

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 52 OF 2024

Maharashtra State Road Transport Corporation
 Branch Vita, Through
 Divisional Controller MSRTC Sangli, Dist. Sangli ... Appellant
 Versus

- 1 Kamal Mahavir Mandave
 Age : 55 years, Occupation : Household
- 2 Mayuri Mahavir Mandave
 Age : 25 years, Occupation : Education
- 3 Mahesh Mahavir Mandave
 Age : 19 years, Occupation : Education
 All R/o. Harugade Plot, Sangliwadi,
 Tal. Miraj, Dist. Sangli
- 4 Sandip Dilip Lokhande
 Age : 42 years, Occupation : Driver
 R/o. Aazad Chowk, Kadegaon,
 Tal. Kadegaon, Dist. Sangli
 F.A. stand dismissed against Res. No. 4 vide R.J.(II)
 order dtd. 24.07.24. ... Respondents

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Mr. D.D.Rananaware, Advocate for the Appellant.
 Mr. Sukumar Ghanavat, Advocate for Respondent Nos. 1 to 3.

CORAM : SHIVKUMAR DIGE, J.
DATED : 29th JULY, 2025.

ORAL JUDGMENT :

1. This appeal is preferred by the appellant / Corporation against the Judgment and Order passed by the Motor Accident Claims Tribunal, Sangli (for short “the Tribunal”).
2. It is contention of learned counsel for the appellant / Corporation that accident occurred due to sole negligence of the deceased as he was

crossing the road along with his ice-cream cart. Learned counsel further submitted that even driver of offending bus blew horn, but the deceased did not listen it, but these facts are not considered by the Tribunal. Learned counsel further submitted that the Tribunal has considered monthly income of the deceased at Rs.9,000/- per month without any evidence on record and on that basis, compensation is awarded which is on higher side, hence requested to allow the appeal.

3. It is contention of learned counsel for the respondent Nos. 1 to 3 / claimants that accident occurred due to sole negligence of the driver of the offending bus. The offence was registered against him. The Tribunal has passed well reasoned order, no interference is required in it and requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused Judgment and Order passed by the Tribunal. To prove the negligence of the driver of offending bus, the claimants have relied on police papers. The claimants have examined claimant No.3 Mahesh Mandave. He has stated that accident occurred due to sole negligence of the driver of offending bus. In cross examination, he admitted that the bus was stationed on the road as passengers were alighting from it and thereafter accident occurred. He has further stated that his father was selling ice-cream and was earning Rs.12,000/- to 15,000/- per month. The appellant/ Corporation has

examined driver of offending vehicle Mr. Sandip Lokhande, as a defence witness. He has stated that on the day of accident, the bus was stopped near the corner as passengers were alighting from the bus. When bus was proceeding further, suddenly the deceased came from left side of the bus and was crossing the road. He did not pay attention to the horn given by this witness. He has further stated that accident occurred due to sole negligence of the deceased. In cross examination, he admitted that the deceased was crossing the road with his ice-cream cart. He has stated that the deceased was dashed by the front side of the bus. While dealing with the issue of negligence, the Tribunal has observed that the accident took place by front side of the bus. It shows that the driver of offending bus did not take proper care and has driven the bus negligently. Therefore, it cannot be said as contributory case. The Tribunal has held that the accident occurred due to sole negligence of the driver of offending bus. I do not find infirmity in it. In my view, at the time of accident, admittedly bus was not moving and after alighting passengers, the bus was proceeding, at that time, accident occurred. In cross examination, DW-1 has admitted that to alert the deceased, he blew horn to the deceased but the deceased did not listen it. It shows that the driver of offending bus had seen the deceased while crossing the road but in spite of that he gave dash to the deceased. He could have avoided the said accident by applying

brake but he did not do that. Hence, I do not find merit in the contention that accident occurred due to negligence of the deceased.

While considering income of the deceased, the Tribunal has considered that the deceased was hawker and the income of the hawker can be Rs.300/- per day, on that basis, the Tribunal has considered Rs.9,000/- per month as monthly income of the deceased. I do not find infirmity in it. In my view, at the time accident, the deceased was 55 years old and was maintaining family of four people including himself. Hence, the income considered by the Tribunal is proper. Considering these facts, appeal is devoid of merit and I pass following order.

ORDER

- (i) The appeal is dismissed.
- (ii) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- (iii) The statutory amount along with accrued interest be transmitted to the Tribunal. The parties are at liberty to withdraw it.
- (iv) Pending applications, if any, stands disposed of.
- (v) R & P be sent back to the Tribunal.