

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 910 OF 2010

Andhra Pradesh State Road
Transport Corporation, Mushribad
Through Divisional Controller .. Appellant

Versus

Manikrao Apparao Kamble and another .. Respondents

**WITH
FIRST APPEAL NO. 624 OF 2010**

Andhra Pradesh State Road
Transport Corporation, Mushribad
Through Divisional Controller .. Appellant

Versus

Dhulappa Narsappa Mehetre
@ Bandichode and others .. Respondents

**WITH
FIRST APPEAL NO. 764 OF 2010**

Andhra Pradesh State Road
Transport Corporation, Mushribad
Through Divisional Controller .. Appellant

Versus

Kalyani Pirappa Shewalkar and ors. .. Respondents

Shri A. B. Dhongade, Advocate for the Appellant in all matters.
Shri B. R. Sontakke Patil, Advocate for Respondents in all matters.

CORAM : S. V. GANGAPURWALA, J.
DATE : 09TH OCTOBER, 2015.

PER COURT :

. The appellant has filed present appeal against the award passed by the Tribunal U/Sec. 166 of the Motor Vehicles Act.

2. Mr. Dhongade, the learned counsel for the appellant strenuously contends that, at the most it can be said to be a case of contributory negligence. According to the learned counsel, in fact, driver of the bus was going from the right direction. All the three deceased were travelling on M-80 moped. In fact, as per the rules three persons are not allowed to travel on M-80. Negligence can be inferred of the person driving the moped itself. According to the learned counsel, in the spot panchanama, location of the bus has not been shown. The Tribunal has wrongly appreciated the evidence in this regard.

3. I have heard Mr. Sontakke Patil, the learned counsel for respondents/claimants.

4. Three persons were travelling on the M-80 moped, however, while considering the negligence, the location of the vehicle at

the time of accident will also have to be considered. The Tribunal has considered the aspect of negligence threadbare. In fact, the driver of the vehicle was best witness, who could have been examined. No reason is forthcoming as to why the driver of the bus has not been examined. Adverse inference can be drawn in that regard. Even the Tribunal threadbare made following observations :

"The claimants have produced on record the complaint dated 9-2-2001 and the spot panchanama dated 9-2-2001. The contents of spot panchanama shows that, the spot of incident is on National Highway No. 9 passing from Omerga to Solapur near mile stone No. 37/2 and at the spot the tar road is having 23 ft. in width and there were trips of 7 ft. width on both sides of the road. From the spot of accident, one Chappal was found lying at a distance of 5 ft. towards west side and at a distance of 9 feet. pair of Chappal and broken Sari-guard and footrest of M-80 motorcycle was found. The M-80 motorcycle was found lying in broken condition on rough trip at a distance of 13 ft. towards northern side. At the spot Omerga town is situated towards East side and Solapur towards West side. It means the offending Bus was proceeding from East to West and the M-80 Motorcycle was proceeding from West to East side. It is an admitted fact that, the offending Bus was proceeding from Hyderabad to Shirdi and therefore, the correct side of the Bus was to the South and that of M-80 Motorcycle was to the North of the road. The actual spot of accident is shown on tar road towards north side at a distance of 7 ft.. It

means, the offending Bus by going to north side i. e. wrong side at a distance of 16 feet gave dash to the M-80 motorcycle which was proceeding by its correct side i. e. north side. Thus, from the contents of the spot panchanama, it is crystal clear that, the M-80 Motorcycle which was proceeding by its correct side i. e. north side. Thus, from the contents of the spot panchanama, it is crystal clear that, the M-80 Motorcycle was proceeding by its correct side leaving sufficient space to pass the offending Bus, however, it was the Bus driver who by going to wrong side gave dash to the M-80 motorcycle. Therefore, considering the oral as well as documentary evidence on record, I hold that, the accident is the result of sole negligence on the part of the offending Bus driver and there was no any fault on the part of the rider of M-80 Motorcycle in causing the accident in which deceased-Apparao died."

5. It is manifest that, driver of the bus was negligent. There is no evidence to show that, three persons were travelling on vehicle and accident is net result of the same.

6. In the light of the above, the first appeals are disposed of.

7. Each claimants are allowed to withdraw the amount in proportionate as directed by the Tribunal.

[S. V. GANGAPURWALA, J.]