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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

First Appeal No. 1944 of 2005

Pune Municipal Transport ... Appellant
v/s.

Smt. Suchitra Ashok Dhumal and
others ... Respondents

Ms. Madhavi M. Tavanandi	Advocate for the Appellant.
Mr. Gurunath Walawalkar and Ms. Darshana Chavan	Advocate for the Respondents.

CORAM : S.M. MODAK, J

**RESERVED ON : 27th August 2026.
PRONOUNCED ON : 23rd September 2026**

JUDGMENT:

1. By this appeal there is a challenge to correctness of the Award dated 19th April 2005 passed by the Additional Member, M.A.C.T., Pune in Claim Petition No.101/1997.

2. One Ashok Dhumal who was riding a Bajaj scooter was given a dash by the bus belonging to Pune Municipal Transport on Pune Nagar Road, Pune. The Tribunal has held the driver of the bus responsible for causing injuries to the deceased-Ashok and consequential death and the transport undertaking was directed to pay an amount of Rs.12,10,000/- along with other benefits.

Transport undertaking is challenging the said Award.

3. The issue involved in this appeal is “*whether the Tribunal has properly appreciated the evidence adduced by both the sides on the point of nature of accident and on the point of negligence and whose negligence*”.

4. Widow of the deceased-Ashok by name Suchitra has entered into witness box. She is not witness to the accident. Claimant Nos.2 and 3 are the minor daughter and major son of the deceased whereas Claimant No.4 Charulata is the mother of the deceased. They have also examined Wilson Samson Hire who is eye witness and he has lodged the FIR with Yerwada Police station whereas the transport undertaking has examined following 4 witnesses:-

- (i) Balu Haribhai Shelke - conductor of the bus.
- (ii) Milind Ramchandra Gangawane - passenger in the bus,
- (iii) Raju B. Sawant - passenger in the bus,
- (iv) Pradip D. Kudale, the driver himself.

5. The transport undertaking has denied negligence of the bus driver. They have taken a plea that in fact deceased was following the Pune Municipal Transport bus and has slipped from his scooter and himself fallen on the road and met with an accident. Whereas case pleaded in the application is “the bus gave a dash from the rear side to the scooter and victim was thrown on the road.” So the issue before the Tribunal was “Whether the deceased slipped from the

scooter who was coming from backside of the bus and met with an accident.”

6. According to Wilson Hire – the first informant, it is the bus which has given dash to the scooter driven by the deceased from backside and that is how accident took place. **“Given dash from backside means backside of the scooter or backside of the bus”**. Whereas as per bus driver - Pradeep there were two vehicles passing from left side of his bus; one was a cycle and another was a scooter. There is a dash in between cycle and a scooter, as a result scooter fell down. Seeing from the mirror, the bus driver stopped the bus. However, he has not explained how the deceased sustained injuries.

7. As against this the two passengers by name Milind and Raju have also said about dash in between cyclist and a scooterist and as a result scooterist fell down. However, which is the place of a dash Milind has said, it was behind the bus, however, witness Raju has not stated the place of dash. Both of them have also not deposed how the deceased sustained injuries. Whereas the Conductor Balu also said about dash in between the scooter and bicycle and the scooter rider fell down, however, even he has not said how the scooter driver sustained injuries.

8. It is undisputed fact that the deceased was shifted to hospital and there he was declared as dead. There is a spot panchnama and inquest panchnama available on record. Both the learned Advocates

have read the spot panchnama. The contents are as follows:

Spot Panchnama

- (a) The spot of the incident is situated from Yerwada, Pune Nagar road in front of Yerwada Petrol Pump, scooter was lying there by tilting on one side. There is a damage to the stepney of the scooter. Even the tyre was broken.
- (b) The headlight of the bus on left side is damaged. There are tyre marks near the headlight. According to learned Advocate for the Appellant these tyre marks need not be due to the dash.
- (c) Location of both the vehicles is also described in the spot panchnama.
- (d) They have also noticed pool of blood near the scooter.

9. As said above none of the witnesses for the transport undertaking have deposed anything how the deceased sustained injuries. Whereas the first informant Wilson Samson Hire has deposed that the bus driver gave a dash to the scooter from backside. He wants to suggest that due to the dash, scooter driver had sustained injuries. The issue is how to reconcile in between the evidence by this first informant-Hire on one hand and the evidence of 4 witnesses examined by the transport undertaking on other hand. Admittedly, the driver of the bus has said that there is a dash in

between the cycle and the scooter on left side of the bus whereas in the written-statement the transport undertaking has pleaded that the scooterist was following the bus and he got slipped and fell on the road and met with an accident.

10. According to learned Advocate for the Respondents the facts deposed by 4 witnesses suggest for the dash in between the scooter and cycle but this is not pleaded in the written-statement. He is right. Even the 4 witnesses have not stated that scooterist was coming from backside of the bus and then slipped and then accident took place. It is true the evidence has to be given on the basis of pleadings. Learned Advocate for the Respondents had relied upon the observations in case of *Srinivas Raghavendraro Desai (dead) by LRs v/s. V. Kumnar Vamanrao @ Alok and others*. It is pertinent to note that the written-statement was filed by transport undertaking and not by the driver.

Findings of the Tribunal

11. It is important to consider how the Tribunal has appreciated this oral evidence adduced by both the sides. If there is a dash in between the scooter and cycle on backside of a bus, there is a remote possibility that bus will give dash to a scooterist. The Tribunal observed:

“theory of dash between bicycle and scooter is newly introduced at the time of evidence and not pleaded in the written-statement and not stated before the police.”

That is why it is disbelieved by the Tribunal. At the same time, the Tribunal has refused to rely on the evidence adduced by the transport undertaking for the reason there was a rush in the bus and passengers were unable to see happening outside the bus. The Tribunal has given more weightage to the damage of the stepney of the scooter and theory of dash to the front side of the bus. That is why Tribunal concluded that scooter was running in front of the bus and bus gave a dash to the scooter from backside (Para-16). Even the Tribunal has not believed the testimony of the driver of the bus for the reason he was unable to see on left side of his bus or backside of the bus.

12. In nutshell, the Tribunal has discarded the theory of the dash by the scooter to the bus from the backside. The Tribunal has discarded the theory of dash in between scooter and cycle and then scooterist fell down and met with an accident. The Tribunal has concluded about dash given by the bus to the scooter from backside.

13. So the issue is whether inference as drawn by the Tribunal is correct. It is no doubt true that the circumstances speak for themselves. It cannot be denied that there was damage to the stepney and front light of the bus but to what extent they can suggest about manner of accident. The first informant – Hire has given intimation to the police firstly and the FIR is lodged by PSI – Chandrakant Bankar against the bus driver. The statement of Hire recorded by the

police is not produced. There is one more factor if the dash is given to the scooter from the backside by heavy vehicle, apart from damage to the stepney there ought to have been more damage to the scooter.

14. 'Bus gave a dash to the scooter from the backside' means scooter was ahead of bus and bus dashed the scooter from backside or whether 'it is the backside portion of the bus which hits the scooter?' Which of these possibilities is correct. When I have read the evidence of eye witness Hire, it is not clear, whereas in the claim petition it is pleaded as,

“Respondent No.2 driver of the said PMT Bus was driving the bus in a most negligent and reckless manner without giving any horn and without observing or following any rules of traffic. The said impact was so severe that within fraction of movement by the said dash (**from the rear side**) the victim fell down in the ground as stated above.”

So what is pleaded is dash was from rear side. While appreciating the evidence the Tribunal has not considered this aspect.

15. What is appreciation of evidence? It is the exercise of considering the evidence adduced by both the sides together and then come to a conclusion about how the accident has taken place. My inferences are as follows :-

- a) We cannot infer that bus dashed the scooter from backside of the scooter' because it is not the case

pleaded in the application with full details and also not clear from the evidence of Hire.

- b) So bus dashed the scooter from backside' has to be tested by considering the oral testimonies of witnesses for the opponent and spot panchnama.
- c) There is damage of the stepney of scooter. If there is dash by bus to the scooter from backside of the scooter, there ought to have been more damage of the scooter.
- d) It is true in the written statement, the transport undertaking has not pleaded about "dash between bicycle and scooter. What is pleaded is scooter was following the bus and scooter was slipped and he fell down".
- e) This pleading also gets support from averment in the claim application that there was dash on rear side of the bus.
- f) Even if oral version about "dash of scooter and cycle and then scooterist fall on the ground" is excluded, still there is reason to believe that rear portion of the bus hits the scooterist. If rear portion of any vehicle hits another vehicle, it is whose responsibility? In this case whether it is the responsibility of the bus?
- g) On this background the inquest panchanama is read, following are relevant notings :-

- a) blood has come out from both the ears.
- b) there were lacerated wounds in lower limb.
- c) death has caused due to injuries to head.
- h) So it does not reveal that bus has gone over the body because there may be more injuries so **there is reason to believe that rear portion of the bus has hit the scooterist.**

16. In this scenario, there cannot be 100% responsibility of the bus driver. He ought to have maintained sufficient distance and he could have avoided the accident if he could have maintained distance or could have driven the bus in a moderate speed. I am not agreeable to the findings of the Tribunal in toto. The bus driver can be held 90% responsible and scooterist for 10%.

17. In view of that the quantum of compensation has to be redetermined. The compensation awarded by the Tribunal is Rs.12,10,000/-. The redetermination is as follows:

- (a) 10% responsibility of deceased is Rs.1,21,000/-.
- (b) 90% responsibility of the Appellant is Rs.10,89,000/-.

18. In view of that following order is passed:

ORDER

- 1) The Judgment dated 19th April 2005 passed by the Additional Member, M.A.C.T. Pune in M.A.C.P.No. 201/1997 is modified as follows:

- (i) The Appellant is directed to pay Rs.10,89,000/- to the Respondents/Claimant Nos.1 to 4 within a period of 8 weeks along with interest of 9% per annum. If the amount is not already deposited it be deposited within that period.
 - (ii) The Tribunal is directed to disburse the amount as per the shares determined in the judgment.
- 2) If the entire amount is withdrawn, in that case, Respondent Nos.1 to 4 are directed to refund the amount paid in excess within the period of six weeks along with interest at the rate of 6% per annum and then it be returned to the Appellant.

19. First Appeal is disposed of.

(S.M. MODAK, J.)