2024 INSC 706

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 10648 OF 2024
(Arising out of SLP(Civil) No(s). 21172 of 2021)

SUSHMA **....APPELLANT(S)**

VERSUS

NITIN GANAPATI RANGOLE & ORS. **....RESPONDENT(S)**

WITH

CIVIL APPEAL NO(S). 10649 OF 2024
(Arising out of SLP(Civil) No(s). 1023 of 2022)

CIVIL APPEAL NO(S). 10650 OF 2024
(Arising out of SLP(Civil) No(s). 21248 of 2021)

CIVIL APPEAL NO(S). 10651 OF 2024
(Arising out of SLP(Civil) No(s). 337 of 2022)

CIVIL APPEAL NO(S). 10652-10653 OF 2024
(Arising out of SLP(Civil) No(s). 17692-17693 of 2023)

J U D G M E N T

Mehta, J.

Civil Appeals @ SLP(Civil) Nos. 21172 of 2021
Civil Appeals @ SLP(Civil) Nos. 1023 of 2022
Civil Appeals @ SLP(Civil) Nos. 21248 of 2021
Civil Appeals @ SLP(Civil) Nos. 337 of 2022

1. Leave granted.

2. The appellant-claimants have preferred these appeals being aggrieved by the common judgment dated 7th April, 2021 passed by the Division Bench of High Court of Karnataka in MAC appeals[1] filed by the appellant-claimants and respondent No.2-Reliance General Insurance Limited (for short the 'Insurer') under Section 173(1) of the Motor Vehicles Act, 1988 (for short the 'Act'). The Division Bench of the High Court disposed of the appeals in the following manner: -

"ORDER

1. Miscellaneous First Appeals filed by both the Insurance Company and the Claimants are disposed of;

2. The modified compensation in all the appeals is as follows:

MFA No.	Amount (Rs.)
102773 of 2016 (MVC 2277 of 2013)	**21,81,718.00**
102774 of 2016 (MVC 2278 of 2013)	**74,720.00**
102775 of 2016 (MVC 2279 of 2013)	**59,54,392.00**
102776 of 2016 (MVC 2280 of 2013)	**7,01,400.00**
102777 of 2016 (MVC 2281 of 2013)	**15,000.00**

3. Insurance company shall satisfy the award within four weeks from the date of receipt of certified copy of this order;

4. Apportionment and disbursement of the compensation amount shall be as per the award of the Tribunal;

5. The amount in deposit, if any, be transmitted to the Tribunal forthwith, for disbursement to the claimants.**"**

[1] In Miscellaneous First Appeal Nos. 102776, 102549, 102775, 102546, 102773, 102547, 102777 & 102550 of 2016 and 100204 of 2017.

3. Brief facts relevant and essential for the disposal of the present appeals are that on 18th August, 2013, a car bearing registration No. MH-09/BX-4073 (for short 'the car') collided with a 14-wheeler trailer truck bearing registration No. MH-09/CA-0389 (for short 'the offending truck') 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 of the car, namely, Sunita, Ashtavinayak Patil, Deepali and the driver Saiprasad Karande at the spot. One of the passengers, namely, Smt. Sushma (wife of deceased- Ashtavinayak Patil) survived the accident, however, sustaining grievous injuries. The car was insured by respondent No. 4-IFFCO-TOKIO General Insurance Co. Ltd. (for short the 'Insurance Company'), whereas, the offending truck was insured by respondent No.2-Insurer.

4. The injured Smt. Sushma and the legal heirs of the deceased occupants of the car filed separate claim petitions under Section 166 of the Act before the VI Additional District and Sessions Judge and Member, Additional Motor Accident Claims Tribunal, Belagavi (hereinafter being referred to as 'Tribunal') claiming compensation from the owner of offending truck i.e. respondent No. 1 and the insurer of the offending truck i.e. respondent No.2-Insurer. No

relief was sought by the claimants against the owner and the insurer of the car. The claimants alleged that since the offending truck was left abandoned in the middle of the highway without switching on the parking lights or indicators or without taking any other precautionary measures to warn the incoming traffic, the person in control of the said vehicle was fully responsible for the accident.

5. The Tribunal, while deciding the claims held that it was a case of contributory negligence by the drivers of both the vehicles. The Tribunal observed that the driver of the car had contributed to the accident because he failed to take appropriate preventive measures so as to avoid collision with the offending truck which was parked in the middle of the road.

6. As the appellant-claimants had not claimed compensation from owner of the car, i.e., respondent No.3-Shri Vasant Ravan Jadhawar and respondent No.4-Insurance Company of the car, these respondents were exonerated and the claims against them were dismissed.

7. The Tribunal computed the compensation as below: -

MVC No.	Amount(Rs.)
2277 of 2013	**22,25,000.00**
2278 of 2013	**30,000.00**
2279 of 2013	**66,02,500.00**

2280 of 2013	**87,500.00**
2281 of 2013	**12,500.00**

8. The Tribunal held the owner of the offending truck, respondent No.1 and the respondent No. 2-Insurer jointly and severally responsible to indemnify the claims of the appellant-claimants and at the same time directed reduction of the compensation awarded by 50% on account of contributory negligence.

9. Aggrieved by the quantum of compensation awarded and the reduction on account of contributory negligence, the appellant-claimants filed appeals under Section 173(1) of the Act before the High Court of Karnataka.

10. Upon hearing arguments advanced on behalf of the parties and appreciating the material available on record, the Division Bench of the High Court of Karnataka applied the rule of last opportunity and held that had the driver of the car been cautious, he could have avoided the accident. The High Court gave imprimatur to the Tribunal's observation with respect to contributory negligence, however, it modified and enhanced compensation awarded by the Tribunal while disposing of the appeals *vide* judgment dated 7th April, 2021 *(supra)*. The High

Court affirmed the direction of the Tribunal holding the respondent No.2-Insurer responsible to indemnify the claims to the extent of 50%.

11. The appellant-claimants have preferred these appeals by special leave primarily aggrieved by the deduction of the compensation awarded to them on account of contributory negligence.

12. Thus, the core issue involved in these appeals centres around the deduction of 50% compensation awardable to the appellant-claimants, who have assailed the concurrent findings of the Courts below on the aspect of contributory negligence whereby, the driver of the car, i.e. Saiprasad Karande (deceased), was held jointly responsible for causing the collision.

13. The challenge in these appeals is against the concurrent findings of the Courts below. The scope of interference by this Court in such concurrent finding while exercising jurisdiction under Article 136 of the Constitution of India is well-established. In the case of ***Sukhbiri Devi v. Union of India***[2], this Court noted:

> **"3.** At the outset, it is to be noted that the challenge in this appeal is against concurrent findings by three Courts, as mentioned hereinbefore. The scope of an appeal by special leave under Article 136 of the Constitution of India against the concurrent findings is well settled. In *State of*

[2] 2022 SCC OnLine SC 1322

Rajasthan v. *Shiv Dayal*[3] reiterating the settled position, this Court held that a concurrent finding of fact is binding, unless it is infected with perversity. It was held therein: —

> "**When any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded *de hors* the pleadings or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached.** (see observation made by learned Judge Vivian Bose, J. as His Lordship then was a Judge of the Nagpur High Court in *Rajeshwar Vishwanath Mamidwar* v. *Dashrath Narayan Chilwelkar*, AIR 1943 Nag 117 Para 43)."

4. Thus, evidently, the settled position is that **interference with the concurrent findings in an appeal under Article 136 of the Constitution is to be made sparingly, that too when the judgment impugned is absolutely perverse**. On appreciation of evidence another view is possible also cannot be a reason for substitution of a plausible view taken and confirmed. We will now, bearing in mind the settled position, proceed to consider as to whether the said appellate power invites invocation in the case on hand."

(emphasis supplied)

14. This Court while dealing with the exercise of power under Article 136 to interfere with concurrent findings in ***Mekala Sivaiah v. State of A.P.,***[4] expounded: -

> **"15.** It is well settled by judicial pronouncement that Article 136 is worded in wide terms and powers conferred under the said Article are not hedged by any technical hurdles. This overriding and exceptional power is, however, to be exercised sparingly and only in furtherance of cause of justice. Thus, when the judgment under appeal has resulted in grave miscarriage of justice by some misapprehension or misreading of evidence or by ignoring material evidence then this Court is not only empowered but is well expected to interfere to promote the cause of justice.

[3] (2019) 8 SCC 637
[4] (2022) 8 SCC 253

> **16.** It is not the practice of this Court to re-appreciate the evidence for the purpose of examining whether the findings of fact concurrently arrived at by the trial court and the High Court are correct or not. **It is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice on account of misreading or ignoring material evidence, that this Court would interfere with such finding of fact.**
> …
>
> **18.** In *Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat* [*Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat*, (1983) 3 SCC 217 : 1983 SCC (Cri) 728] , a two-Judge Bench of this Court held that this Court does not interfere with the concurrent findings of fact unless it is established:
>
> **18.1. That the finding is based on no evidence.**
>
> **18.2. That the finding is perverse, it being such as no reasonable person could arrive at even if the evidence was taken at its face value.**
>
> **18.3. The finding is based and built on inadmissible evidence which evidence, excluded from vision, would negate the prosecution case or substantially discredit or impair it.**
>
> **18.4. Some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded or wrongly discarded."**
>
> (emphasis supplied)

15. In view of the above precedents, it is clear that this Court in exercise of its jurisdiction under Article 136 of the Constitution of India has the power to interfere, even if the Courts below have concurrently reached to a common conclusion with respect to a certain factual aspect, subject to the condition that such a conclusion is so perverse that no reasonable person could arrive

at such a conclusion even if the evidence was taken at its face value.

16. Having considered the submissions advanced by learned counsel for the parties and after going through the impugned judgements passed by the High Court and the Tribunal as well as upon appreciating the material placed on record, we feel that the contentious finding whereby, the driver of the car, namely, Saiprasad Karande (deceased) was held jointly responsible for causing the accident along with the driver/owner of the offending truck leading to the claims of the passenger-Sushma & dependants of the deceased-passengers being deducted by 50% on the principle of contributory negligence is perverse on the face of the record.

17. In addition, we hold that the finding of the Courts below, which reduced the claims of the legal heirs of the deceased and the injured, other than the legal heirs of the driver-Saiprasad Karande (deceased) is also invalid in the eyes of law. The Courts below uniformly applied the principle of contributory negligence while directing deduction from the compensation awarded to the respective appellant-claimants, *i.e.* the dependents of passengers and the injured as well as the dependents of the driver-Saiprasad

Karande @ 50%. Thus, the contributory negligence of the driver of the car was vicariously applied to the passengers which is *prima facie* illegal and impermissible.

18. In the case of ***Union of India v. United India Insurance Co. Ltd.***,[5] this Court dealt with the question whether the driver's negligence in any manner vicariously attaches to the passengers of the motor vehicle of which he was the driver, and it was held as below: -

> **"10.** There is a well-known principle in the law of torts called the "doctrine of identification" or "imputation". It is to the effect that the defendant can plead the contributory negligence of the plaintiff or of an employee of the plaintiff where the employee is acting in the course of employment. But, it has been also held in *Mills v. Armstrong* [(1888) 13 AC 1, HL] (also called The Bernina case) that that principle is not applicable to a passenger in a vehicle in the sense that the negligence of the driver of the vehicle in which the passenger is travelling, cannot be imputed to the passenger. (Halsbury's Laws of England, 4th Ed., 1984 Vol. 34, p. 74; Ratanlal and Dhirajlal, Law of Torts, 23rd Ed., 1997, p. 511; Ramaswamy Iyer, Law of Torts, 7th Ed., p. 447.) The Bernina case [(1888) 13 AC 1, HL] in which this principle was laid in 1888 related to passengers in a steamship. In that case a member of the crew and a passenger in the ship Bushire were drowned on account of its collision with another ship Bernina. It was held that even if the navigators of the ship Bushire were negligent, the navigators' negligence could not be imputed to the deceased who were travelling in that ship. This principle has been applied, in latter cases, to passengers travelling in a motor vehicle whose driver is found guilty of contributory negligence. **In other words, the principle of contributory negligence is confined to the actual negligence of the plaintiff or of his agents. There is no rule that the driver of an omnibus or a coach or a cab or the engine driver of a train, or the captain of a ship on the one hand and the**

[5] (1997) 8 SCC 683

> **passengers on the other hand are to be "identified" so as to fasten the latter with any liability for the former's contributory negligence. There cannot be a fiction of the passenger sharing a "right of control" of the operation of the vehicle nor is there a fiction that the driver is an agent of the passenger. A passenger is not treated as a backseat driver.** (Prosser and Keeton on Torts, 5th Ed., 1984, pp. 521-22.) It is therefore clear that even if the driver of the passenger vehicle was negligent, the Railways, if its negligence was otherwise proved — could not plead contributory negligence on the part of the passengers of the vehicle. What is clear is that qua the passengers of the bus who were innocent, — the driver and owner of the bus and, if proved, the Railways — can all be joint tortfeasors.**"**
>
> (emphasis supplied)

19. It is clear from the ratio of the above judgment that the contributory negligence on the part of a driver of the vehicle involved in the accident cannot be vicariously attached to the passengers so as to reduce the compensation awarded to the passengers or their legal heirs as the case may be.

20. Thus, we have no hesitation in holding that the Courts below committed gross error in law while reducing the compensation awarded to the appellant-claimants, being the dependents of the deceased-passengers and Smt. Sushma as the claims of these claimants cannot be truncated by attaching the vicarious liability with the driver. However, the claim of the dependents of the deceased driver Saiprasad Karande would stand on a different footing.

21. We shall now proceed to discuss whether the Courts below were justified in fastening partial liability on the driver of the car on the basis of contributory negligence in causing the accident.

22. The High Court, after adverting to the evidence available on record, made the following observations on the aspect of contributory negligence: -

> **"12.** The Investigation Officer has filed charge sheet against the driver of the car as also the driver of truck. Exhibit P4-spot *mahazar* establishes the fact that the offending truck was parked on the middle of the road. Undisputedly, accident took place at 9.10 pm and the truck is a Heavy Goods Vehicle. Exhibit P6-Photograph of the place of accident substantiate that the offending truck was fourteen wheeled heavy truck which was parked on the middle of the road. Though Shri G.N. Raichur, learned counsel submitted that the truck was parked on the extreme left of the road, **however, perusal of the photographs would clearly substantiate the fact that the truck was parked on the middle of the road and on the other hand, the learned counsel for the claimants submitted that there was fog at the time of the accident.** There are no eye-witnesses to the incident. Taking into consideration the facts in totality, it may be stated that if the driver of the car was cautious, he would have avoided the accident and accordingly, the rule of last opportunity would be squarely applicable to the facts of the case and therefore, the finding recorded by the Tribunal fastening 50% contributory negligence on the drivers of both the vehicles in question, is just and proper. In view of the same, the finding recorded by the Tribunal on issue No.1 is, hereby, affirmed and the appeals filed by the Insurance Company challenging the liability are required to be rejected, accordingly rejected.**"**
>
> (emphasis supplied)

23. On going through the above extract from the impugned judgment, it is evident that the High Court recorded an affirmative finding that the offending truck was parked in the middle of the road. This finding as borne out from the evidence is not under

challenge and has attained finality. The accident took place on 18th August, 2013 which as per the Hindu calendar fell on *Shukla Paksha Dwadashi*, and thus, there was not even a remote possibility that the road would be illuminated by moonlight at the time of the accident. The discussion of evidence by the Tribunal and the High Court makes no reference to availability of streetlights at the collision site and hence, there is no doubt that at the time of the accident, the conditions on the road would have been pitch dark making it virtually impossible for the incoming vehicles to sight the stationary offending truck within a reasonable distance.

24. Learned counsel for the appellant-claimants, urged that there is neither any evidence nor any finding by the Courts below that the offending truck was parked on the road after taking due care and caution i.e. either by switching on the parking lights or by putting any prominent markers around the vehicle so as to warn the passing vehicles. Apparently thus, the offending truck was left abandoned in the middle of the highway (as concurrently held by both the Courts below) without taking due care and caution to switch on the parking lights or to put in place any other

precautionary measures to warn the vehicles traversing the highway in the dead of the night.

25. Common sense requires that no vehicle can be left parked and unattended in the middle of the road as it would definitely be a traffic hazard posing risk to the other road users.

26. We shall briefly refer to the statutory provisions applicable to the situation at hand.

27. A highway or a road is a public place as defined in Section 2(34) of the Act: **-**

> "**2(34)** "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;"

28. Section 121 of the Act provides that the driver of a motor vehicle shall make such signals and, on such occasions, as may be prescribed by the Central Government.

29. Section 122 of the 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 so as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.

30. Section 126 of the Act provides that no person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place.

31. Section 127(2) of the Act provides that where any abandoned, unattended, wrecked, burnt or partially dismantled vehicle is creating a traffic hazard, because of its position in relation to the public place, or its physical appearance is causing the impediment to the traffic, its immediate removal from the public place by a towing service may be authorised by a police officer having jurisdiction.

32. Regulation 15 of the Rules of Road Regulation, 1989 which were prevailing on the date of the incident provides that every driver of a motor vehicle shall park the vehicle in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users. It casts a duty on the drivers of a motor vehicle stating that the vehicle shall not be parked at or near a road crossing or in a main road.

33. These legal provisions leave no room for doubt that the person in control of the offending truck acted in sheer violation of law while abandoning the vehicle in the middle of the road and that too without taking precautionary measures like switching on

the parking lights, reflectors or any other appropriate steps to warn the other vehicles travelling on the highway. Had the accident taken place during the daytime or if the place of accident was well illuminated, then perhaps, the car driver could have been held equally responsible for the accident by applying the rule of last opportunity. But the fact remains that there was no illumination at the accident site either natural or artificial. Since the offending truck was left abandoned in the middle of the road in clear violation of the applicable rules and regulations, the burden to prove that the placement of the said vehicle as such was beyond human control and that appropriate precautionary measures taken while leaving the vehicle in that position were essentially on the person in control of the offending truck. However, no evidence was led by the person having control over the said truck in this regard. Thus, the entire responsibility for the negligence leading to the accident was of the truck owner/driver.

34. In view of the above discussion, the view expressed by the High Court that if the driver of the car had been vigilant and would have driven the vehicle carefully by following the traffic rules, the accident may have been avoided is presumptuous on the face of the record as the same is based purely on conjectures and

surmises. Nothing on record indicates that the car was being driven at an excessively high speed or that the driver failed to follow the traffic rules. The High Court recorded an incongruous finding that if the offending truck had not been parked on the highway, the accident would not have happened even if the car was being driven at a very high speed. Therefore, the reasoning of the High Court on the issue of contributory negligence is riddled with inherent contradictions and is paradoxical.

35. The Courts below erred in concluding that it is a case of contributory negligence, because in order to establish contributory negligence, some act or omission which materially contributed to the accident or damage should be attributed to the person against whom it is alleged.

36. In the case of ***Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak***[6], this Court while referring to a decision of the High Court of Australia in ***Astley v. Austrust Ltd.***[7], went on to hold that: -

> *"... where, by his negligence, if one party places another in a situation of danger which compels that other to act quickly in order to extricate himself, it does not amount to contributory negligence, if that other acts in a way which, with the benefit of hindsight is shown not to have been the best way out of the difficulty."*

[6] (2002) 6 SCC 455
[7] (1999) 73 ALJR 403

37. In the very same judgment, this Court also referred to and approved the view taken in ***Swadling v. Cooper***[8], as below: -

> "**Mere failure to avoid the collision by taking some extra ordinary precaution, does not in itself constitute negligence**."
>
> (emphasis supplied)

38. A three Judge Bench of this Court in the case of ***Archit Saini and Another v. Oriental Insurance Company Limited and Others***[9], had the occasion to consider an identical fact scenario, and after analysing the evidence available on record, it was held:-

> **"8.** After having perused the evidence of PW7, Site Map (Ext. P-45) and the detailed analysis undertaken by the Tribunal, we have no hesitation in taking the view that the approach of the High Court in reversing the conclusion arrived at by the Tribunal on issue No.1 has been very casual, if not cryptic and perverse. Indeed, the appeal before the High Court is required to be decided on fact and law. That, however, would not permit the High Court to casually overturn the finding of fact recorded by the Tribunal. As is evident from the analysis done by the Tribunal, it is a well-considered opinion and a plausible view. The High Court has not adverted to any specific reason as to why the view taken by the Tribunal was incorrect or not supported by the evidence on record. It is well settled that the nature of proof required in cases concerning accident claims is qualitatively different from the one in criminal cases, which must be beyond any reasonable doubts. The Tribunal applied the correct test in the analysis of the evidence before it. Notably, the High Court has not doubted the evidence of PW7 as being unreliable nor has it discarded his version that the driver of the Maruti Car could not spot the parked Gas Tanker due to the flashlights of the oncoming traffic from the front side. Further, the Tribunal also adverted to the legal presumption against the driver of the Gas Tanker of having parked his vehicle in a negligent manner in the middle of the road. The Site Plan (Ext. P-45) reinforces the version of

[8] 1931 AC 1
[9] (2018) 3 SCC 365

> PW7 that the Truck (Gas Tanker) was parked in the middle of the road but the High Court opined to the contrary without assigning any reason whatsoever. In our view, the Site Plan (Ext. P-45) filed along with the chargesheet does not support the finding recorded by the High Court that the Gas Tanker was not parked in the middle of the road. Notably, the High Court has also not doubted the claimant's plea that the Gas Tanker/offending vehicle was parked without any indicator or parking lights. The fact that PW7 who was standing on the opposite side of the road at a distance of about 70 feet, could see the Gas Tanker parked on the other side of the road does not discredit his version that the Maruti Car coming from the opposite side could not spot the Gas Tanker due to flashlights of the oncoming traffic from the front side. It is not in dispute that the road is a busy road. In the cross-examination, neither has any attempt been made to discredit the version of PW7 nor has any suggestion been made that no vehicle with flashlights on was coming from the opposite direction of the parked Gas Tanker at the relevant time.
>
> **9.** Suffice it to observe that the approach of the High Court in reversing the well-considered finding recorded by the Tribunal on the material fact, which was supported by the evidence on record, cannot be countenanced.
>
> **10.** Accordingly, we have no hesitation in setting aside the said finding of the High Court. As a result, the appellants would be entitled to the enhanced compensation as determined by the High Court in its entirety without any deduction towards contributory negligence. In other words, we restore the finding of the Tribunal rendered on issue No.1 against the respondents and hold that respondent no.1 negligently parked the Gas Tanker/offending vehicle in the middle of the road without any indicator or parking lights.**"**

39. We are of the view that the aforesaid decision applies to the case at hand on all fours and thus, the appellant-claimants cannot be denied their rightful compensation on the ground that the driver of the car, namely Saiprasad Karande (deceased), was jointly responsible for the accident with the person in control of the

offending truck and hence, their claims should be reduced on the principle of contributory negligence.

40. On a holistic analysis of the material available on record, it is established beyond the pale of doubt that the offending truck was parked in the middle of the road without any parking lights being switched on and without any markers or indicators being placed around the stationary vehicle so as to warn the incoming vehicular traffic. This omission by the person in control of the said truck was in clear violation of law. The accident took place on a highway where the permissible speed limits are fairly high. In such a situation, it would be imprudent to hold that the driver of a vehicle, travelling through the highway in the dead of the night in pitch dark conditions, would be able to make out a stationary vehicle lying in the middle of the road within a reasonable distance so as to apply the brakes and avoid the collision. The situation would be compounded by the headlights of the vehicles coming from the opposite direction and make the viewing of the stationary vehicle even more difficult. Thus, the conclusion drawn by the Courts below that the driver of the car could have averted the accident by applying the brakes and hence, he was equally negligent and contributed to the accident on the application of principle of last

opportunity is *ex-facie* perverse and cannot be sustained. Hence, it is a fit case warranting exercise of this Court's powers under Article 136 of the Constitution of India to interfere with the concurrent finding of facts.

41. We, therefore, hold that the person in control of the offending truck insured by respondent No. 2-Insurer, was fully responsible for the negligence leading to the accident.

42. As a consequence, the deduction of 50% of compensation awarded to the appellant-claimants on account of contributory negligence, as directed by the Tribunal and affirmed by the High Court, cannot be sustained. The finding recorded by the Courts below on this issue is reversed as being perverse and unsustainable in the facts as well as in law. Resultantly, it is directed that there shall be no deduction from the compensation payable to the appellant-claimants who shall be entitled to the full compensation as assessed by the Tribunal and modified by the High Court by the impugned judgment.

43. It is further directed that respondent No. 2-Insurer shall be jointly and severally liable along with the owner of the offending truck to indemnify the awards.

44. The appeals are accordingly allowed. No costs.

Civil Appeals @ SLP(Civil) Nos. 17692-17693 of 2023

45. Leave granted.

46. In these appeals, the appellant-Malutai[10] has challenged the apportionment of the compensation awarded by the Tribunal between the appellant and the co-claimant[11]. Modification in the apportionment is sought on the ground that the co-claimant Smt. Sushma has remarried after the claim was decided and thus, she cannot claim equal share in the compensation.

47. Having considered the submissions advanced on behalf of the parties, we are not inclined to interfere in the apportionment of the compensation between the appellant-Malutai and co-claimant (respondent No.5), as directed by the Tribunal and affirmed by the High Court. Thus, the said prayer of the appellant-Malutai is declined.

48. However, we reiterate the findings recorded in Civil Appeal @ SLP (Civil) No. 21172 of 2021 and connected matters and direct that the claimants, being the mother and wife of the deceased-

[10] Mother of the deceased-Ashtavinayak Patil
[11] Smt. Sushma, wife of the deceased-Ashtavinayak Patil (respondent No. 5 in the present appeals)

Ashtavinayak Patil, shall be entitled to full compensation without any deduction on account of contributory negligence.

49. The respondent No.2-Insurer shall be liable to indemnify the award, however, the apportionment of the compensation *inter se* between the claimants as directed by the Tribunal shall not be disturbed.

50. The appeals are accordingly disposed of. No costs.

51. Pending application(s), if any, shall stand disposed of.

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

.....J.
(SANDEEP MEHTA)

New Delhi;
September 19, 2024.