he succumbed to the injuries.

2.2. The Deceased was working as the Production Manager with Balkrishna Industries Ltd, Waluj MIDC, Aurangabad with monthly salary of Rs.29,001/- (Rs. Twenty Nine Thousand One). He was 52 years old. The Appellants filed the above referred Claim Petition for compensation of Rs.50,00,000/- (Rs. Fifty Lakh) with interest @ 10% Per Annum. The Claim Petition was contested by the Respondent 1 – Owner of the said Bus and the Respondent No.2 – Insurance Company by filing their respective Written-statements below Exhs.64 and 13. They denied the contentions of the Claimants. They pleaded for dismissal of the Claim Petition.

2.3. The Tribunal framed the issues below Exh.15. Claimant No.1 – Widow of the Deceased examined herself by filing evidence Affidavit below Exh.28. She was Cross-examined on behalf of the Respondent No.2 – Insurance Company. In her evidence, the Police papers and the Post-mortem Report etc., were brought on record. The Claimants examined the Manager (Personnel) from the Company where the Deceased was working, to prove the monthly income of the Deceased. The statements of salary of the Deceased were brought on record in his evidence. The Claimants examined the Accountant from the Kamalnayan Bajaj Hospital, where the Deceased was hospitalized, to prove the medical bills.

2.4. The Respondent No.1 – Vehicle Owner examined its Manager as the Witness. He was Cross-examined on behalf of the Claimants. After the evidence of both the sides was closed, the learned Tribunal heard the parties and passed the above referred Judgment and Award granting compensation of Rs.10,29,700/- (Rs. Ten Lakh Twenty Nine Thousand Seven Hundred) with interest @ 9 % Per Annum from the date of filing of the Claim Petition till its realization.

3. Heard learned Advocate for the Appellants, learned Advocate for Respondent No.1 – Owner of the Vehicle and learned Advocate for Respondent No.2 – Insurance Company. Perused the record.

4. It is submitted by learned Advocate for the Appellants that, the evidence on record goes to show that the Bus was parked in the middle of the road which was contrary to the provisions of Section 122 and 126 of the M.V. Act. No parking lights were lit as required by Rule 109 of the Central Motor Vehicle Rules, 1989. The accident occurred due to such negligent parking of the said Bus in the middle of the road and the learned Tribunal erred in holding that it was the case of contributory negligence and 50% negligence is attributed to the Deceased. There was no evidence to show that, the Deceased was rash and negligent while driving the Motorcycle. The learned Tribunal presumed wrongly and contrary to the evidence on record. It is further submitted that, at the

most 10% contributory negligence could have been attributed to the Deceased. In support of his contentions, he relied on the Judgments in *(i) Sushma vs. Nitin Ganapati Rangole and Others, 2024 AIR (SCW) 4627, (ii) Mohammed Siddique and Another vs. National Insurance Company Limited and Others, (2020) 3 SCC 57, and (iii) New India Assurance Company Limited Vs. Anita Rajendra Sonwane, 2025 (4) MhLJ 252.*

5. It is submitted by learned Advocate for the Respondent No. 1 – Owner of the Bus that, the learned Tribunal has rightly appreciated the evidence on record and rightly attributed 50% contributory negligence on both i.e. Bus Driver and the Deceased. The Bus was partly on road as can be seen from the evidence on record. It was broad day light and the vehicle was clearly visible. No interference is called for in the finding of the contributory negligence recorded by learned Tribunal.

6. It is submitted by learned Advocate for the Respondent No.2 – Insurance Company that, all the necessary documents were available on record. The Spot Panchanama at Exh.31 shows that the Bus was not completely on the road, but was partly on the *kaccha* road. There was ample space to move on the road. The Bus was stationary and was parked. The accident took place in the morning. The learned Tribunal has rightly considered the entire scenario and attributed 50%

contributory negligence to the Bus Driver and by the Deceased. The learned Tribunal has rightly appreciated the evidence available on record and there was no illegality in the finding in respect of contributory negligence. In support of his contentions, he relied on the Judgment in *Raj Rani and Others vs. Oriental Insurance Company Limited and Others*, (2009) 13 SCC 654.

7. In the case of *Sushma (supra)* the Appeal was under the Motor Vehicles Act. The Car collided with fourteen wheeler trailer which was left abandoned in the middle of the Highway without any warning signs in the form of indicators or parking lights. The collision resulted into the death of the passengers in the car. The Tribunal held that, it was the case of contributory negligence by the Drivers of both the vehicles. The finding recorded by the Tribunal was concurred in the Appeal. By considering the evidence on record and the provisions of Section 2 (34), 121, 122, 126, 127 (2) of the Motor Vehicles Act, 1988 and Regulation 15 of the Rules of Road Regulation, 1989, it was held that the entire responsibility for the negligence leading to the accident was of the Truck Owner / Driver. It was observed that, '*there was nothing to indicate that the Car was being driven at an excessively high speed or that the Driver failed to follow the traffic rules.*'

8. In the case of *Mohammed Siddique (supra)* the Deceased was the

Pillion Rider on the Motorcycle which was hit by the Car from behind. Learned Tribunal and the Appellate Court held that the case was of contributory negligence. It was observed that there was nothing to show that wrongful act on the part of the Deceased Victim contributed either to the accident or to nature of injuries sustained and the Victim Pillion rider could not have been held guilty of contributory negligence and the reduction of 10% towards contributory negligence was set aside.

9. In the case of *New India Assurance Company Limited (supra)* the accident was between the Truck and the Car which was being driven by the Deceased. It was recorded by the Police in the Police Papers that the accident occurred in the center of the road. The finding recorded by learned Tribunal in respect of negligence on the part of the Truck Driver was not interfered in the Appeal.

10. In *Raj Rani and Others (supra)*, the Deceased was driving Maruti Car. One Truck was parked in middle of the road. It was the case of the Claimants that although the Car was being driven at a nominal speed, owing to another vehicle coming from the other side and as the parking lights of the Truck being not on, it was sighted at the last minute and the Deceased tried to take the Car towards left side, but it dashed against the Truck resulting in the death of the Deceased. The Tribunal held the case as that of contributory negligence. In the said case, the finding of

the contributory negligence to the extent of 50% was upheld.

NEGLIGENCE :-

11. Coming to the case at hand, the Appellants relied on the Police Papers to substantiate their claim. Undisputedly, the Appellant No.1 who was examined as the Witness in support of the Claim Petition admitted in the Cross-examination that, she did not witness the accident. The Respondent No.1 - Owner of the Bus examined the Witness below Exh.68 on the point of Motor Vehicular Accident. This Witness deposed that he was present in the office of the Respondent No.1 – Travels on the date of accident from 06:00 a.m. and the said Bus arrived from Mumbai in between 07:00 a.m. to 07:30 a.m. and it was standing in front of their office beyond the road. According to him, the Motorcycle came from the back side and dashed against the Bus. The Motorcycle Driver was removed to the hospital. According to him, he witnessed the said accident which occurred due to negligence of the Deceased. He denied the suggestions that he was giving false evidence.

12. The Police Papers show that pursuant to the registration of the Crime against the Driver of the said Bus, the Spot Panchanama was prepared. As per the Spot Panchanama, the Bus was halted by the Driver on the road, due to which the Motorcycle dashed against the Bus and the Deceased suffered injuries. The sketch of the spot of accident is

also drawn in the Spot Panchanama. The said sketch show that the road was divided into two parts by divider and the said Bus was standing on the road towards northern side. The learned Tribunal in the Judgment observed that, *'it is well settled that in the case of accident the principle of Res Ipsa Loquitur plays an important role. Therefore, the factual position depicted in the Spot Panchanama Exh.31 would be more helpful to decide the issue than the oral evidence of interested witnesses.'* It is not in dispute and it is clearly seen from the evidence on record that, the said Bus was stationary on the road. It is observed by the Tribunal that, *'Had the said Bus been stationed away from the northern edge of the said road, perhaps the accident would not have happened'*. The learned Tribunal further observed that, from the Spot Panchanama Exh.31, it was clear that, there was sufficient space available between the southern side of the said Bus and the divider for the Deceased to take his Motorcycle safely ahead of the Bus. It further noted that the accident took place at 07:30 a.m. and by that time the vehicles on the road must be quite visible, however instead of taking Motorcycle ahead of the said Bus from the available space, he dashed the rear portion of the said Bus from its Driver side and further observed that, it seems that either the Deceased was not vigilant while riding on the Motorcycle or due to its high speed he could not control it and consequently the Motorcycle dashed against the Bus and held that, the Deceased was also responsible for occurrence of the accident. The

Tribunal further noted that, the facts and circumstances stated above clearly disclose that the Respondent No. 3 and the Deceased were equally responsible for the accident.

13. Though the Witness examined by the Respondent No.1 deposed that, the accident took place due to the mistake of the Deceased and the Bus was stationed at the side of the road, no Report was lodged against the Deceased for rash and negligent driving of the Motorcycle. Undisputedly, and on which aspect there is no dispute, the Crime came to be registered against the Driver of the said Bus for the offence under Section 304A of the Indian Penal Code which deals with causing death by negligence. So far as the evidence of the Witness examined by Respondent No.1 is concerned, it nowhere shows that the Deceased was driving the Motorcycle in rash and negligent manner. The observation by learned Tribunal that, either the Deceased was not vigilant while driving the Motorcycle or due to the high speed he could not control the Motorcycle and dashed the Bus, is without any evidence on record. The said finding finds no support from the material available on record. When it was observed by learned Tribunal that, the accident would not have occurred had the Bus been stationed away from the northern edge of the road, the finding of attributing negligence to the Deceased runs contrary to the said observation. The learned Tribunal gave contrary finding on the point of negligence.

14. The provisions of Section 122 of the M.V. Act provides that, *'No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.'* In the Judgment of *Raja Rani and Others (supra)* it was observed in paragraph no.17 as under:

"17. So for as the issue of "contributory negligence" is concerned, we may notice that the Tribunal has deducted 1/3rd from the total compensation on the ground that deceased had contributed to the accident. The same, we find, has been upheld by the High Court. This court in Usha Rajkhowa and Ors. v. Paramount Industries and Ors. [Civil Appeal No.1088 of 2009 (arising out of SLP (C) No.16647 of 2008)] discussed the issue of contributory negligence noticing, inter alia, earlier decisions on the same topic. It was held that :

"20. The question of contributory negligence on the part of the driver in case of collision was considered by this Court in Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak and Ors. reported in (2002) 6 SCC 455. That was also a case of collusion in between a Car and a truck. It was observed in Para 8:

'8. ... The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as 'negligence'. Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence", it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an author of his own wrong."

15. As discussed above, there is no iota of evidence to show that, the Deceased was negligent in any manner. There is clear evidence on record to show that, the Bus was stationed or stopped on the road without there being any compliance of the above referred provisions of the M.V. Act. The crime was registered against the Driver of the said Bus. When such is the material on record, it is not possible to draw presumption of contributory negligence on the part of the Deceased as drawn by the learned Tribunal. In the light of the above discussion, the only reasonable and possible conclusion emerges is that, the Bus Driver was responsible for the said accident in which the Deceased lost his life. In this background, the finding of the learned Tribunal in respect of negligence on the part of the Deceased requires interference.

Quantum :

16. It is submitted by learned Advocate for the Appellants that in the light of the Judgment in *National Insurance Company Ltd Vs. Pranay Sethi and Others, (2017) 16 SCC 680* appropriate addition is to be made in the income of the Deceased towards future prospects as he was aged 53 years and consortium @ Rs.40,000/- for each Appellant is to be added in the light of the Judgment in *Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and Others, (2018) 18 SCC 130*. He further submitted that expenses of Rs.15,000/-

(Rs. Fifteen Thousand) towards transportation of the Deceased to the hospital, Rs.15,000/- (Rs. Fifteen Thousand) towards funeral expenses and Rs.15,000/- (Rs. Fifteen Thousand) towards loss of estate be included in the amount of compensation.

17. It is submitted by learned Advocates for the Respondent No.1 – Owner of the Vehicle and the Respondent No.2 – Insurance Company that, there is no dispute about the position under the law in respect of future prospects, consortium and compensation under the conventional heads, such as, Funeral Expenses and Loss of Estate. However, they opposed the contention in respect of the addition of transportation charges.

18. The age of the Deceased as seen from the evidence on record was above 50 years of age. The evidence on record shows that, Deceased had a permanent job having monthly salary. Under such circumstances, as per the said Judgment in the case of *Pranay Sethi (supra)*, the addition of 15% is to be made in the monthly income of the Deceased between the age of 50 to 60 years and the amount of Rs.15,000/- (Rs. Fifteen Thousand) each, towards the Funeral Expenses and Loss of Estate is to be added in the amount of compensation.

19. As regards the Consortium is concerned, the Appellants being the Widow, Son and Mother of the Deceased, the amount of

Rs.40,000/- (Rs. Forty Thousand) each, will have to be added towards Spousal Consortium, Parental Consortium and Filial Consortium, respectively, as per the Judgment in *Magma General Insurance Company Limited (supra)*.

20. As regards the expenses towards the transportation, there is no evidence to support the said amount. The learned Tribunal has considered and granted the compensation towards medical expenses.

21. In the light of the above discussion, the compensation awarded by the Tribunal needs recalculation.

22. The learned Tribunal held the Appellants entitled to get the total compensation of Rs.20,59,400/- (Rs. Twenty Lakh Fifty Nine Thousand Four Hundred). However, considering 50% contributory negligence, divided the said amount and held the Appellants entitled to the amount of Rs.10,29,700/- (Rs. Ten Lakh Twenty Nine Thousand Seven Hundred). As on re-appreciation of the evidence on record, the accident is found to be the result of complete negligence on the part of the Bus Driver, the amount of compensation is recalculated by including the amount towards above referred conventional heads and Consortium as under :-

Particulars	Amount
Monthly income of Deceased proved before the Tribunal.	Rs.21,300/-
Addition of 15% towards Loss of Dependency	Rs. 3,195/-
Total Monthly Income	Rs.21,300/- + Rs.3,195/- = Rs.24,495/-
1/3rd deduction towards personal and living expenditure	Rs.24,495/- ÷ 3 = 8,165/-
Net Monthly income after 1/3rd deduction	Rs.24,495/- - Rs. 8,165/- = Rs. 16,330/-
Net Yearly income	Rs.16,330/- (Net monthly income) x 12 months = Rs.1,95,960/-
Multiplier of 11	Rs.1,95,960/- x 11 = 21,55,560/-
Towards Medical Expenses (considered by the learned Tribunal)	Rs.85,000/-
Expenditure towards purchase of medicines (considered by the learned Tribunal)	Rs.10,000/-
Towards loss of Consortium (Rs.40,000/- x 3 dependents)	Rs.1,20,000/-
Towards Loss of Estate	Rs.15,000/-
Towards Funeral Expenses	Rs.15,000/-
Total Compensation :	Rs.24,00,560/-

23. In light of the above, amount of compensation awarded by the learned Tribunal to the Appellants is modified to Rs.24,00,560/- (Rs. Twenty Four Lakh Five Hundred Sixty) with the same rate of interest as granted by the learned Tribunal. The above referred compensation be apportioned with proportionate costs and interest in the same proportion as done by the learned Tribunal.

24. The share of enhanced compensation be deposited in the account maintained by the Appellants in the Nationalized Bank.

25. The amount of compensation paid by the Respondents to the Appellants, if any, shall be adjusted towards satisfaction of the modified Award.

26. The Appellants shall not be entitled for interest for the delayed period as observed in the order dated 13.06.2017 and the apportionment be accordingly made.

27. First Appeal stands disposed off accordingly.

[NEERAJ P. DHOTE]
JUDGE

GGP