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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 545 OF 2007

Maharashtra State Road Transport
Corporation, Through
Divisional Controller,
MSRTC, Dhule Division,
Dhule

**... APPELLANT
(Ori. Respondent)**

VERSUS

- 1) Fatte Mohammadbhai Vasanbhai Sindhi,
Age : 46 years, Occu.: Business,
R/o.: Ucchal, District Surat (Gujrat)
- 2) Shivaji Namdeo Bobatkar,
Age : 41 years, Occu.: S.T.Driver,
MH-31/AP-9044,
R/o. Buldhana,
S.T. Depot Buldhana

..RESPONDENTS

(Resp.No.2, deleted as per Court's
order dated 05.04.2007 in
C.A.No.3470/2006)

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Advocate for appellant: Shri M.K. Goyanka
Advocate for respondent no.1: Shri M.G. Kochar

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CORAM: V.L. ACHLIYA, J.

DATE: 01.08.2019

JUDGMENT :

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1] Being aggrieved by the judgment and award dated 18.10.2005 passed in Motor Accident Claim Petition No.86/2004 by learned Member, Motor Accident Claims Tribunal, Nandurbar, the appellant – original respondent no.2 has preferred this appeal. By the impugned judgment and award, the Tribunal has allowed the claim application filed u/s 166 of the Motor Vehicles Act and awarded the compensation of Rs.96,000/- to the respondent no.1 – claimant.

2] Heard learned counsel for the appellant and respondent no.1 – original claimant. The name of respondent no.2 appears to be deleted as per order dated 5.4.2007 passed in Civil Application No.3470/2006.

3] In view of the limited challenge raised in the appeal, it is not necessary to discuss the facts of the case in detail.

4] Learned counsel for the appellant – original respondent no.2 assailed the reasons and findings recorded by the Tribunal with contention that the Tribunal has not properly appreciated the oral and documentary evidence adduced in the case. By referring the testimony of the claimant, the learned counsel

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submits that the claimant has admitted in his cross-examination that there was some fault on his part in causing accident. It is submitted that the said admission brought through the cross-examination of the claimant has been ignored by Tribunal while appreciating the evidence. It is submitted that the position as depicted in the spot panchanama makes out that the place where the accident had occurred, there was a sharp curve. At the time of accident, the vehicles were coming from opposite direction and the width of the road was more than sufficient for safe passage of those vehicles coming from opposite direction. It is submitted that the respondent no.1-claimant was driving the motorcycle in a rash and negligent manner. He overlooked the S.T. Bus coming from opposite direction and hit the Bus. It is submitted that in view of evidence brought on record, the Tribunal ought to have accepted the case of appellant that there was contributory negligence on the part of the respondent no.1 - claimant and the liability ought to have been apportioned in equal proportion.

5] On the other hand, learned counsel for the respondent no.1 supported the judgment and award passed

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by the Tribunal. By referring the evidence on record, the learned counsel submits that the Tribunal has duly considered the testimony of the claimant in the light of overall evidence adduced in the case. It is submitted that while appreciating the evidence, overall evidence is to be considered. The solitary admission brought through cross-examination of claimant cannot form the basis to hold that there was contributory negligence on the part of the respondent – claimant. It is submitted that the appellant has not examined the driver of S.T. Bus to prove its case that the accident had occurred due to negligence on the part of the respondent no.1 – claimant and he has contributed for the cause of accident.

6] In order to appreciate the submissions advanced, I have carefully considered the oral and documentary evidence on record. If we consider overall facts of the case, then the respondent no.1 – claimant has approached with a case that on 25.11.2002, he was going from Dhule towards Surat on Hero Honda Splendor motorcycle bearing registration No.GJ-21-A-8075. At the time of accident, the offending vehicle i.e. S.T. Bus bearing registration No.MH-31-AP-9044 was coming from opposite direction gave

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forceful dash to motorcycle causing fracture to his right leg. The claimant has approached with a case that the accident had occurred due to rash and negligent driving on the part of driver of S.T. Bus. The appellant – Corporation and respondent no.2 – driver contested the claim with contention that the accident has resulted due to sole negligence on the part of the claimant.

7] In order to prove his case, the claimant has examined himself and further produced documentary evidence in the nature of First Information Report, the spot panchanama, Form B certificate, injury certificate etc. No evidence was adduced on the part of the appellant as well as the respondent no.2 i.e. driver of S.T. Bus. Thus, the evidence as adduced in the case confines to the testimony of the claimant and the documentary evidence in the nature of First Information Report and the spot panchanama.

8] On due consideration of the evidence on record, the Tribunal has reached to the conclusion that the accident occurred due to rash and negligent driving on the part of driver of S.T. Bus i.e. the respondent no.1 in claim application. The Tribunal has duly considered

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the admission brought through the cross-examination of the claimant wherein he has admitted that he was also responsible to some extent for the accident. By scrutinizing the said admission in the light of overall evidence on record, the Tribunal has reached to the conclusion that the accident in question solely occurred on account of rash and negligent driving on the part of driver of S.T. Bus. It is observed that the solitary admission brought through the cross-examination of claimant is not sufficient to hold that the claimant has also contributed for the cause of accident and thereby the case of contributory negligence has been made out by respondent - appellant. The Tribunal has observed that the accident had occurred at a place where there was sharp curve and steep rise of road towards Surat and downward slope towards Dhule. Therefore, it was expected on the part of driver of S.T. Bus i.e. respondent no.1 to drive the Bus in a moderate speed in view of sharp curve and steep rise of road at the place where accident occurred. On due consideration of evidence on record, the Tribunal has reached to the conclusion that the accident had resulted due to sole negligence and fault on

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the part of driver of S.T. Bus.

9] In my view, the reasons and findings recorded by the Tribunal cannot be termed as perverse. So also no case is made out as to improper appreciation of evidence. If we consider the overall facts of the case and evidence on record, then the fact is not in dispute that the claimant was proceeding on motorcycle from Dhule and going towards Surat. Whereas the offending vehicle i.e. S.T. Bus bearing registration No.MH-31-AP-9044 driven by respondent no.1 was coming from opposite direction i.e. from Surat and proceeding towards Dhule. The accident occurred on Dhule - Surat road, which is a National Highway. The spot panchanama (Exh.29) reflects that at the place where accident occurred, the width of tar road was 22 Ft. with 5 Ft. side road / Kachha road to both the sides of tar road. The driver side wheel of Bus was found on tar road, whereas rear side wheel was found on the side road. The motorcycle in question was found at a distance of 8 Ft. away from the right side wheel of Bus i.e. driving side of S.T. Bus. The motorcycle was found extensively damaged due to accident. The incident occurred in Kondai Bari Ghat and there was downward slope

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towards Dhule. The accident occurred at a place where there was sharp curve.

10] Thus, if we consider the spot panchanama, then considering the width of tar road 22 ft. with 5 ft. side road on both the sides of road, the inference can be drawn that both the vehicles could have easily passed through said road if driven in cautious manner and to their respective side. The driver of S.T. Bus could have easily avoided the accident if he would have driven S.T. Bus with due care and caution.

11] The evidence on record shows that there was sharp curve and steep rise on the road proceeding towards Surat. The accident occurred in Kondai Bari Ghat. In that view, the driver of S.T. Bus coming from Surat and going towards Dhule ought to have driven the S.T. Bus in a moderate speed. Since there was steep rise towards Surat and the Bus was coming from Surat and going towards Dhule, it was expected on the part of driver of S.T. Bus to slow down the speed of Bus. The evidence on record is more than sufficient to draw inference that the driver of S.T. Bus was driving the Bus in excessive and unmanageable speed. While taking turn on the sharp curve

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in Ghat area, the driver of S.T. Bus lost control over the wheel and hit the motorcycle coming from opposite direction.

12] The spot panchanama reflects that the S.T. Bus came towards wrong side of road and gave dash to motorcycle. As per First Information Report, the offence has been registered against the driver of S.T. Bus. The position noted in the spot panchanama supports the conclusion drawn by the Tribunal that the accident occurred due to sole negligence on the part of driver of S.T. Bus. In that view, the solitary admission brought through the cross-examination of claimant is not sufficient to accept the contention that the respondent no.1 – claimant has equally contributed for the cause of accident. Although the plea of contributory negligence has been raised by the appellant, but the appellant has not examined the driver of S.T. Bus. In that view, the reasons and findings recorded by the Tribunal are quite consistent with pleadings and evidence adduced in the case.

13] In absence of any perversity in the reasons and findings recorded by the Tribunal, the judgment and award

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passed by the Tribunal calls for no interference in exercise of appellate jurisdiction. I am, therefore, inclined to dismiss the appeal. Accordingly, the appeal is dismissed with no order as to costs.

(V.L. ACHLIYA, J.)