

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

904 FIRST APPEAL NO. 158 OF 2017

National Insurance Company Limited,
Through it's Divisional Manager,
Station Road, Aurangabad.

... APPELLANT

VERSUS

- 1) Shivaji S/o Bodhala Kapare. (Deleted as per Court order dt.14/8/13)
- 2) Taramati W/o Shivaji Kapare and others. **... RESPONDENTS**

...

Mr. S. S. Chapalgaonkar, h/f Mr.S.P.Chapalgaonkar, Advocate for Appellant.

Mr. Swapnil S. Dograd, Advocate for Respondent Nos.1 to 4.

Mr. A. G. Kanade, Advocate for Respondent No.7.

...

CORAM : **V. K. JADHAV, J.**

DATE : 29th June, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Ambajogai dated 25th August, 2006 in MACP No.71 of 2000, original Respondent No.2 has preferred this appeal to the extent of the finding of negligence as recorded by the Tribunal.

3 Brief facts giving rise to the present appeal are as under:

- i) Deceased Meghraj was serving as a driver on a Jeep bearing registration No.MH-11-F-2186 owned by Respondent / Musa and insured with Respondent / United India Insurance Company. On 29th January, 1996 deceased Meghraj was driving the said tempo on Pune Satara road, proceeding towards Satara. At that time, one luxury bus bearing registration No.KA-01-4308 tried to overtake the said tempo. The said luxury bus while attempting to overtake the tempo, given dash to the tempo. In consequence of which, the said tempo turned turtled and deceased Meghraj, who was driving the said tempo died on the spot. The legal representatives of deceased Meghraj approached to the Tribunal by filing MACP No.71 of 200 (Old No.42 of 1997) for grant of compensation under the various heads. The Claimants have preferred the said claim petition against both the *tort-feasors*. It has been contended in the claim petition that the Claimants were entirely depending upon the income of the deceased and

as such entitled for the compensation.

- ii) The Appellant / Insurer has strongly resisted the claim petition on various grounds. It has been contended that deceased Meghraj was driving his vehicle on the wrong side and also contributed the negligence to some extent.
- iii) The Claimants have adduced oral and documentary evidence to substantiate their contentions. The Respondents including the present Appellant / Insurer have not adduced any evidence. The learned Member of the Tribunal has recorded the finding in the affirmative to issue No.1 and held that the accident had taken place on account of rash and negligent driving on the part of the driver of the luxury bus. Being aggrieved by the said finding in the affirmative recorded by the Tribunal to issue No.1, the Appellant / Insurer has preferred this appeal. So far as quantum of compensation is concerned,

the learned counsel appearing for the Appellant / Insurer has not challenged the same.

4 The learned counsel for Appellant / Insurer submits that though the Appellant / Insurer has raised a specific defence about the contributory negligence on the part of deceased Meghraj while driving his tempo at the relevant time, the Tribunal has not framed a specific issue to that effect and as such, the impugned judgment and award is liable to be set aside on this count alone. The learned counsel submits that after going through the contents of spot Panchanama Exhibit 57, it appears that the tempo driver i.e. deceased Meghraj was also responsible for the accident to some extent and the accident had not taken place owing to the negligence on the part of the driver of the luxury bus alone.

5 The learned counsel for Respondents / original Claimants submits that original Claimant Nos.1 and 2 died during the pendency of the appeal before this Court. However, during the pendency of the appeal the judgment and award passed by the Tribunal has been executed and each of the Claimants have received the compensation to the extent of their share as awarded

by the Tribunal. The learned counsel submits that the Appellant / Insurer has never objected framing of the issues before the Tribunal and as such, this point cannot be raised for the first time in the appeal. Furthermore, the learned Member of the Tribunal has considered the entire evidence on record including the spot Panchanama Exhibit 57 and FIR Exhibit 56 and recorded the finding to the effect that the driver of the luxury bus was entirely responsible for the accident and deceased Meghraj had not contributed the negligence. The learned counsel submits that deceased Meghraj was driving his tempo from correct left side of the road. It was for the driver of the luxury bus, while overtaking the said tempo, to take due care and caution. However, it is part of record that the driver of the luxury bus without taking any cognizance of the vehicles coming from the opposite direction, tried to overtake the tempo and during that process after noticing that the vehicle is coming from opposite direction, suddenly took his vehicle towards left side and in that process given dash to the tempo, which was being driven from the correct left side of the road. The learned counsel submits that FIR Exhibit 56 and spot Panchanama Exhibit 57 fully corroborate the contentions raised by the Claimants. The learned Member of the

Tribunal has therefore, correctly recorded the finding in the affirmative to issue No.1. There is no substance in the appeal and the appeal is thus, liable to be dismissed.

6 I have also heard the learned counsel for Respondent No.4 / Insurer of the vehicle tempo involved in the accident.

7 On careful perusal of pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the Claimants have produced on record certified copies of FIR Exhibit 56 and spot Panchanama Exhibit 57. On careful perusal of the contents of spot Panchanama Exhibit 57, I find that the tar road on the spot of accident was sufficiently wide and the road at the spot of accident is south-north in direction. Both the vehicles were proceeding in the same direction i.e. from north to south. Thus, the vehicle proceeding towards south, the correct left side of the road is the eastern side. On perusal of the contents of spot Panchanama Exhibit 57, I find that the said tempo was at the extreme left side i.e. the eastern side of the road whereas the luxury bus was towards western side of the road. Thus, the only inference could be drawn that while overtaking the said tempo, the luxury bus given dash to

the tempo and in consequence of which, the tempo turned turtled and deceased Meghraj, who was driving the said tempo died on the spot. By any stretch of imagination, no inference could be drawn about the negligence on the part of deceased Meghraj, who was driving the tempo from the correct left side of the road. It has also come in evidence that after giving dash to the tempo driven by deceased Meghraj, the said luxury bus, which was in speed, gave a dash to a jeep coming from the opposite direction. Even after giving dash to the tempo, the driver of the luxury bus could not stop his vehicle. I do not find any fault in the observations that Exhibit 56 FIR and Exhibit 57 spot Panchanama are sufficient documents to conclude that it was rash and negligent driving of the driver of the luxury bus due to which the accident took place and deceased Meghraj died in the accident on account of rash and negligent driving on the part of the driver of the luxury bus.

8 So far as quantum of compensation is concerned, the learned counsel for Appellant / Insurer has not challenged the same. The learned counsel for Respondents / Claimants submits that as per the judgment and award passed by the Tribunal, the entire amount has been paid to the Respondents / Claimants including the

parents (original Claimant Nos.1 and 2) and as such, there is no propriety in bringing their legal heirs on record in this appeal. In view of the discussion above, the appeal is liable to be dismissed. Hence, the following order:

ORDER

- I. The appeal is hereby dismissed with costs.
- II. Appeal is accordingly disposed of.
- III. Pending civil application stands disposed of.

[V. K. JADHAV, J.]

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