



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

FIRST APPEAL NO. 1222 OF 2024

Shubham s/o Bhojraj Ukunde,
Age about 28 years, Occupation – Nil,
R/o Ward No.3, Mu. Bhanewada,
Post – Mathani, Tahsil – Kamptee,
District – Nagpur.

.... **APPELLANT**
(Original Claimant/Petitioner)

VERSUS

The Controller
Maharashtra State Road Transport
Corporation (MSRTC), Near Ganeshpeth
ST Bus Stand, Nagpur.

.... **RESPONDENT**
(Original Respondent)

Mr. P.S. Mirache, Advocate for the appellant,
Mr. Ashish Mehadia, Advocate for the respondent.

CORAM : ABHAY J. MANTRI, J.

DATE : 07-07-2025

ORAL JUDGMENT :

Heard. **Admit.** With the consent of the learned Counsel for the parties, the appeal is taken up for final hearing forthwith.

2. The original claimant challenges the judgment and award dated 28-08-2024 passed in M.A.C.P. No. 249/2019 by the learned Member,

Motor Accident Claims Tribunal-2, Nagpur (for short, the “*Tribunal*”), whereby the claim was dismissed.

3. The facts of the case in a nutshell are as follows:

(a) On **25-01-2019**, the appellant/original claimant was riding his motorcycle bearing registration No.MH-40/AJ-3822 towards Vadoda. On the way, when he reached near Calcutta Dhaba on Nagpur-Bhandara Road, a S.T. Bus was going towards Bhandara in a rash and negligent manner and collided with the claimant's motorcycle, causing him to fall on the road and sustain injuries. Therefore, he was admitted to the P.H.C., Mouda. Thereafter, he was shifted to Mayo Hospital, then to Seven Star Hospital and lastly to Rahate Hospital, Nagpur.

(b) Due to the occurrence of the accident, on **19-02-2019**, the brother of the claimant lodged a report against the bus driver. Based on the said report, Police Station Mouda registered the offence against the bus driver vide Crime No.122/2019 for the offences punishable under Sections 279, 337 and 338 of the Indian Penal Code.

(c) At the time of the accident, he was 23 years old and doing the cultivation work and earning Rs. 10,000/- per month. Due to the accident, he has sustained a permanent disability and his working capacity is reduced. He spent Rs. 6,00,000/- towards medical treatment

and medicines. Hence, he had filed the claim petition claiming compensation.

4. The respondent filed a written statement and resisted the claim, and denied the contents of the claim petition in toto. It is categorically denied that the driver of the bus was involved in the alleged accident, but he has been falsely implicated in it. It is submitted that no accident occurred at the fault of the bus driver, but it happened due to the negligence of the claimant himself. Therefore, he urges the dismissal of the petition.

5. Based on the rival pleadings, the learned Tribunal has framed the issues. Pursuant to the issues, the claimant examined four witnesses and produced and proved the documents. On the other hand, the respondent examined the Bus driver as a witness and closed its evidence. After appreciating the evidence on record, the learned Tribunal has held that the claimant failed to prove that due to the rash and negligent driving on the part of the bus driver, the accident occurred and he had sustained the permanent disability and, therefore, dismissed the petition of the claimant.

Being aggrieved by the same, the claimant has preferred this appeal.

6. Heard Mr. P.S. Mirache, learned Advocate for the appellant and Mr. A.S. Mehadia, learned Advocate for the respondent, at length. Perused the record and proceedings, more particularly the impugned judgment and evidence on record as well as the judgments relied on by the learned Advocate for the appellant. Having considered the rival submissions and record, the following point arises for determination.

“Whether any interference is required in the impugned judgment and award?”

7. The learned Advocate for the appellant has vehemently argued that the learned Tribunal failed to take into consideration the fact that the F.I.R. was registered against the driver of the bus; so also, the charge-sheet was filed against him, which itself denotes that the bus driver was driving the bus rashly and negligently and, therefore, F.I.R. was registered against him. The learned Tribunal failed to consider the police papers and spot panchanama filed on record in its proper perspective, which the bus driver did not challenge, and therefore, the learned Tribunal ought to have considered these. However, the learned Tribunal has ignored these documents and erred in holding that the appellant failed to prove that the bus driver was driving the bus in a rash and negligent manner.

a) He further submitted that the bus driver, during his cross-examination, deposed that he had not given any statement to the police nor filed the same on record. Similarly, no documentary evidence was filed on record to show that the appellant was under the influence of the drug or was not holding a driving licence. Still, the appellant has discharged his burden by leading evidence. However, the learned Tribunal erred in discarding that evidence and gave undue importance to his evidence, and, therefore, the said finding cannot be sustained in the eyes of the law.

b) Lastly, he canvassed that it is not in dispute that the bus was involved in the accident and, therefore, being the beneficial legislation composite negligence has to be taken into consideration as in the incident the appellant has spent huge amount and, thus, he urges for setting aside the impugned judgment and award.

To buttress his submissions, he has relied on the following judgments :

- (a) The Oriental Insurance Company Ltd. v. Pallavi and Ors., 2024(3) Mh.L.J. 100;
- (b) Mangla Ram v. Oriental Insurance Co. Ltd. & Ors., 2018 ACJ 1300;
- (c) Oriental Insurance Co. Ltd. v. Rajo & Ors., IV (2018) ACC 869 (P & H)
- (d) Yerramma and others v. G. Krishnamurthy and another, 2015 AIR (SCW) 514;

- (e) ICICI Lombard General Insurance Co. Ltd. v. Rajani Sahoo and Ors., 2025(3) Mh.L.J. 38.

8. On the other hand, the learned Advocate for the respondent has strongly opposed the contentions of the appellant and submitted that the impugned judgment and award are just and proper and no interference is required in the appellate jurisdiction. During the argument, he has taken me through the evidence of the claimant and argued that *“the claimant himself, during cross-examination, admitted that the bulls of the bullock-cart became uncontrolled. Consequently, as his motorcycle was positioned behind the bullock-cart, he gave a dash to the rear (back) side of the bus. The said evidence itself indicates that the bus driver was not at fault, nor was he responsible for the said accident.”*

a) He further canvassed that the claimant failed to explain the delay caused in filing the F.I.R. When his brother was following the bus and present on the spot, immediately after the occurrence of the incident, it was incumbent on him to lodge the report immediately. However, the claimant failed to explain the delay in filing the F.I.R. He also pointed out the panchanama and the damage to the motorcycle's front side guard, and argued that this created a doubt about the bus's giving a

dash to the motorcycle from the rear side. Hence, he urges the dismissal of the appeal.

9. At the outset, it appears that the learned Member of the M.A.C.T., after considering the evidence on record in paragraph Nos. 19 to 24, has dealt with the issues and the rival contentions of the parties and held that there was a delay of twenty days in lodging the F.I.R. As per the contentions of the brother of the claimant i.e. informant that at the time of accident, he was following the bus, but he failed to explain the same. Further, he discussed the evidence of the bus driver, which the claimant supported and corroborated during his cross-examination. The evidence of the bus driver and the claimant themselves demonstrates that the motorcycle rider lost control due to the uncontrolled bulls of the bullock cart, causing him to dash to the left rear side of the bus and fall on the road. Thus, the Tribunal held that the claimant had failed to prove that the bus driver was driving the bus in a rash and negligent manner and gave a dash to the motorcycle. However, the Tribunal held that the claimant himself was responsible for the occurrence of the said accident and, therefore, dismissed the claim petition.

10. It is to be noted that the claimant in the claim petition has averred that the driver of the bus drove the bus in a rash and negligent manner and gave a dash to his motorcycle. However, he has not clearly stated how or where the bus driver gave the dash to the motorcycle when he was riding it himself. In such circumstances, it was incumbent on him to provide the specific details of the incident from which side the bus had given a dash to the motorcycle, but he vaguely stated that the bus had given a dash to the motorcycle. It is worth noting that in his evidence, he has reiterated the said fact in examination-in-chief. However, during his cross-examination, in paragraph No.2, he categorically admitted that *“The bulls of the bullock-cart got uncontrolled, (my) his motorcycle was on the rear side of (behind) the bullock cart, therefore, his (my) motorcycle gave a dash to the left rear side (back side) of the bus.”* He has also admitted that *“he (I) was not having a driving licence”* and *at the time of the incident, “he was not wearing a helmet”*. I would like to reproduce paragraph No.2 of the cross-examination as under :

“2. It is not true to say that I gave the bullock cart a dash and fell down on the road. I was not having driving licence. I was not wearing helmet at the time of accident. Accident took place on Bhandara-Nagpur Road, it is National Highway. The bulls of the bullock cart got uncontrolled, my motorcycle was behind the bullock cart; therefore, my motorcycle gave a dash to the backside of the bus.”

11. Besides, on perusal of F.I.R. (Exhibit 25), which was lodged by the brother of the claimant on **19-02-2019** in respect of the accident occurred on **25-01-2019**, wherein he has vaguely stated that the bus which was proceeding from Nagpur to Bhandara gave a dash to the motorcycle and due to the said dash, the rider of the motorcycle fell on the road. He was following the bus. Then he went to see the motorcycle rider. At that time, he learned that he was his brother Shubham, who had sustained simple injuries, i.e. abrasions to his right leg and head. But he did not report the said accident to the police immediately. Indeed, he would have to inform the police and lodge the report. However, he failed to enter the witness box or explain the delay in filing the F.I.R., which was incumbent upon him to do. In the F.I.R., he has not stated from which side of the motorcycle the bus driver gave the dash. The F.I.R. was vague in that regard.

12. On perusal of the spot panchanama, it does not appear that the motorcycle was damaged from the rear side, but the panchanama indicates that the right-side guard and petrol tank of the motorcycle got damaged in the said accident, and the bus was not available at the spot.

13. It is pertinent to note that the claimant has not examined any other eyewitness to the incident in support of his claim. If, as the claimant claims, his brother was present at the spot, he would have certainly examined him, as he had lodged the report. According to him, his brother was following the bus. Non-examination of the brother of the claimant leads to drawing an adverse inference about the presence of the brother on the spot.

14. On the other hand, the respondent examined the bus driver, who categorically deposed that one motorcycle gave a dash to the left rear side of the bus. During his cross-examination, his testimony was neither challenged nor denied by the claimant. On the contrary, the suggestion was put to him that he had given the dash to the motorcycle from behind was denied by him. He denied driving the bus at high speed in a rash and negligent manner, and gave a dash to the motorcycle.

15. On careful perusal of the evidence of the claimant, i.e., the rider of the motorcycle and the bus driver, it is evident that the claimant, during his cross-examination, categorically admitted that the bulls of the bullock-cart got uncontrolled and, therefore, his motorcycle gave a dash to the left rear side of the bus. Apart from this, the testimony of the bus driver that “*one motorcycle gave a dash to his bus from the left*

rear side” remained unchallenged and unshattered; therefore, there is no reason to disbelieve the testimony of the bus driver as well as the claimant on this point. The said evidence categorically demonstrates that on the date of the accident, as the bulls of the bullock-cart got uncontrolled, the claimant gave a dash to the left rear side of the bus. The evidence above itself is fatal to the claimant's case that the bus driver lost control and gave a dash to the motorcycle of the claimant. Moreover, it is evident that the claimant has not come to the Court with clean hands, but averred the incorrect facts in his pleading that the bus driver gave a dash to his motorcycle, and on that count, the claimant is also not entitled to seek relief from the Court. The person who does not come to the Court with clean hands is not entitled to claim any relief. Besides, the claimant failed to produce the Discharge Card of the Mouda Hospital or Mayo Hospital, Nagpur, before the Court in support of his claim to show that immediately after the occurrence of the incident, he informed the Medical Officer about the incident. The said fact also leads to drawing an adverse inference against the claimant about the occurrence of the incident as alleged.

16. During the argument, the learned Advocate for the appellant tried to canvass that due to the head injury, the claimant's mental condition was not good; therefore, he might have deposed the same.

However, in examination-in-chief, he has not deposed that his mental condition was not good. On the contrary, in the verification of the affidavit, he affirmed that *“as per his instructions, the affidavit was drafted by his counsel and gave understanding to him in vernacular language. The contents of the affidavit are true and correct.”* Apart from this, he has not produced any medical certificate on record to show that his mental condition was not stable/shout or that he had suffered any mental trauma. Therefore, I do not find substance in his contention that the mental condition of the claimant was not good.

17. Alternatively, he argued that on the principle of ‘*res ipsa loquitur*’, the bus driver was to be held liable for composite negligence. However, the learned Tribunal erred in holding that the claimant failed to prove that the bus driver was negligent or responsible for causing the accident and, therefore, exonerated the insurance company from liability. It is pertinent to note that, as discussed above, the evidence of the claimant himself and the respondent categorically demonstrates that on the day of the incident, the claimant gave the dash to the left rear side of the bus. Moreover, it is not the case that the claimant averred that the bus driver was negligent. On the contrary, it is the claimant's case that the bus driver gave a dash to the rear side of the motorcycle.

18. To ascertain the real facts based on the principle of '*res ipsa loquitur*', it is necessary to assess the spot panchanama and police papers on record. The principle of '*res ipsa loquitur*' is a legal doctrine meaning "*the thing speaks for itself*". It allows a court to infer negligence on the part of a party based on the circumstances of an accident, even without direct evidence of negligence, if certain conditions are met. Furthermore, this concept arises when the very occurrence of an accident suggests that someone was at fault, even if there's no direct evidence pointing to the party's negligence. However, on perusal of the spot panchanama, it does not appear that the motorcycle was found damaged from the rear side. On the contrary, it seems that the front right-side guard and petrol tank of the motorcycle were damaged. The bus was not available on the spot while conducting the panchanama. Nothing has been brought to record that the bus was also damaged in the said accident. During his cross-examination, the claimant himself admitted that the bus was proceeding ahead of the motorcycle. However, the bulls of the bullock-cart got uncontrolled, and therefore, his motorcycle gave a dash to the left rear side of the bus. In those circumstances, it would not be proper to hold that the bus driver was negligent while driving the bus or that he was at fault. The evidence itself shows that the claimant himself was negligent while driving the motorcycle and gave a dash to the left rear side of the bus, which was

not within the vision of the bus driver. Therefore, in my view, even assuming the principle of '*res ipsa loquitur*', it cannot be said that the bus driver was also negligent and, therefore, the accident occurred on his part to hold him as a composite negligence.

19. No doubt, the claim petition is not to be tried as a criminal proceeding wherein strict proof of the fact is required, but the claimant is expected to prove his case on the preponderance of probabilities. Similarly, the Motor Vehicles Act is a beneficial legislation and therefore, the Court ought to have taken a liberal approach while considering the claim of the claimant. However, in the case in hand, the claimant himself admitted that he gave a dash to the left rear side of the bus, which was proceeding ahead of his motorcycle. On the contrary, the claimant has not come to the Court with clean hands, as in the claim petition as well as in the examination-in-chief, he stated and deposed that the bus gave a dash to the motorcycle from the rear side, and, therefore, the accident occurred. However, during cross-examination, he categorically admitted that he gave a dash to the left rear side of the bus. In such circumstances, the claimant failed to discharge the initial burden of proving that the bus driver was negligent, which, in turn, led to the accident. Contrary to the claimant's assertion, the evidence on record demonstrates that the claimant

himself was negligent while driving the motorcycle, and therefore, the accident occurred. In such an event, it cannot be said that the claimant has proved that the bus driver was negligent and, therefore, that the accident occurred.

20. In the cases of *Pallavi and Others, Mangla Ram and Rajani Sahoo and others* (supra), this Court as well as the Hon'ble Apex Court has observed that registration of the F.I.R, filing of the charge-sheet against the driver of the bus and non-challenging the same by the driver of the offending vehicle would lead to draw an inference that the driver of the offending vehicle was negligent and due to his negligence, the accident was occurred. However, in the case at hand, the facts are different. The claimant, who was the victim of the said accident, himself deposed that he gave a dash to the left rear side of the bus and, therefore, the accident occurred. Hence, the law laid down in the said judgments is hardly of any assistance to the claimant in support of his contentions.

21. Similarly, in the case of *Rajo and others* (supra), the driver of the offending vehicle had not moved the application before the authority, as he had been falsely implicated in the case. Therefore, the tribunal as well as the Madhya Pradesh High Court held that the rash and negligent driving of the offending vehicle caused the said accident.

However, in the case at hand, the claimant himself failed to discharge the burden, which lies on him to show that the bus driver was negligent; therefore, the dictum laid down in the said judgment is not helpful to the claimant in support of his contentions.

22. In the case of *Yerramma and others* (supra), the facts were that the deceased was driving the motorcycle, and the bus, which was going ahead of him, took a right turn without giving an indicator; therefore, the motorcycle collided with the bus. Thus, the Hon'ble Apex Court held that due to the negligence of the bus driver, the said accident occurred. However, in the case at hand, the claimant has not come to the Court with clean hands. In the claim petition, he averred that the bus gave a dash to the rear side of his motorcycle; however, in his cross-examination, he admitted that he gave a dash to the left rear side of the bus. The person who has not come to the Court with clean hands is not entitled to claim any relief. Similarly, it was not his case that the bus driver was negligent or took a turn without giving any signal, and, therefore, the accident occurred. However, during his cross-examination, he categorically stated that the bullock-cart, which was proceeding ahead of him, was uncontrolled, and his motorcycle, which was behind the bullock-cart, gave a dash to the rear side of the bus. The claimant failed to adduce any cogent and reliable evidence to show

that the bus driver was negligent while driving the bus. The initial burden lies on the claimant to prove the negligence on the part of the bus driver, but he failed to discharge it, and, therefore, the mandate laid down in the above case is of no assistance to him in support of his submission.

23. Thus, having considered the above discussion, it is evident that the claimant failed to prove that the bus driver was negligent and that the accident occurred due to the negligence on his part. On the contrary, it has come on record that the accident occurred due to the claimant's own fault. Therefore, he failed to prove that the bus driver was responsible for the said accident. The learned trial Court has rightly considered the same in detail. Consequently, I do not find any perversity or illegality in the impugned judgment to interfere with it in the appellate jurisdiction. On the contrary, the judgment and award of the learned Tribunal are found just and proper. No interference is required in it. Apart from this, the claimant has not come to the Court with clean hands. Hence, I answer the point in the negative. Resultantly, the appeal must fail, and as a result, it is dismissed. No order as to costs.

(ABHAY J. MANTRI, J.)