

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

23 FIRST APPEAL NO. 312 OF 2017

DIVISIONAL CONTROLLER, MAHARASHTRA STATE ROAD
TRANSPORT CORPORATION, PARBHANI
VERSUS
SMT. VIJAYA W/O VIJAY DALAL AND OTHERS

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Advocate for Appellant : Mr. Anand D. Wange.

Advocate for Respondents : Mr. Pramod C. Mayure.

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

DATE : 27th June, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Parbhani dated 15th February, 2013 in MACP No.36 of 2012, the Respondent / MSRTC has preferred this appeal to the extent of involvement of the vehicle S.T. Bus in the accident.

3 The learned counsel for Appellant / MSRTC submits that no such accident has taken place involving said S.T. Bus bearing registration No.MH-22-D-9695. The said vehicle S.T. Bus was not found on spot. The learned counsel submits that Manwat Selu road is busy road having heavy traffic and possibility of some unknown vehicle

giving dash to the deceased cannot be ruled out. The learned counsel submits that the Claimants have preferred claim petition in collusion with the police.

4 The learned counsel for Respondents / Claimants submits that the Claimants have examined the Investigating Officer API Vajinath Pujari and also head constable Pitlewad, who has actually witnessed the accident. The learned counsel submits that even though witness P.H.C. Pitlewad after happening of the accident, blew the whistle to stop the vehicle S.T. Bus, the driver of the S.T. Bus fled away from the scene alongwith the S.T. Bus. The learned counsel submits that after due investigation, the Investigating Officer has submitted the charge-sheet against the driver of S.T. Bus and further the Respondent / MSRTC has also initiated departmental enquiry against the driver. The learned counsel submits that there is no substance in the appeal and the appeal is thus, liable to be dismissed.

5 On careful perusal of the evidence particularly the evidence of Investigating Officer API Vajinath Pujari, it appears that he has recorded the statement of head constable Pitlewad, the conductor of the S.T. Bus and also the passengers of the S.T. Bus. He has deposed that on the basis of statements of those persons, it was transpired that the driver of said S.T. Bus driven his vehicle in rash and

negligent manner and given dash to the motorcycle of the deceased. During the course of investigation, Investigating Officer API Vaijnath Pujari has recorded the statement of injured person. The same is taken on record and marked Exhibit 30. On perusal of the same, it appears that injured Vijay who subsequently succumbed to the injuries, has stated in his police statement about the involvement of S.T. Bus in the accident alongwith registration number of the vehicle and the depot of the said S.T. Bus. On perusal of the oral evidence of head constable Pitlewad, it appears that after hearing big sound of collision, he saw that there was a collision between the S.T. Bus and motorcycle and the motorcyclist fallen down due to the dash given by the S.T. Bus. He has further deposed that though the S.T. Bus driver had reduced the speed of S.T. Bus, when he blew the whistle to stop it, the S. T. Bus driver did not pay any heed and fled away alongwith the S.T. Bus. Even though he offered chase, but the driver of the S.T. Bus did not stop the vehicle. The Respondent / MSRTC has also examined the driver of S.T. Bus Devidas who has stated in his examination-in-chief itself that the accident had occurred at about 07:30 to 08:00 pm. The learned Member of the Tribunal has rightly observed that the driver of the S.T. Bus has not explained as to how the accident has taken place. On the basis of oral evidence as well as

the documentary evidence in the form of police statements recorded by the Investigating Officer and the charge-sheet, it appears that the accident has taken place on account of rash and negligent driving on the part of the driver of S.T. Bus.

6 In the case of **Khatri and others Vs. State of Bihar and others**, reported in, **(1981) 2 SCC 493**, the Supreme Court held that bar under Sections 162 and 172 of Code of Criminal Procedure 1973, against the production or use in evidence of statement made before the police officer in the course of investigation or case diary prepared by the police officer, would not apply where the court calls for such statement or diary in civil proceeding. In view of the above ratio laid down by the Supreme Court, the statement of said driver recorded by the police can be read in evidence. The learned Member of the Tribunal has therefore, rightly recorded the finding in affirmative to Issue No.1 and thereby held that the death of deceased Vijay occurred in vehicular accident because of the rash and negligent driving by the driver of S.T. Bus bearing registration No.MH-22-D-9695.

7 In view of the above and in view of the ration laid down by the Supreme Court in the case of *Khatri and others Vs. State of Bihar and others* (supra), I do not find any fault in the finding recording by the

Tribunal. Since the learned counsel for Appellant has not made any submissions on the point of quantum of the compensation as awarded by the Tribunal, I do not find any substance in the appeal. The appeal is thus, liable to be dismissed. Hence, the following order:

ORDER

- I. The appeal is hereby dismissed with costs.
- II. If any amount is deposited before this Court or before the Executing Court, the Claimants are entitled to withdraw the same.
- III. The appeal is accordingly disposed of.
- IV. Pending civil application stands disposed of.

[V. K. JADHAV, J.]

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