

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

FIRST APPEAL NO. 2431 OF 2008

1. Mangalbai W/o Sheshrao Rathod,
Age 34 years, Occ.: Household,
2. Pankaj S/o Sheshrao Rathod,
Age 6 years,
3. Puja @ Rohini d/o Sheshrao Rathod
Age 4 years,

Appellant no.2 and 3 are minor
and under guardianship of real
mother appellant no.

All R/o Jahagirdarwadi,
Tq. And Dist. Osmanabad

... Appellants

Versus

1. Maharashtra State Road Transport
Corporation, Vahatuk Bhavan
Bombay, through its
Divisional Controller, M.S.R.T.C.,
Osmanabad.
2. Lobha Jema Rathod,
Age 71 years, Occu.: Household,
3. Shantabai W/o Lobha Rathod,
age 65 years, Occu. Household

Nos. 2 and 3 r/o Jahagirdarwadi,
Tq. And Dist. Osmanabad.

... Respondents

....

Mr. N.P. Patil Jamalpurkar, Advocate for the Appellant
Mr. A.B. Dhongade, Advocate for Respondent No.1

....

CORAM : SHRIKANT D. KULKARNI, J.

Reserved on : 30.11.2021

Pronounced on : 21.12.2021

1. This appeal is directed against the impugned judgment and award passed in M.A.C.P No. 46/2003 by the Adhoc Additional District Judge at Osmanabad.

2. Sheshrao S/o Lobhaji Rathod (since deceased) was driving the motorcycle bearing no. MH-24/H-4936 on 25.11.2002 on Tulapur-Osmanabad road. He was proceeding to Tuljapur from Osmanabad. He reached near field of one Vilas Kanade about 2.00 p.m. One S.T. Bus bearing No. MH-20/D-3275 was proceeding ahead of the motorcycle.

3. It is the case of the claimants / appellants that S.T. Bus driver all of a sudden applied the brakes. The deceased was behind the S.T. Bus dashed against the said S.T. Bus from back side and sustained grievous injuries and subsequently succumbed to the accidental injuries. It is the case of the claimants that accident took place due to rash and negligent driving of the S.T. Bus driver.

4. The M.S.R.T.C. / Respondent No.1 resisted the claim by filing its written statement.

5. Both the parties produced their evidence in support of their pleadings.

6. The learned Adhoc Additional District Judge, Osmanabad after considering the rival pleadings and evidence on record was pleased to dismissed the claim petition.

7. Feeling aggrieved by the decision rendered by the Adhoc Additional District Judge, Osmanabad, the original claimants have preferred this appeal by taking aid of Section 178 of the Motor Vehicles Act, 1988.

8. Heard Mr. N.P. Patil Jamalpurkar, learned counsel for the appellants / original claimants and Mr. A.B. Dhongade, learned counsel for respondent no.1 / M.S.R.T.C. Respondent nos. 2 and 3 are the parents of the deceased and they seem to have not appeared in spite of proper service of notice.

9. Mr. N.P. Patil Jamalpurkar, learned counsel for the appellants submitted that the learned Adhoc Additional District Judge has not properly appreciated the facts and evidence on record and recorded incorrect findings. The Adhoc Additional District Judge has committed grave error in recording finding that the accident was caused due to rash and negligent driving of the deceased Sheshrao. He submitted that the deceased was driving his motorcycle in a moderate speed and one S.T. Bus of M.S.R.T.C. was proceeding ahead. The S.T. Bus driver all of a sudden applied the brakes and the bus was stopped on the road. The deceased dashed to the rear side of the bus and sustained serious injuries. It was sheer rash and negligent driving of bus and S.T. driver. The deceased cannot be held responsible. The Adhoc Additional District Judge has committed an error while appreciating the evidence.

10. The learned Adhoc Additional District Judge has committed an error while drawing adverse inference against the deceased without considering the facts and evidence on record. The claimants had examined Auto rickshaw driver who was an

eye witness to the accident. The Adhoc Additional District Judge has discarded the evidence by giving improper reasons.

11. Mr. N.P. Patil Jamalpurkar, submitted that the spot *panchanama* cannot be said to be reliable in view of time gap. He submitted that it was the duty of Tribunal to award adequate compensation.

12. Mr. N.P. Patil Jamalpurkar, learned counsel for the appellants has placed his reliance on following citations.

(i) ***Subulaxmi Vs. Managing Director, Tamil Nadu State Transport Corporation and another*** reported in ***2013 (2) Mh.L.J. 20.***

(ii) ***Kiran through her father Harinarayan Vs. Sajjan singh and others*** reported in ***2015 (3) Mh.L.J. 626.***

(iii) ***Vandana Shedge and others Vs. Narayan Dinkar Jadhav and another*** reported in ***2010 (6) Mh.L.J. 479.***

(iv) ***Manam Saraswathi Sampoorana Kalavathi and Ors. Vs. Manager, APSRTC, Tadepalligudem A.P and anr.*** Reported in ***2010 AIR (SC) 1609.***

11. Per contra, Mr. A.B. Dhongade, learned counsel for respondent no.1 / M.S.R.T.C. submitted that the accident was caused due to sheer rash and negligent driving of the deceased. The accident had occurred in a broad day light. The S.T. Bus driver was driving his bus in a moderate speed and deceased was behind the S.T. Bus and driving his motorcycle. The S.T. bus driver slowdown the bus for alighting the passenger at bus stop. The S.T. Bus stopped at extreme left side of the road. It was for the deceased to keep safe distance between between his motorcycle and the S.T. Bus. The deceased did not keep safe distance between the two vehicles. He could not control his motorcycle due to high speed and dashed against the back side of the S.T. Bus and resulted into the accident. He sustained the injuries due to his own rash and negligent driving. The spot *panchanama* reveals the scenario of the spot of accident focusing light on the rash and negligent driving of the deceased. The Tribunal has considered all these aspects coupled with the evidence on record and rightly dismissed the claim. Mr. Dhongade, learned counsel for the respondent no.1 supported the impugned judgment and award passed by the Tribunal. He submitted that there is no merit in the appeal.

12. Having regard to the argument advanced by the learned counsel for both the sides. I have studied the impugned judgment passed by the Tribunal as well as carefully gone through the evidence produced by both the sides.

13. The motor vehicle accident occurred on 25.01.2002 about 2.00 p.m. on Osmanabad-Tuljapur road and involvement of the S.T. Bus and motorcycle are not in dispute.

14. The center of dispute is about rash and negligent driving. Whether the accident was caused due to rash and negligent driving of the deceased or the S.T. Bus driver, to be answered on the basis of evidence on record.

15. On going through the oral evidence tendered by both the sides, it is very much clear that the S.T. Bus was ahead and the deceased was driving his motorcycle. S.T. Bus was ahead. The S.T. Bus was slowdown at a bus stop for alighting the passengers. The deceased along with his motorcycle dashed against the rear side of the S.T. Bus and caused the accident. The spot *panchanama* vide exhibit 17 clearly reveals that

motorcycle was dashed against the rear side of the S.T. Bus. According to the traffic rules, a driver is required to keep safe distance from a vehicle, which is ahead. Since S.T. bus was slowdown, the deceased could have controlled his motorcycle noticing that the bus was going to halt at bus stop for alighting the passengers. This can be safely inferred from the factual scenario appearing from the spot *panchanama* and the evidence of bus driver Ramkrushna Ganpat Mule vide exhibit 21.

16. The testimony of S.T. Bus driver Ramkrushna Ganpat Mule (exhibit 21) discloses that his bus reached near Sidheshwar Wadgaon Pati, when two women passengers gave signal to stop the bus. He slowdown the S.T. Bus and stopped at the side strip. Two to four ladies and some boys boarded the bus. He heard the noise from back side. He asked the conductor to see what had happened and then he also got down. He noticed that one motorcycle was dashed against the rear side of the bus and one motorcycle rider was lying there. He took that injured person in the auto rickshaw and taken to the hospital. He also informed about the accident to his depot Manager and then went to police station and informed about

the accident. This evidence of S.T. Bus driver is not any way shaken by way of cross-examination.

16. On the other hand, the claimant had examined one witness as PW-2 Avinash Pawar auto rickshaw driver vide exhibit 19. He went on stating that he was driving minidoor rickshaw. He was proceeding from Osmanabad to Tuljapur. One she buffalo came across S.T. Bus. Due to which, the S.T. Bus driver applied the brakes and S.T. bus was stopped, and the motorcycle rider dashed to the S.T. Bus from back side. According to PW-2 rickshaw driver Avinash Pawar, the accident was caused due to negligence of S.T. bus driver. He further disclosed that after the accident, he took the injured to the civil hospital at Osmanabad and admitted there.

17. The Tribunal has considered his evidence and rightly discarded the testimony of PW-2 Avinash Pawar. PW-2 Avinash Pawar has not produced any evidence to show that at the time of accident, he was driving minidoor rickshaw. He has not even produced his driving licence. The story tried to be put forth by the claimant / PW-1 Mangalbai vide exhibit 14 and her witness

PW-2 Avinash Pawar vide exhibit 19 appears to be after thought in order to get compensation. The claim petition is completely silent that she buffalo came across the road and S.T. bus driver all of a sudden applied the brakes. The S.T. bus was stopped. The motorcycle rider dashed against the rear side of the bus and met with an accident. It is altogether a new story tried to be put forth by the appellant and PW-2 Avinash Pawar a rickshaw driver. The Tribunal has rightly discarded that piece of evidence.

18. The documentary evidence placed on record by the claimants vide exhibits 15 and 16 (copy of FIR and sopt *panchanama*) clearly throws light on facts of the accident. The deceased was driving his motorcycle. He might be in a high speed and not maintained safe distance from the bus, which was ahead. The deceased because of his high speed could not control his motorcycle and dashed against the rear side of the S.T. bus and caused the accident. The deceased was alone found to be rash and negligent while driving his motorcycle and alone liable for the accident. The S.T. bus driver cannot be said to be rash and negligent for the accident.

19. Mr. N.P. Patil Jamalpurkar has placed his reliance in case of *Vandana Shedge and others Vs. Narayan Dinkar Jadhav and another* (supra). On going through the facts of the cited case, it is noticed that the driver of the motorcycle as well as pillion rider died on the spot due to collision with S.T. Bus coming from opposite direction. Here in the case in hand, the motorcycle rider himself dashed to the rear side of the S.T. Bus and caused the accident. As such, the case of *Vandana Shedge and others Vs. Narayan Dinkar Jadhav and another* (supra) is not any way helpful to the appellants.

20. Mr. N.P. Patil Jamalpurkar placed reliance in case of *Manam Saraswathi Sampoorana Kalavathi and Ors. Vs. Manager, APSRTC, Tadepalligudem A.P. and anr.* (supra). On going through the citation, it is revealed that the bus has given dash to the scooter from back side. The pillion rider of the scooter was examined who stated all these facts as an eye witness to the accident. It is not any way helpful to the case in hand.

21. Mr. N.P. Patil Jamalpurkar has placed his reliance in case of *Kiran through her father Harinarayan Vs. Sajjan singh and others* (supra), wherein it is held by the Hon'ble Supreme Court about the award of compensation under both heads namely; pecuniary and non-pecuniary damages so as to award just and reasonable compensation to the injured. In case of *Subulaxmi Vs. Managing Director, Tamil Nadu State Transport Corporation and another* (supra), it is held by the Hon'ble Supreme Court that in a claim under Section 166 of the Motor Vehicles Act, 1988, the approach of the Tribunal must be liberal and balanced one. The Tribunal must award just compensation to the claimants.

22. Both the citations referred above are not any way helpful to the case of appellants when the deceased motorcycle rider who himself found rash and negligent while driving his motorcycle and caused the accident. Certainly, the respondent / M.S.R.T.C. cannot be held liable to pay compensation. There is no merit in the appeal and same is liable to be dismissed.

ORDER

- (i) The appeal stands dismissed.
- (ii) The impugned judgment and award passed in M.A.C.P. No. 46 of 2003 by the Motor Accident Claims Tribunal, Osmanabad is hereby confirmed.
- (iii) No order as to the costs.
- (iv) R & P be sent back to the Tribunal.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane