

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.47 OF 2000

- 1) Smt. Marthabai W/o Gorakshnath
Bhosale,
Age: 38 years, Occ. : Household,
R/o Rampur, Taluka Rahuri,
District Ahmednagar
- 2) Master Chandrakant S/o Gorakhshnath
Bhosale,
Age: 21 years, Occ. : Education,
R/o Rampur, Taluka Rahuri,
District Ahmednagar
- 3) Kum. Jayshree D/o Gorakshnath
Bhosale,
Age: 16 years, Occ. : Education,
Minor Guardian No. 1
Marthabai Gorakshnath Bhosale,
Age: 38 years, Occ. : Household,
R/o Rampur, Taluka Rahuri,
District Ahmednagar
- 4) Yohan S/o Bansi Bhosale,
Age: 63 years, Occ. : Nil,
R/o Rampur, Taluka Rahuri,
District Ahmednagar
- 5) Sau. Yelanbai W/o Yohan Bhosale,
Age: 58 years, Occ. : Household,
R/o Rampur, Taluka Rahuri,
District Ahmednagar

...APPELLANTS

VERSUS

- 1) Shaikh Jafar Shaikh Ahmed,
Age: 46 years, Occ. : Service(Driver)
(Appeal dismissed as against R. No. 1
vide Court's order dtd. 17/02/2004)

- 2) Andhra Pradesh State Road Transportation Corporation

...RESPONDENTS

Mr Sunil Bhalerao, Advocate holding for Mr V. P. Latange, Advocate for appellants

CORAM : N.W. SAMBRE, J.

DATE : 25th June, 2015

ORAL JUDGMENT :

Heard Mr Sunil Bhalerao, learned Counsel appearing on behalf of the appellants.

2. This appeal takes an exception to the judgment and award dated 30th July, 1999, rendered by the Member, Motor Accident Claims Tribunal, Ahmednagar, whereby the Tribunal has awarded 50% compensation to the appellants, as according to it, the deceased, who was riding bicycle, was also responsible for the cause of the accident in question.

3. The appeal is already dismissed as against respondent no.1, whereas none appears on behalf of respondent no.2, though served.

4. Today the appeal is fixed for final hearing.

5. Mr Bhalerao, learned Counsel appearing on behalf of the appellants would urge that the conclusion drawn by the Tribunal, that the deceased Gorakshanath was also responsible for the accident in question, is based on presumptions and assumptions. With a view to substantiate his contentions, he has taken me through the observations made by the Tribunal for arriving at a conclusion that the bicycle rider Gorakshanath, who died in the accident on 9th August, 1990, was equally responsible for the cause of the accident.

6. With a view to analyze the contentions raised by the learned Counsel appearing on behalf of the appellants, I have perused the issues framed by the Tribunal at Exh.17 and findings recorded thereon, which read thus :-

Sr. No.	ISSUES	FINDINGS
1	Do the petitioners prove that the accident was caused due to rash and negligent driving of S.T. Bus No.AP-09-Z-262 by Oppt. No.1 on 9.8.1990 ?	Yes, to the extent of 50%
2	Do the petitioners further prove that in the said accident, Gorakshanath Yohan Bhosale sustained injuries and died of those injuries ?	Yes
3	Are the petitioners entitled to compensation ? If so, the quantum thereof ?	Yes, as per order below
4	What is the extent of liability of each of the opponents in the event the claim is granted ?	Joint and several of Oppt. Nos. 1 & 2
5	What order and award ?	As per order below

7. While dealing with issue no.1 as regards award of compensation only to the extent of 50%, the Tribunal noticed the evidence of A.S.I. Shahaji, who was examined at Exh.32. The said witness has deposed that he went to the spot upon receiving information and has drawn spot panchnama at Exh.33, which was proved by him. A complaint was lodged against the Bus Driver at Exh.34 and after investigation, he was charge-sheeted in the Court.

8. A.S.I. Shahaji has also deposed that there was a speed breaker, which was located about 35 ft. behind the spot at which the Bus was stopped. He has also deposed that the road in question is in east-west direction and the S.T. Bus was stopped on the northern side. He has deposed that 3 ft. behind the S.T. Bus he noticed that the bicycle was lying and it was 5 ft. away from the eastern side of the tar road. According to him, the speed breaker was existing only for the name sake, as the same had almost been flat and invisible, perhaps because of the heavy traffic.

9. The post mortem notes at Exh.23 reflect fracture of skull, several abrasions and lacerations.

10. The case sought to be placed on record is that, the Truck and the Bus in question were travelling in opposite direction and the bicycle rider,

while trying to over-take the truck, hit the Bus on the Driver's side.

11. It is required to be noted that the Tribunal, while recording finding of contributory negligence, has noted that the Bus was ahead of the spot of speed breaker and the cyclist dashed the Driver side of the Bus and the spot panchnama depicts that the Bus was on its correct side, which clearly shows that the cyclist must have gone to the wrong side of the road.

12. If the above referred observations are considered and analyzed in correct perspective, it is required to be noted that those are based on presumptions and assumptions.

13. Apart from above, it is required to be noted that admittedly, the accident had taken place in close proximity of the speed breakers. It has to be presumed that if existence of the speed breakers was not disputed by the parties, there was sufficient indication to the Drivers of the respective vehicles to slow down the vehicles.

14. Though the accident has occurred because of collision of the bicycle with that of the Bus, it is required to be noted that , if the Bus would have been at a slow speed after crossing the speed breakers, the Bus Driver would have been in a position to control his vehicle.

15. Thus, in my opinion, the decision arrived at by the Tribunal in shifting negligence on the cyclist, to the extent of 50%, is not sustainable.

16. To confront with the allegations levelled by the appellants, respondent no.2 though was served, has chosen not to appear and thus, those allegations have remained un-controverted.

17. In that view of the matter, the award impugned herein needs modification.

18. In the result, it is ordered that respondent no.2 Andhra Pradesh State Road Transport Corporation, shall pay the entire compensation of Rs.1,17,000/- to the appellants/claimants. The appellants/claimants shall be entitled to receive amount of Rs.1,17,000/-, together with interest at the rate of 7.5% per annum, from the date of the claim petition till its realization.

The appeal stands allowed in above terms with no order as to costs.

(N.W. SAMBRE, J.)

amj