

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 282 OF 1999

Divisional Manager,
Maharashtra State Road Transport
Corporation Ltd., Hingoli, Tq. Hingoli,
Through its Divisional Manager,
M.S.R.T.C., Jalna

...APPELLANT
(Orig. Resp. No. 3)

VERSUS

- 1) Rafiyabegum W/o Ab. Rahman,
Age: 35 yrs., Occ.: Household
- 2) Syed Rahim s/o Ab. Rehman,
Age: 8 yrs., Occ.: Nil
- 3) Shabana d/o Ab. Rehman,
Age: 6 yrs., Occ.: Nil,
- 4) Azim s/o Ab. Syed Rehman,
Age: 4 yrs., Occ.: Nil,

Respondent Nos. 2 to 4 are Minor
u/g of their real mother respondent No.1

- 5) Noorhee w/o Abdul Dulla,
Age: 50 yrs., Occ. Nil
- 6) Abdul Dulla s/o Syed Hussain,
Age: 50 yrs.
(Appeal abated against R. Nos.
5,6 vide Court's order dated
14/10/2003)

All R/o Khandasari, Zopadpatti,
Jalna, Tq. & Dist. Jalna

- 7) Syed Moinoddin s/o Syed Rayajoddin,
Age: 35 yrs., Occ. Business,
R/o Khandasari, Ajantha Nagar,
Jalna, Tq. & Dist. Jalna
(owner of Vehicle no. MWP 1344)

...RESPONDENT
(Orig. Resp. No. 1)

- 5) The National Insurance Co.,
Through its Branch Manager,
Branch Office, Jalna,
Tq. & Dist. Jalna
...RESPONDENT
(Orig. Resp. No. 2)
- 6) Sk. Tajul S/o Sk. Abdul,
Age: 30 yrs., Occ. Driver,
R/o S.T. Depot, Hingoli,
Tq. Hingoli, Dist. Parbhani
...RESPONDENT
(Orig. Resp. No. 4)

Mr D. S. Bagul, Advocate for appellant;
Mr S. P. Sonpawale, Advocate for respondent No. 1;
Mr V.N. Upadhye, Advocate for respondent No.8

CORAM : N.W. SAMBRE, J.

DATE : 2nd July, 2015

ORAL JUDGMENT

This appeal is preferred by the Maharashtra State Road Transport Corporation Ltd., questioning the legality and validity of the judgment and award dated 7th June, 1999, rendered by the Member, Motor Accident Claims Tribunal, Jalna, in Motor Accident Claim Petition No.119 of 1997.

2. There are three vehicles involved in an accident that took place on 27th June, 1997, at 11.45 p.m. on Aurangabad – Jalna road, resulting into death of three persons, namely, Abdul Raheman, Ganesh Jadhav and Sayyed Sattar, who were working as Driver, Cleaner and Labour, respectively, on metador bearing registration No.MWP-1344, which was

travelling from Aurangabad to Jalna. The said metador met with an accident with S.T. Bus bearing registration No.MH20-1534, which was travelling from Jalna to Aurangabad, followed at a distance of 60 ft. by truck bearing registration No.MH-15/G-832.

3. M.A.C.P. No.119 of 1997 was preferred by the claimants being legal representatives and dependents of the deceased Driver of the metador, namely, Abdul Raheman, who according to the claimants, was earning about Rs.3,000/- per month and at the time of death, he was 35 years of age. Respondent No.1 Syed Moinoddin was the owner of the vehicle - metador bearing registration No.MWP-1344, which was insured with respondent no.2 – National Insurance Co. In the said claim petition, the claimants sought compensation of Rs.3,00,000/- against the appellant and respondents no.7 to 9, jointly and severally.

4. Respondent no.8 – insurance company resisted and denied the claim by filing written statement at Exh.12. According to the insurance company, the claimants were not entitled for the compensation, as there was a breach of policy. Original Respondents No.3 and 4, i.e. present appellant and respondent no.9 filed their written statement and denied the claim.

5. The Tribunal framed issues at Exh.23, as regards, whether the claimants prove that the accident dated 27th June, 1997 took place due to rash and negligent driving of Truck and Metador and answered the same in affirmative.

6. The Tribunal, as such, awarded compensation of Rs.1,90,000/-, inclusive of Rs.50,000/- towards no fault liability, with proportionate costs on Rs.1,90,000/- and interest at the rate of 12% per annum on Rs.1,40,000/-, from the date of petition till its realisation.

7. Being aggrieved by the said judgment and award dated 7th June, 1999, the present appeal by the respondent – State Transport Corporation.

8. Mr Bagul, learned Counsel appearing on behalf of the appellant, has tried to visualize the accident in question by relying upon the spot panchnama Exh.29, so as to canvass that it is the metador which was solely responsible for the accident in question as the said vehicle was driven by its Driver in most rash and negligent manner. So as to substantiate his contention. Mr Bagul submits that the said vehicle was running from west to east, i.e. from Aurangabad to Jalna. It was expected of the Driver of the said vehicle to drive from the northern side as it was travelling from west – east side and in case of dash by a Bus or

truck in question, the said vehicle should have gone on its left side, i.e. to say on the northern side.

9. Apart from above, the learned Counsel appearing on behalf of the appellant, while inviting my attention to the written statement of the appellant and that of insurance company, would urge that the Truck Driver, its owner and insurer were not added as party respondents. According to him, in view of provisions of Rule 260 of the Motor Vehicles Rules, it was necessary that the Tribunal should have issued them notice. In addition, he would urge that there was no iota of evidence so as to reach to a conclusion that the income of the deceased Driver was Rs.3,000/- per month.

10. While countering the above referred submissions, Mr Sonpawale, learned Counsel appearing on behalf of respondent no.1/claimant would urge that the spot panchnama as is sought to be relied upon, was never objected by the present appellant. He has further invited my attention to the observations made by the Tribunal so as to canvass that there was a finding of composite negligence, i.e. of metador and the Bus and as such, according to him, the truck owner and Bus Driver and its insurer were not necessary parties to the present proceedings. According to him, the claim was rightly granted by the Tribunal and thus, sought for dismissal of the appeal.

11. Upon careful consideration of the rival contentions of the parties, it is required to be noted that the Tribunal has framed an issue, as regards, whether all the three vehicles referred herein above, were involved in the accident in question resulting into death of Abdul Raheman. The Tribunal then proceeded to observe that the accident has occurred because of the involvement of only two vehicles, i.e. the metador and the Bus which were travelling in opposite directions and the accident occurred as the vehicles were hit from the front side.

12. Upon perusal of the observations of the Tribunal, it further reflects that the Tribunal has perused the spot panchnama (Exh.29), narrated the contents thereof and has analyzed the same. The Tribunal noted that since the accident has occurred on the middle of the road and though no brake marks are mentioned in the spot panchnama, the Drivers of S.T. Bus and Metador, were responsible for occurrence of the accident.

13. So far as income of the deceased is concerned, the Tribunal noticed that though a tall claim of Rs.3,000/- of the Driver of the Metador was made, Rs.1,500/- per month would be reasonable salary of the Driver and proceeded to award the compensation. In my opinion, the said quantum is just and proper, in the given facts and evidence as is brought on record.

14. So far as the issue as regards the provisions of Rule 260 of the Motor Vehicles Rules is concerned, though Mr Bagul has placed reliance upon the judgment of this Court, in the matter of **New India Assurance Company Ltd. vs. Suman Bhaskar Pawar & ors.**, reported in **2010 (1) Bom. C.R. 319**, so as to substantiate the contention, that the notice must be issued to all the vehicle owners, it is required to be noted that the Tribunal, having noticed that the Drivers of the Metador and the Bus alone were responsible for the accident in question, has rightly not acceded to the said issue, i.e. whether both owners and insurers of the vehicles were necessary parties to the proceedings.

15. In my opinion, the view taken by the Tribunal is just and proper. No case for interference is made out. Thus, the appeal fails and stands dismissed.

(N.W. SAMBRE, J.)

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