

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 296 OF 2014

The Divisional Controller,
Maharashtra State Road Transport Corporation,
Through its Divisional Officer,
Sarjepura, Kothala Maidan Road,
Ahmednagar .. Appellant

Versus

1. Simon John Adhav,
Age : 66 years, Occu : Nil
2. Tereja @ Kalawati Adhav,
Age : 63 years, Occu : Household,
Both R/o : Jorve, Tq. : Sangamner,
Dist. : Ahmednagar
3. Urmila Anton Adhav,
Age : 46 years, Occu : Service,
R/o : Indiragandhi Hospital , Staff Nurse Colony,
Bhiwandi, Dist. : Thane
4. Samual Anton Adhav,
Age : 17 years, Occu : Education,
(Under Guardian of Respondent No. 3),
R/o : As respondent No. 3 .. Respondents

...

Shri M.K.Goyanka,Adv. For appellant
Shri R.A.Tambe,Adv. For respondent nos.1 & 2
Shri S.D.Ghayal,Adv. For respondent nos.3 & 4.

...

CORAM : S.V.GANGAPURWALA,J.

DATED : 28TH SEPTEMBER, 2015

ORDER :-

1] The respondent claimants had filed application for compensation u/s 166 of the Motor Vehicles Act on account of death of deceased Antone in an accident. The tribunal partly allowed the said application holding present appellant liable. Aggrieved thereby, the present Appeal.

2] Mr.Goyanka, learned counsel for the appellant strenuously contends that the involvement of the vehicle itself was disputed. Heavy burden lies upon the claimants to show that the bus owned by the present appellant was involved in the accident. When the FIR was lodged initially it was stated that the accident had taken place with an unknown vehicle. Even description of the vehicle was not given. The learned counsel submits that even said person who is stated to be an eye witness and on the basis of whose statement further criminal prosecution was lodged, had also initially never stated the involvement of the bus.

3] The learned counsel further submits that only because the bus of the appellant subsequently went through the said route after the accident is over, the accident is alleged against the driver of the present appellant. The learned counsel submits that there is no evidence worth the name. The alleged eye witness is also not examined. There was no impediment to examine the said eye witness. Adverse inference is required to be drawn against claimant for non examining the best witness. The learned counsel submits

that only the investigating officer who had submitted report is examined. The same is not sufficient to discharge the burden of proof. The learned counsel submits that after nine days, the number of the bus has been given. If the eye witness knew the number of the bus, then the same could have been given at the first instance itself and the said person who is said to be eye witness in the FIR has stated that unknown vehicle has given dash to the deceased who was going on a motor cycle. According to the learned counsel, the whole theory put forth by the claimants is misconceived and does not stand to any reason. The learned counsel relies on the judgment of the learned Single Judge of this Court in the case of **Bajaj Allianz General Insurance Co.Ltd. Aurangabad V/s Meera w/o Raju Ghoudhary and others reported in 2014 (6) Mh.L.J. 556** so also on the judgment of the learned Single Judge of this court in the case of **Faridabegum Shaikh Yousuf and others V/s Daulat Khan Sardar Khan (died) through L.Rs. Azamat Khan Daulat Khan reported in 2014(6) Mh.L.J. 751** and another judgment of the learned Single Judge of this Court in the case of **New India Assurance Company Ltd. Versus Laxman s/o Dadarao Karpe and others dated 28/7/2015 in First Appeal No.2973/2013**. The learned counsel has further relied on the judgment of the Apex Court in the case of **Lachoo Ram and others V/s Himachal Road Transport Corpn. Reported in AIR 2014 SC (Supp) 1218**.

4] Mr.Tambe and Mr.Ghayal, learned counsel for respondents/ claimants support the judgment and submit that the evidence has been led, the police after investigation, had registered crime against driver of the bus in question, the charge sheet is also filed against the said driver of the vehicle. According to the learned counsel the claimant is required to prove the involvement of the vehicle by preponderance of probabilities and the same has been done. The

evidence has been led. The police officer who has investigated the matter has been examined. This proved the said fact. The learned counsel relied on the judgment of the Apex Court in the case of **Bimla Devi and others V/s Himachal RTC reported in (2009) 13 SCC 530** and the judgment of the Apex Court in the case of **Dulcina Fernandes and others V/s Joaquim Xavier Cruz and another reported in 2014 (2) Mh.L.J. 510**.

5] With the assistance of learned counsel, I have gone through judgment so also the record and proceeding. The eye witness is not examined. The investigating officer who is investigating the complaint has been examined. Ofcourse the claimants are required to prove the case by preponderance of probabilities. At this stage, Mr.Tambe and Mr.Ghayal, learned counsel for claimants submit that they may be given an opportunity to examine the eye witness who has given statement to the police to prove statement given to the police and the incident.

6] The claimants will have to prove statement given by eye witness as the case would revolve more on the said statement given by eye witness. Considering beneficial legislation, I am inclined to grant one more opportunity to the claimants to adduce evidence of the said eye witness. In light of the above, the impugned judgment and award is quashed and set aside. The matter is remitted back to the tribunal. The claimants may examine additional witnesses. The appellant is also entitled to adduce such other evidence. The parties shall appear before the concerned tribunal on **26/10/2015**. The tribunal shall after giving opportunity to the parties to adduce further evidence decide the said claim petition expeditiously within six months from the date of appearance of the parties.

7] The amount deposited by the appellant be transmitted to the tribunal. The same be retained by the tribunal till the decision and may pass further orders with regard to the disbursement of the said amount in tune with the judgment delivered by the tribunal. No costs.

8] It is made clear that whole matter will be open for the respective parties including proving accident and the quantum. In view of disposal of Appeal, Civil Applications stand disposed of.

[S.V.GANGAPURWALA,J.]

umg/