

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 70 OF 2017
WITH CA/9280/2017 IN FA/70/2017

THE DIVISIONAL CONTROLLER, MAHARASHTRA STATE ROAD
TRANSPORT CORPORATION, DIVISION AHMEDNAGAR
VERSUS
GORAKSHA DAGADU RAUT AND ANR

...
Advocate for Appellant : Mr. Deshmukh Bhausaheb S
Advocate for Respondents : Mr. R.R. Karpe
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CORAM : V. K. JADHAV, J.
DATED : 12th JULY, 2017

PER COURT:-

1. By consent, heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 19.8.2016, passed by the Chairman, M.A.C.T. Ahmednagar, in M.A.C.P. No.170 of 2011, the original respondent M.S.R.T.C. has preferred this appeal.
3. Brief facts giving rise to the present appeal are as follows:-
 - a) On 7.2.2011, deceased Pravin Raut had been to village Parner and started his return journey by riding his motor cycle bearing registration No. MH-16-U-9604. It has been contended that he was riding the motor cycle in moderate speed and by following traffic rules

and regulations. At about 8.00 a.m. within the limits of village Kanher Ohal, one S.T. Bus, bearing registration No. MH-12-AV-9443, came from opposite direction in high speed and gave dash to deceased on the turn. In consequence of which, deceased Pravin had sustained grievous injuries. He was immediately shifted to Parner, where he declared dead on arrival. The claimants approached the Tribunal by filing M.A.C.P. No. 170 of 2011 for grant of compensation under various heads. It has been contended that deceased Pravin was their only son and was earning member of the family. He was doing private job. The applicants/claimants were entirely depending upon his income. The claimants, as such, claimed compensation of Rs.5,00,000/-.

b) The appellant M.S.R.T.C. has strongly resisted the claim petition by filing written statement. It has been contended in the written statement that driver of the bus was driving the bus in moderate speed by following traffic rules and regulations. Deceased Pravin came from opposite direction and attempted to pass the curve. The deceased, after noticing the bus coming from the opposite direction, got puzzled and could not control his motorcycle and in the said exercise, his motor cycle came towards right hand side portion of the road and the motor cycle was skidded. Due to skidding of motorcycle, it went in oblique direction and stopped beneath the bus

and deceased came near the bus when the bus was completely in stationary condition. It has been contended that the driver of S.T. Bus took the bus to the left hand side and slowed it down. It has been contended that the information was given by the driver of S.T. Bus to the concerned police. The police has registered a false crime against the driver of Bus due to the pressure of relatives of deceased. It has also been contended that deceased was not having driving licence to drive the motor cycle. He had no experience to drive the motor cycle. He met with an accident because of his own rash and negligent driving. The deceased did not wear the helmet.

c) The claimants have adduced oral and documentary evidence in support of their contentions. The appellant M.S.R.T.C. has also examined its driver. Learned Chairman of the Tribunal by its impugned judgment and award dated 19.8.2016 partly allowed the petition and thereby directed the appellant M.S.R.T.C. to pay compensation Rs.4,79,200/- with interest and costs. Hence, this appeal.

4. Learned counsel for the appellant M.S.R.T.C. submits that the Tribunal, after appreciating the evidence on record, in para 24 of the judgment has specifically observed that the evidence of S.T. Bus driver Baban Auti found to be trustworthy and reliable. The Tribunal

has also observed that copy of spot panchnama clearly reveals that motorcycle dragged along the road for a considerable distance of 50 ft. and then dashed to the diesel tank of S.T. Bus and then motorcycle went beneath the S.T. Bus. Even the Tribunal has also considered three factors against the deceased Pravin, those are that he was not having driving licence at the time of accident to drive the motorcycle with gear, secondly he has also not taken proper care and caution even after noticing that there is difficult curve ahead and visualize the opposite vehicles, and thirdly he was not wearing helmet at the time of accident. Learned counsel submits that despite these observations, the Tribunal held that S.T. Bus driver was rash and negligent to the extent of 80% and deceased Pravin Raut was negligent to the extent of 20% in proportionate of factum of negligence.

5. Learned counsel for the respondents-original claimants submits that the Tribunal after appreciation of evidence has rightly considered the negligence on the part of S.T. Bus driver to the extent of 80% and negligence on the part of deceased to the extent of 20%. Learned counsel submits that S.T. Bus is bigger in size compared to the motor cycle and considering sitting position of the driver of S.T. Bus he had clear view ahead. The driver of S.T. Bus could have noticed the coming motorcycle from opposite direction on curve road

and driver of the S.T. Bus could have taken proper care. Learned counsel submits that driver of S.T. Bus should have taken extra care to save the life when the deceased was riding motorcycle on curve road.

6. On careful perusal of pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the motorcycle dragged along the road for a considerable distance of 50 ft. then dashed to the diesel tank of S.T. Bus. The same reveals from the contents of spot panchnama Exh.24. D.W.1 Baban Auti, who was driving the said Bus at the time of accident, has also deposed that rider of the motorcycle has lost his control over the motorcycle on curve portion of the road and in consequence of which motorcycle was skidded on the road and motorcycle rider fallen down and dragged alongwith motorcycle for a distance of 50 ft and dashed to the diesel tank of S.T. Bus. As per the spot panchnama at Exh.25, the spot of accident is located at curve portion of the road. A judicial note also be taken that diesel tank of S.T. Bus is located in middle portion of the bus from driver side of S.T. Bus. However, as per the evidence of D.W.1 Baban Auti, he had occasion to see the motorcycle coming from opposite direction from 50 to 60 ft away. In the light of this admission, it is expected from the driver of big vehicle like bus to take extra efforts to save the life of rider of motorcycle

coming from opposite direction, though in speed. However, I do not think that driver of S.T. Bus had contributed negligence to the extent of 80% as held by the Tribunal. Thus, considering the entire evidence on record and also considering the size of vehicles, involved in the accident, it would be just and appropriate to hold that the driver of S.T. Bus had contributed the negligence to the extent of 60% whereas the deceased Pravin had contributed negligence to the extent of 40%. I record my finding to issue No.1 accordingly.

7. So far as the quantum of compensation is concerned, the same requires redetermination in the light of finding recorded to issue No.1, as aforesaid.

8. In view of above, the claimants are entitled for the compensation of Rs.3,59,400/- as against Rs.4,79,200/- awarded by the Tribunal. Thus, the impugned judgment and award passed by the Tribunal requires modification to that extent. Hence, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby partly allowed. No costs.
- II. The judgment and award 19.08.2016 passed by the Chairman, M.A.C.T. Ahmednagar in M.A.C.P. No. 170 of 2011 is hereby

modified in the following manner:-

“The respondents shall pay compensation of Rs.3,59,400/- (Rupees Three lacs fifty nine thousand four hundred only) [inclusive of no fault liability amount of Rs.50,000/-] to the claimants/applicants alongwith interest at the rate of 9% p.a. from the date of institution of claim i.e. 4.3.2011 till realization of the amount in full”.

- III. Except the finding about negligence recorded by the Tribunal and the quantum of compensation in consonance with that, rest of the judgment and award stands confirmed.
- IV. The award be drawn up as per above modification.
- V. If the amount is deposited by the M.S.R.T.C. the respondents claimants are permitted to withdraw the amount as per the modified award and balance amount shall be refunded to the appellant M.S.R.T.C.
- VI. Appeal is accordingly disposed of.
- VII. Pending civil application is also disposed of.

(V. K. JADHAV, J.)

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