

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

**961 FIRST APPEAL NO. 1326 OF 2003
WITH CA/11111/2003 IN FA/1326/2003**

- . Maharashtra State Road
Transport Corporation,
Dhule Division,
through its Divisional
Controller, Dhule. ..Appellant

VERSUS

- 1) Smt.Pramilabai w/o Shivaji Patil
Age: 43 yrs., Occu.: Household work
- 2) Ravita Shivaji Patil,
Age: 23 yrs., Occu.: Education
- 3) Asha Shivaji Patil
Age: 20 yrs., Occu.: Education
- 4) Vaishali Shivaji Patil
Age: 18 yrs., Occu.: Education
- 5) Mayur Shivaji Patil
Age: 13 yrs., Occu.: Education

Respondent No.5 minor and under
the guardianship of mother i.e.
respondent No.1 i.e. Pramilabai.

All Resident of War,
Taluka and District - Dhule ..Respondents

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Advocate for Appellant : Mr.D.S.Bagul
Advocate for Respondent Nos.1 to 4 : Mr.A.P.Yenegure h/f.
Mr.P.S.Patil

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CORAM : M.S.SONAK, J.
DATE : 2nd FEBRUARY, 2018

ORAL JUDGMENT:-

- 1) Heard learned counsel for the parties.
- 2) Mr.D.S.Bagul learned counsel for the appellant submits that the only contention of the appellant in this appeal is that the appellant-Maharashtra State Road Transport Corporation was not at all responsible for the accident and it was infact the Tempo, which was entirely responsible for the accident. He submits that in this case, the owner and driver of the Tempo neither filed any written statement nor they stepped into the witness box. He submits that the Site Panchanama show that the Maharashtra State Road Transport Corporation's Bus was at extremely West side of the road and it is the Tempo, who has come and collided with the Bus. He submits that

driver of the Tempo fled away from the scene and the driver of the Maharashtra State Road Transport Corporation Bus infact died in the accident. He submits that infact the claimants lodged the complaint against the Tempo Traveller. Taking into consideration all these aspects, Mr.Bagul learned counsel submits that Maharashtra State Road Transport Corporation had to be absolved from the liability and liability should be foisted on owner and driver of the Tempo.

3) From the perusal of the cause title, it is seen that the appellant herein has not bothered to implead the owner and driver of the Tempo as respondent to this appeal. This is despite the fact that the owner and the driver had been impleaded as parties by the claimants before the Tribunal. There is no explanation as to why they were not impleaded in the appeal and the explanation is only that the previous lawyer was required to do so. The submissions made cannot really be gone into in the

absence of the owner and the driver of the Tempo as parties to this appeal.

4) The Tribunal has held that the Tempo driver and the driver of the Maharashtra State Road Transport Corporation were jointly liable for the accident, which is resulted in the demise of Shivaji. The dependents of Shivaji has lodged the claim and have been awarded the compensation amount. The Tribunal has relied upon the spot Panchanama and the complaint to hold that the Maharashtra State Road Transport Corporation Bus as well as the Tempo contributed equally to the accident. In this case, the evidence does indicate that head on collusion. Besides, the Maharashtra State Road Transport Corporation Bus being a bigger vehicle of the two, had greater responsibility to take great care. Thus, to conclude, it cannot be said that the findings of contributory negligence warrants interference.

5) Since, this is the only ground urged in support of the appeal and since, this ground is not made out, the appeal is liable to be dismissed and it is hereby dismissed.

6) There shall be no order as to costs.

7) Pending civil application does not survive and is disposed of.

[M.S.SONAK, J.]