

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.877 OF 2004

Tarachand Hari Padvi,
age: 42 years, Occ: Agriculture,
R/o Mood, Tq. Taloda,
District Nandurbar.

Appellant

Versus

01 Anil Bijasing Vasave,
age: 42 years, Occ: Service,
R/o Ganesh Nagar, Shahada,
Taluka Shahada, District
Nandurbar.

02 The Divisional Officer,
Maharashtra State Road
Transport Corporation,
Dhule.

Respondents

Mr.S.P.Brahme, advocate for the appellant.
Mr.U.B.Shriram, advocate holding for Mr.D.S.Bagul, advocate for
Respondent No.2.
Respondent No.1 served.

CORAM : M.S.SONAK, J.
DATE : 05th February, 2018.

ORAL JUDGMENT :

1 Heard learned Counsel for the parties.

2 The challenge in this appeal is to the judgment and
award dated 04.11.2003 made by the learned Member, Motor
Accident Claims Tribunal, Shahada, dismissing appellant's Claim
Petition for compensation.

3 Mr.Brahme, learned Counsel for the appellant submits that the evidence on record indicates that the MSRTC bus bearing Registration No.MH-12-8-8774 was involved in the accident, in which, appellant suffered injuries. He points out that evidence on record suggests that the accident took place on account of rash and negligent driving of driver of the MSRTC bus. He submits that even criminal prosecution has been launched against driver of the ST bus and this, by itself, is sufficient to establish that the accident had taken place on account of rash and negligent driving of the MSRTC bus. Mr.Brahme submits that the evidence on record needs to be appreciated on the basis of preponderance of probabilities and the evidence on record was more than sufficient to hold that the accident took place on account of rash and negligent driving of the driver of the ST bus. Mr.Brahme submits that minor contradictions here and there have been amplified by the Tribunal in order to deny compensation to the appellant. He submits that upon evaluation of the evidence in its entirety, it is apparent that the appellant had sustained injuries in the accident which arose on account of rash and negligent driving of the driver of the ST bus and, therefore, Respondent-MSRTC was bound to compensate the appellant for the injuries so sustained by the appellant.

4 On the other hand, Mr.Shriram, learned Counsel holding for Mr.D.S.Bagul, advocate for Respondent No.2-MSRTC, submits that it is the case of not minor but major contradictions rendering case of the appellant totally unbelievable and unreliable. He submits that there are admissions in the deposition of the appellant that the accident took place because Motorcycle slipped

on the turn. He submits that there is nothing in the evidence on record to connect MSRTC bus with the accident. He submits that though, the driver of the MSRTC bus was prosecuted, he was acquitted. He submits that the Motor Accident Claims Tribunal has correctly appreciated the evidence on record and there is no case made out to interfere with the impugned judgment and award.

5 In this case, the appellant had categorically pleaded that he was driving the Motorcycle with Jaising Mali as the pillion rider when the motorcycle met with accident with MSRTC bus. However, in the evidence, the appellant made a complete turn around and stated that he was not driving the motorcycle but it was Jaising who was driving the motorcycle and appellant was only sitting on pillion. It is not a minor contradiction, as urged by the learned Counsel for the appellant. Further, the appellant, in the course of his evidence, has admitted that the accident had occurred on the turn of the road and it is true that the motorcycle had slipped at the turn of the road. No doubt, the evidence, in such matters, has to be evaluated on the basis of touchstone of preponderance of probabilities. However, preponderance of probabilities suggest that the motorcycle actually slipped at the turn of the road and thereafter the blame was sought to be shifted on the driver of the ST bus. There is no consistency in the evidence of the appellant and it does appear that there is no evidence showing any rashness or negligence on the part of the driver of the ST bus. Relying upon a mere circumstance that prosecution was launched against the driver of the ST bus, without any further evidence on record, in the facts of the present case, cannot be said to be sufficient to attribute rashness or negligence

on the part of the driver of the MSRTC bus. As pointed out by the learned Counsel for Respondent-MSRTC, the prosecution is also ended in acquittal of the driver. In the absence of any evidence as to rashness and negligence on the part of the driver of the MSRTC, the Tribunal, was quite right in not fastening any liability upon MSRTC.

6 In this case, the appellant has admitted that his three sons were aged 20, 22 and 25 years at the time of accident. He has also admitted that along with his sons, his wife was also doing labour work. The appellant has claimed that he was also doing labour work. There is no evidence that the family was dependent upon income of the appellant. In any case, if there is no evidence about rashness and negligence on the part of the driver of the ST bus, there is no case made out to interfere with the impugned judgment and award.

7 This appeal is, therefore, dismissed. There shall be no order as to costs.

M.S.SONAK
JUDGE

adb