

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1725 OF 2002

1. **Smt. Vishala Sridhar Shetty**,
Adult, Occ : Household
2. **Manickya Sridhar Shetty**
3. **Kum. Deesha Sridhar Shetty**
Nos.2 and 3 minors, through their
mother and natural guardian,
Applicant No.1 abovenamed,
All residing at Gangaram Bhoir Chawl,
Village Digha, Thane Belapur Road,
Taluka and District Thane. ... Appellants

Versus

1. **The Secretary,**
Maharashtra State Road Transport
Corporation
2. **Smt. Bhavani Shetty**,
Adult, Occ : Household,
Residing at Tillar Pari House,
Udipi, Dakshin Kannada,
State of Karnataka. ... Respondents

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Ms. Dhruiti Datar instructed by Mr. Rajesh Datar, Advocate for the Appellants.

Mrs. P.M. Bhansali alongwith Ms. Rajlaxmi Punjabi and Mr. Arafat Siddique, Advocate for the Respondents.

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CORAM : ABHAY AHUJA, J.

DATE : 5 MAY 2026

ORAL JUDGMENT :

1. Being aggrieved by the Judgment and Order dated 27th April 2001 of the Motor Accident Claims Tribunal, Thane, this First Appeal has been preferred by the wife and two children of the deceased.

2. The deceased died in a motor accident on 27th August 1991, while riding his motorcycle from Thane towards Thane-Belapur Road being knocked down by the S. T. Bus owned by the Respondent No.1- Corporation coming in a high and excessive speed from Thane to Turbhe.

3. Ms. Datar, learned Counsel, appearing for the Appellants submits that the accident occurred due to the rash and negligent driving of the driver of the S. T. Bus and despite the eyewitness/passenger accounts clearly showing that the S. T. Bus was being driven at a high and excessive speed and while overtaking, dashed the motorcycle ridden by the deceased, and despite recording a finding that the Appellants had proved that the deceased died in the motorcycle accident on 27th August 1991, while riding the motorcycle No. MAY 4076, due to the rash and negligent driving on the part of the rider of the S. T. Bus No. MCA 7005, the Tribunal has erroneously observed that “the deceased motorcyclist was also negligent and

therefore, the accident must have occurred”.

4. The learned Counsel further submits that despite a finding that the motorcycle was dashed on its right side and the S. T. Bus struck the motorcyclist from the right side, which clearly demonstrates that the driver of the S. T. Bus was driving the bus rashly and negligently, the Tribunal has erroneously relied upon the evidence of the driver of the S. T. Bus holding the same to be trustworthy and reliable where the driver has stated that the motorcyclist had indeed indicated his intention to overtake the S. T. Bus and without any other evidence observed that as one vehicle was coming from the opposite direction, he gave a signal to the motorcyclist that he should not attempt to overtake the said S. T. Bus but despite this, the motorcyclist attempted to overtake the S. T. Bus and upon noticing one vehicle coming from the opposite direction, suddenly swerved to the left side, and dashed against a herd of cattle and was thrown away on the road and that thereafter the driver of the S. T. Bus took the said S. T. Bus towards the extreme left, however, the motorcyclist came under the rear-side wheel of the S. T. Bus and therefore, the accident occurred due to the sole negligence on the part of the motorcyclist. It is submitted that only on the basis of this, the Tribunal had come to a

conclusion that there was no harm in the testimony of the driver and that there was reason to believe that the driver of the S. T. Bus had signalled the motorcyclist that he should not attempt to overtake the S. T. Bus as one vehicle was seen coming from the opposite direction, but since the motorcyclist did not pay heed and attempted to overtake in haste, he met with an accident and that therefore the deceased was guilty of negligence, as he did not even care to heed the signal given by the driver of the S. T. Bus.

5. Ms. Datar submits that the said finding is completely erroneous, as firstly there is no evidence on record with respect to the herd of cattle against which the motorcyclist dashed and was thrown away. Ms. Datar secondly submits that since the motorcycle was on the left of the S. T. Bus and the S. T. Bus being a right hand drive, the driver of the S. T. Bus could not have signalled to the motorcyclist not to overtake. That there is also no evidence to even suggest that there was a vehicle coming from the opposite direction or there was a herd of cattle.

6. Ms. Datar has submitted that the S. T. Bus driver ran away as he was afraid of getting beaten by the persons gathered there and did not even care to check the condition of the motorcyclist.

7. It is submitted that the Tribunal has already recorded that the Appellants have proved that the deceased died in the motorcycle accident on 27th August 1991, while riding the motorcycle, due to the rash and negligent driving on the part of the driver of the S. T. Bus No. MCA 7005 and that thereafter the Respondent No.1 - Corporation has not challenged the said order.

8. On the other hand, Mrs. Bhansali, learned Counsel appearing for the Respondent-Corporation has firstly submitted that a perusal of the statement made by the witness Mr. Shubhakar Shetty at Exh.20 and his evidence at Exh. 28 suggest that he has made contradictory statements: on the one hand there is a clear admission in Exh. 20 that the deceased was his brother-in-law but while deposing in evidence he has changed his statement and mentioned that he was a distant relative. It is further submitted that, the fact that he was related to the deceased itself demonstrates that he was an interested witness. Mrs. Bhansali has submitted that therefore the evidence of Mr. Shubhakar Shetty be rejected.

9. It is further submitted by Mrs. Bhansali that the MSRTC driver has clearly deposed that the bike gave signal to overtake and the bus

driver gave him a signal to not to overtake. The driver has further deposed that the bike still attempted to overtake and the motorcyclist therefore dashed into another vehicle which was coming from the opposite direction and then swerved to the left side all of a sudden and dashed against the herd of cattle which led to the motorcyclist being thrown on the road and that the witness withstood the cross examination.

10. Mrs. Bhansali has submitted that the bus driver has also deposed that he took the bus towards the extreme left, but the motor cyclist came under the rear wheel of the bus.

11. Mrs. Bhansali has further submitted that the motorcycle being a smaller vehicle was in a better position to easily manoeuvre the vehicle as compared to the bus full of passengers, still, the bus driver made all possible attempts to firstly ask the motorcyclist not to overtake, then to take the bus on the extreme left. Mrs. Bhansali has submitted that, therefore, the last opportunity to avoid the accident was with the motor cyclist and hence this is a clear case of contributory negligence, if not the sole negligence of the motorcyclist, and thus the entire liability cannot be saddled on the Respondent-Corporation or the

bus driver alone.

12. With respect to the quantum, Mrs. Bhansali, drawing this Court's attention to Exh. 25 submits that Exh. 25 specifically mentions the per month salary as Rs. 2,294/- and therefore, the Tribunal could not have awarded Rs. 3,000/- as documentary evidence needs to be preferred over oral evidence. Mrs. Bhansali has further submitted that, in view of the decision of the Hon'ble Supreme Court in the case of *Smt. Sarla Varma and others vs. Delhi Transport Corporation and another*¹ where the need for consistency and standardisation in determining compensation so as to avoid arbitrary and speculative assessments has been stressed, the Tribunal's enhancement of income without any evidentiary basis runs contrary to the settled principles and therefore, the salary needs to be accepted at Rs. 2,294/-.

13. Ms. Datar has submitted in rejoinder that the Panchanama of the site of offence reveals that the motorcycle was severely damaged and that it was dashed on the right side. However, the contention of the Respondent No.1 that the deceased was trying to overtake on the wrong side of the road completely contradicts the Panchnama and therefore should not be considered. Ms. Datar submits that the

1 (2009) 6 SCC 121

evidence of the passenger of the bus ought to have been given more weightage than that of the driver of the bus. Ms. Datar has submitted that therefore, the finding of the Tribunal that the deceased contributed to his misfortune is erroneous and contrary to the evidence on record.

14. Ms. Datar has also submitted that the appeal be allowed not only in favour of the Appellants but also in favour of the Respondent No. 2 as well as the deceased mother of the deceased viz. Kamla S. Shetty. Ms. Datar has submitted that the Tribunal has awarded the claim only in favour of the Appellants but not in favour of the deceased mother, who was alive at the time of the claim application and also not in favour of the sister Smt. Bhavani Shetty, the Respondent No. 2, who as per the evidence of the Appellant No.1 – wife of the deceased, is the sister of the deceased and is handicapped and was 60 years old at the time of the examination and cross-examination.

15. As regards the claim of the deceased mother is concerned, Mrs. Bhansali has fairly submitted that, this Court may allow the same in view of the decision of the Hon'ble Supreme Court in the case of *Kirti and Another vs. Oriental Insurance Company Limited*² where the Hon'ble Supreme Court has clearly observed that the subsequent death

² (2021) 2 Supreme Court Cases 166

of the deceased's dependent mother ought not to be a reason for reduction of motor accident compensation.

16. However, as regards the compensation to the handicapped sister of the deceased is concerned, Mrs. Bhansali has submitted that a sister is not a legal representative under Section 166 of the Motor Vehicles Act, 1988 (the "M. V. Act") and that this Court may not permit the same.

17. I have heard the learned Counsel and with their able assistance perused the record and proceedings including the evidence.

18. Ms. Datar has submitted that the evidence of the passenger witness has not been properly considered by the Tribunal. I agree with the learned Counsel. As per the evidence of the passenger witness, the S. T. Bus was being driven at a high and excessive speed and while overtaking the motorcycle, proceeding ahead of it, dashed against it. In fact, the passenger witness account supports the submissions made on behalf of the Appellants.

19. In a recent decision in the case of *Baban Shankar Daphal & Ors. Vs. The State of Maharashtra*,³ the Hon'ble Supreme Court has while discussing "interested" and "related" witnesses observed that

³ 2025 INSC 97

being a relative does not automatically render a witness “interested” or biased and the law also nowhere states that the evidence of the interested witness should be discarded altogether. The Hon’ble Supreme Court has re-emphasized that Courts must assess the reliability, consistency and coherence of related or interested witnesses rather than labelling them as untrustworthy. The Hon’ble Supreme Court has also observed that this approach ensures that the evidence is not discarded merely due to familial ties but is instead assessed based on its inherent reliability and consistency with other evidence in the case. That once there is a version of an eye witness and the same inspires confidence of the Court, it will be sufficient to prove the guilt of the accused.

20. In the case of *Pruthviraj Jayantibhai Vanol Vs. Dinesh Dayabhai Vala and Ors.*⁴, the Hon’ble Supreme Court has observed that ocular evidence is considered the best evidence unless there are reasons to doubt it. It is only where there is a gross contradiction that makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved. In the case of *Baban Shankar Daphal & Ors. Vs. The State of Maharashtra (supra)* it has been held that a conviction can be based upon the

4 (2022) 18 SCC 683.

version put forth by the eye witness and the medical evidence must be considered only for the purpose of corroboration of the ocular evidence.

21. Merely being a relative, close or distant, cannot decide that the witness is an interested witness until it is proved that the witness has a personal stake in the outcome. No evidence has been brought to my notice to demonstrate or prove that the passenger witness has a personal stake in the outcome. Further, in the facts of this case, it would make little difference if the passenger witness viz. Mr. Shubhakar Shetty has made a statement that he is the brother-in-law or a distant relative as from his deposition it is quite clear that the motorcycle which was being ridden was proceeding ahead of the S.T. Bus which was at high and excessive speed and while overtaking the said motorcycle, dashed against it. The witness was sitting on the cleaner's side in the S. T. Bus. The witness has also deposed that the driver of the S. T. Bus stopped the S. T. Bus ahead from the spot and thereafter ran away. This evidence has not been in any manner controverted in the deposition by the driver of the S.T. Bus. The passenger witness has also deposed that due to the dash, the driver of the motorcycle had sustained severe

injuries and died on the spot. The passengers from the S. T. Bus got down to see as to what had happened and the witness also went there with them. The witness has stated that he saw that his relative named Shridhar Shetty was lying dead at the place and then he informed the family members and then went to Rabale Police Station and informed them about the incident and lodged the F.I.R. which is at Exh. 20 and which bears his signature. All these facts have gone uncontroverted. In the cross examination of the passenger witness, it has been stated that it is not true that the motorcycle was in the process of overtaking or that the motorcyclist lost control and came under the rear side wheel of the S. T. Bus. This is a clear contradiction to the deposition by the driver of the S. T. Bus who has stated that the motorcyclist was indicating that he wants to overtake the S. T. Bus or that one vehicle was seen coming from the opposite direction or that the driver gave a signal to the motorcyclist not to overtake or even that the motorcyclist overtook the S. T. Bus or swerved to the left side all of a sudden and dashed against a herd of cattle and was thrown away on the road. The deposition that the driver took the S. T. Bus towards extreme left itself suggests that the S. T. Bus was overtaking the motorcycle and that is only how the S. T. Bus would have dashed against the motorcycle due to which, the deceased would have fallen down and come under the

left side rear wheel of the S. T. Bus leading to the accident and his death on the spot.

22. The Post-Mortem Report at Exh. 23, and particularly the description of injuries on the right side of the body of the deceased as described in paragraphs 17 and 18 is the testimony of the cause of death as corroborated by the passenger witness viz. Mr. Shubhakar Mudanna Shetty, the relative of the deceased, so also, the Panchanama is corroborated by the account of the eye witness. The Panchanama clearly reveals that the motorcycle was severely damaged and that it had been dashed on the right side. The related witness was naturally present at the scene of the accident and in my view his evidence only corroborates with reliability, consistency and coherence the other evidence including the Post-Mortem Report and the Panchanama. Therefore, the testimony of the related witness cannot be discarded in the facts and circumstances of this case. The direct evidence of Mr. Shubhakar Mudanna Shetty is credible and reliable and I am inclined to give due weight to the said testimony. His ocular evidence is corroborated by the Post-Mortem Report as noted above. Just on the basis that there is no harm to believe the testimony of the S. T. Bus driver, the Tribunal has observed that there was reason to believe that the driver of the S. T. Bus had signaled the motorcyclist not to overtake,

as one vehicle was coming from the opposite direction and that the motorcyclist did not pay heed to the said signal and attempted to overtake and met with the accident. Neither the Panchanama nor the Post-Mortem Report make a mention of a herd of cattle or a vehicle coming from the opposite direction. This evidence of the driver of the offending vehicle therefore does not find any corroboration. I therefore agree with the submissions made by Ms. Datar. The Appellants have proved that the deceased died in the accident on 27th August 1991 while riding the motorcycle due to the rash and negligent driving on the part of the driver of the S. T. Bus No. MCA-7005 and there was no contributory negligence on the part of the motorcycle rider viz. the deceased. Admittedly, the Respondent No. 1 – Corporation has not even challenged the order of the Tribunal.

23. In fact, the deposition of the driver of the offending vehicle to the extent of attempting to give another version of the entire accident and a completely baseless one needs to be discarded. The driver of the S. T. Bus would in fact be an interested witness though not related. The driver's own deposition states that the criminal prosecution is still pending. In my view, even if the prosecution was not pending, the driver would definitely be interested in the outcome of these

proceedings and would be an interested witness whose testimony deserves to be discarded to the extent it seeks to contradict the corroborative testimony of the passenger witness corroborating the Post-Mortem Report and the Panchanama.

24. In this view of the matter, the deceased cannot be held to be contributorily negligent. The findings of contributory negligence by the deceased as held by the Tribunal are therefore set aside. The deceased died due to the sole negligence of the driver of the Respondent-Corporation. There was no occasion for the motorcyclist to avoid the accident as he was clearly ahead of the offending vehicle even though the motorcycle being a smaller vehicle would have been in a position to easily manoeuvre the motorcycle. I therefore agree with the learned Counsel for the Appellants that the finding of the Tribunal that the deceased contributed to his misfortune is erroneous and contrary to the record.

25. Coming to the submission with respect to the enhancement of compensation, although this Court has on 28th April 2026 had recorded that both the learned Counsel are *ad-idem* that the income of the deceased for computing the compensation be taken as Rs.3,000/- per month and the multiplier of 16 be applied in accordance with the

decisions in the case of *National Insurance Company Limited vs. Pranay Sethi and others*⁵, *Smt. Sarla Verma and others vs. Delhi Transport Corporation (supra)* and *Magma General Insurance Co. Ltd. vs. Nanu Ram and others*⁶, today Mrs. Bhansali as noted above has sought to oppose the per month income.

26. No doubt Mrs. Bhansali is right that in view of the decision of the Hon'ble Supreme Court in the case of *Smt. Sarla Verma and Others vs. Delhi Transport Corporation (supra)*, the need is for consistency and standardization in determining compensation so as to avoid arbitrary and speculative assessments. Mrs. Bhansali has made the above submission emphasizing that the Tribunal has enhanced the income adopting the salary per month as Rs. 3,000/- instead of Rs. 2,294/-. I would have on the first blush agreed with Mrs. Bhansali however, a perusal of Exh. 25 which is a certificate by the Manager – Personnel – HRD of the employee company not only clearly certifies that the deceased was working with the company from 15th March 1976 to 26th August 1991 drawing a total salary of Rs. 2,294.49/- per month but in addition, it certifies that he was also entitled to the following fringe benefits:

5 (2017) 16 SCC 680

6 2018 ACJ 2782

- (i) 7 days Salary towards Regular Attendance Bonus for a Quarter.
- (ii) 7 days Casual Leave per year.
- (iii) 5 days Sick Leave per year.
- (iv) 15 days Annual Leave per year.
- (v) Rs. 800/- per year towards Medical Reimbursement.
- (vi) Rs. 400/- per year towards Leave Travel Assistance.
- (vii) Rs. 3000/- per year towards Bonus.

27. It is well settled that fringe benefits also form part of income. As can be seen in addition to Rs. 2,294/- per month, the fringe benefits would also have to be added to the monthly salary and which would come to nearly Rs.3,000/-. The Motor Vehicles Act is a social beneficial legislation for the benefit of the legal representatives of a deceased and I see no reason to interfere with the per month income being considered as Rs. 3,000/-.

28. Further, I am afraid I am unable to agree with Mrs. Bhansali's submission with respect to the deceased's handicapped sister. The Hon'ble Supreme Court in the case of *N. Jayasree and Others vs. Cholamandalam MS General Insurance Company Limited*⁷ had the occasion to consider the term legal representative as mentioned in Section 166 of the M. V. Act and observed that the M. V. Act does not

⁷ (2022) 14 SCC 712

define the term legal representative but generally legal representative means a person who in law represents the estate of the deceased person and includes any person or persons in whom legal right to receive compensatory benefit vests and may not necessarily be a legal heir. Observing that the term legal representative should be given a wider interpretation and it should not be confined to mean only the spouse, parents or children of the deceased as the M. V. Act is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. That, therefore, the M. V. Act calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfill its legislative intent. That to maintain the claim petition, it is sufficient for the Claimant to establish loss of dependency. It has been observed that Section 166 of the M. V. Act makes it clear that every legal representative who suffers on account of the death of a person in a motor vehicle accident should have a remedy for realization of the compensation.

29. In view of the aforesaid exposition of law by the Hon'ble Supreme Court and there being no dispute to the fact that the Respondent No.2 is the handicapped sister of the deceased and even on the date of the deposition of the Appellant No.1, was 60 years old, to

which deposition there has been no contradiction, I am of the view that the Respondent No. 2 would also be a legal representative and entitled to the compensation under the M. V. Act.

30. The learned Counsel for the Appellants and Respondent No. 2 has tendered across the bar a calculation of compensation on the basis of the income of the deceased as Rs.3000/- per month and considering that there are five legal representatives of the deceased.

31. In view of the aforesaid discussion, I am inclined to allow the Appeal and enhance the quantum of compensation as under:

Sr. No.	Particulars	Amount (In Rupees)
1.	Income of the Deceased	3,000/-
2.	Add Future Prospects (40%)	1,200/-
3.	Total Income	4,200/-
4.	Deduction of 1/4 th for personal expenses	1,050/-
5.	Remaining income of the deceased for the family	3,150/-
6.	Dependency (3,150 x 12 months x 16 multiplier)	6,04,800/-
7.	Consortium (48,000 x 5 claimants)	2,40,000/-
8.	Funeral Expenses	18,000/-
9.	Loss of Estate	18,000/-
	Total	8,80,800/-
	Amount awarded by the Tribunal	1,91,000/-
	Enhanced compensation	6,89,800/-

32. In the light of the above, the Appellants and the Respondent No. 2 are entitled to a total compensation of Rs. 6,89,800/- inclusive of the amount of compensation under 'no fault' liability along with the interest at the rate of 9% per annum to be paid by Respondent No. 1 to the Appellants as well as the Respondent No. 2 less the amount, if any, already withdrawn.

33. The Judgment dated 27th April, 2001 of the Motor Accidents Claim Tribunal, Thane in Claim Application No. 594 of 1991 is modified to the above extent.

34. The Appeal is allowed as above. No costs.

(ABHAY AHUJA, J.)

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