

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1721 OF 2002
A/W
CIVIL APPLICATION NO.352 OF 2019
IN
FIRST APPEAL NO.1721 OF 2002

- | | | | |
|------|----------------------------------|---|----------------------------|
| 1. | SMT. SHAHIN RAEES SHAIKH |] | |
| | Age: 30 yrs. Occ: Household, |] | |
| | R/o. 25, Modikhana, Solapur. |] | |
| | | | |
| 2. | SHARPHUHIN MULAKA NAIKWADI |] | |
| | Age: 69 yrs. Occ: Retired, |] | |
| | R/o. As above. |] | |
| | | | |
| 3. | MASHUMBI SHARPHUHIN NAIKWADI |] | |
| | Age: 59 yrs. Occ: Household. |] | |
| | R/o. As above. |] | Appellants/
Applicants |
| | | | |
| V/s. | | | |
| 1. | PUNE MUNICIPAL CORPORATION, PUNE |] | |
| | Shivaji Nagar, Pune – 5. |] | |
| | | | |
| 2. | THE ASSISTANT DIRECTOR OF |] | |
| | INSURANCE, Maharashtra State, |] | |
| | R/o. Bandra (East), Gruha Nirman |] | |
| | Bhawan, (MHADA), Mumbai. |] | Respondents
(Opponents) |

Mr. Shashikant P. Chaudhari a/w Mr. Pranot Pawar a/w Ms. Kishori Tribhuwan i/b Pawar & Co., for Appellant/Applicant.

Ms. Madhavi Tavanandi, for Respondent No.1.

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 15TH FEBRUARY, 2021.
PRONOUNCED ON : 24th FEBRUARY, 2021.

JUDGMENT:

1. This appeal challenges the Judgment and Award dated 20th February, 2002 passed by the learned Chairman, M.A.C.T., Solapur in M.A.C.P No.93 of 1998, by which the Petition of the appellants came to be dismissed.

2. Facts in brief are as under;

Appellant No.1 is the widow of deceased Raees Shaikh and appellants No.2 and 3 are parents of the deceased. Deceased Raees Shaikh (for short 'deceased') was aged about 38 years. He was a resident of Solapur. He was issue less. Deceased was working as Branch Manager with Sanchayani Savings and Investment (I) Limited, Pune.

On 27th October, 1997, deceased was proceeding from Bahirat Putala, Pune on his motorcycle bearing Registration No. MH-12-NA-1891. He was driving the motorcycle in a moderate speed by the left side of the road. At the relevant time, a P.M.T bus bearing registration No. MH-12-Q/0763 (offending bus) gave a forcible dash to his motorcycle. Due to dash, deceased fell down. He was crushed

under the rear wheel of the offending bus resulting into his instantaneous death.

3. Genaba Kadu was the Driver of the offending bus which belongs to respondent No.1 and insured with respondent No.2. Bhalchandra Nagne (Applicant's witness No.3) was incidentally an eye witness and also the investigating officer who was proceeding in the same direction at the relevant time on his scooter. He was on his way to Shivaji Nagar Police Chowky under Deccan Police Station. An F.I.R was registered (**Exhibit 24**) by A.W.3- Bhalchandra Nagne. Statements of the witnesses were recorded. A panchnama of the scene of occurrence was drawn. A charge-sheet was filed against Driver of the offending bus Genba Kadu attributing rash and negligent driving to him. The appellants have claimed compensation of Rs.20,00,000/- to 25,000,00/-. However, they restricted the claim to a sum of Rs.10,00,000/-.

4. It is contended by the appellants that the deceased was drawing a monthly salary of Rs.2900/-, getting petrol expenses of Rs.500/- and in addition to that development expenses of Rs.500/-. He had a rent free quarter. It is further contended that besides serving in Sanchayani Savings Scheme and Investment (I) Ltd, he used to sell home appliances of "Sony" by taking orders and was getting additional income of Rs.1500/- per month. Out of his savings, he had purchased a Tata Sumo Jeep in the name of his wife-appellant No.1. The Jeep was being given on hire and for transportation. Appellant No.1 being a *pardanashin* lady, deceased himself was looking after the business of the said jeep and was earning Rs.16,000/- per month. Thus, it is contended that the total

income of the deceased was around Rs.22,400/- per month. The appellants, therefore, claimed compensation as above.

5. Issues were framed below **Exhibit 21** by the learned Chairman. It is held that the Driver of the offending bus was not rash and negligent at the time of the accident and, therefore, he cannot be held responsible for the accidental death of the deceased involving the offending bus. The learned Chairman of the Tribunal held that the accident occurred due to rash and negligent driving of the motorcycle by the deceased and, therefore, the appellants are not entitled for any compensation from the respondents.

6. Aggrieved by the the said decision, the appellants have approached this Court by way of the first appeal.

7. I heard Mr. Chaudhari, learned Counsel for the appellants. He would argue that the Investigating Officer himself was the eye witness and, therefore, his evidence needs to be believed and Driver of the offending bus ought to have been held responsible for causing the accident. The learned Chairman has, therefore, erred in not considering the evidence of Bhalchandra Nagne in its proper perspective and had erred in observing that the deceased had contributed to the accident to its full extent. It is further submitted that the learned Chairman has failed to appreciate the fact that evidence of A.W.3-Bhalchandra Nagne was neither challenged by the respondents in the cross-examination nor challenged by contradicting his statement in F.I.R. The learned Counsel for the appellants took me through the evidence of A.W.3-Bhalchandra Nagne in order to buttress his point that he was a creditworthy witness, in the sense,

that there was no reason for him to testify falsely in relation to the accident as well as with regard to the fast driving of the offending bus by its Driver.

8. On the aspect of application of multiplier, it is contended that the learned Chairman has erred in applying the multiplier in respect of age of the parents instead of the deceased in the light of the fact that one of the claimants is his widow. By applying improper multiplier, the learned Chairman had erred in quantifying the amount of compensation awardable to the claimants. The impugned judgment has also been assailed on the ground that the learned Chairman has failed to distinguish between absolute liability, strict liability and rules under *Reyland Vs. Fleture* and failed to appreciate that the respondents have not proved any exception.

9. Per contra, Ms. Madhavi Tavanandi, learned Counsel appearing for respondent No.1-Pune Municipal Corporation supported the impugned judgment by arguing that it was sole negligence of the deceased and, therefore, respondent No.1 cannot be fastened with any liability of compensating the appellants for the accidental death of the deceased.

10. In order to prove rash and negligent driving of the Driver of the offending bus, the appellants examined A.W.3-Bhalchandra Nagne. According to this witness, on 27th October, 1997 while proceeding from Police Chowky to the Corporation by his Scooter, he noticed the deceased who overtook him riding a motorcycle and tried to overtake the offending bus from the left side. While doing so, the offending bus hit the motorcyclist resulting into his fall on the

ground and coming under the rear wheel of the conductor's side. Blood was oozing from his mouth and nose. This witness shifted him to the Sassoon Hospital, Pune, however, Doctor declared him dead. A.W. 3- Nagne informed Shivaji Nagar Police Chowky on phone from the Hospital and went to the spot. Interestingly, though he was an eye witness, he became an Investigating Officer who conducted spot panchanama, gave memo to R.TO for inspection of the offending bus and recorded statement of the witness. The F.I.R is proved at **Exhibit 24**.

11. In sum and substance, it is the evidence of this witness that the accident took place due to the negligence on the part of the bus Driver. Had he been slow, the accident could have been avoided. This witness filed a charge-sheet against the Driver of the offending bus.

12. Learned Counsel Ms. Tavanandi for respondent No.1 informed this Court that the Driver has already been acquitted of the offence.

13. During his cross-examination, A.W.3-Bhalchandra Nagne admits that the speed of the motorcycle of the deceased was more than speed of his Scooter. If contents of the F.I.R, **Exhibit 24** *vis-a-vis*, evidence of A.W.3-Nagne is seen, it is obvious that there was no occasion for this witness to actually see as to how the accident took place. It is significant in the light of the fact that the F.I.R clearly indicates that when he reached on the spot, there was a crowd of vehicles and people. However, in his evidence, he testified the circumstances that laid to the accident in detail. Indeed, he made

improvements in his version before the Court and, therefore, the learned Chairman has rightly declined to place credence on his evidence. Moreover, had he been an eye witness, he ought not to have acted as an Investigating Officer also as that would not be a fair investigation.

14. Statement of one Virendrakumar Dube was recorded who was sitting at P.M.T Bus stand. He testified that around 12.30 noon, he noticed one motorcycle going from the bridge towards Savarkar Bhavan. In front of the bus stand, motorcycle of the deceased slipped and he was crushed under the rear left side wheel of the PMT Bus. The blood was oozing from his nostrils and mouth. He died on the spot. Statement of Dube who was an eye witness to the accident and whose statement was recorded by A.W.3- Bhalchandra Nagne does not corroborate the testimony of A.W.3- Bhalchandra Nagne himself and, therefore, it is difficult to accept that Driver of the offending bus was responsible for rash and negligent driving resulting into death of the deceased. It can be seen that the deceased came under the rear wheel of the conductor side while overtaking bus from the wrong side. This itself indicates that the deceased was solely responsible for the accident due to his negligent act of driving the motorcycle in a high speed and overtaking the bus from the wrong side.

15. A perusal of spot panchanama **Exhibit 25** reveals that width of the road near spot of the accident was 50 feet and the motorcycle of the deceased was lying at a distance of 2 feet south of the place of the accident. The rear wheel of the offending bus was at a distance of 15 feet from the place of the accident and the front left wheel of the bus was at a distance of 32 feet from the place of the accident.

This indicates that the offending bus stopped at a distance of 15 feet from the place of the accident and, therefore, it cannot be said that the Driver of the offending bus was in high speed. The offending bus must have been in a moderate speed. Except damage to the head lamp, there was no other damage to the motorcycle.

16. In this background, evidence of O.W.1-Genaba Kadu, Driver of the offending bus is significant. He testified that at the relevant time, he was plying on Route No.36 i.e from Municipal Corporation to Chinchwad Gaon. His duty hours were from 5.00 a.m to 2.30 p.m. He was supposed to take five rounds on the said route. The accident took place when he was taking the last round. According to this witness, around 12.45 p.m, he left the first stop known as Dengale Bridge stop. The work of pipeline was going under the bridge. It was a one way traffic. He was driving slow. Speed of the bus was 10 to 20 kms per hour. When he crossed the bridge and entered Bahirat Putala Chowk, another bus came from right side which took turn and went towards Deccan. At that time, he heard some of the passengers shouting that a motorcyclist fell behind. He stopped the bus and got down. He noticed that the motorcyclist was taken in an auto rickshaw. According to this witness, he did not give dash to the motorcyclist as has been rightly testified that there was no question of giving dash to the motorcycle of the deceased. During his cross-examination, he denied the suggestions of he being rash and negligent and in a hurry to finish last round of the bus. There is nothing in his cross.

17. It is obvious that there was no occasion for the bus Driver either to see the motorcyclist trying to overtake his bus from the

wrong side or to see as to how he came under the rear wheel. At the most, had the deceased overtaken the offending bus from the right side then the things ought to have been different. As already discussed, the deceased was trying to overtake the bus from the wrong side and hit it which resulted into the accident and consequently, resulted into his death. The deceased himself had invited the peril by risking to overtake the offending bus from the wrong side. No one but he is to be blamed for putting his life at risk. The learned Chairman has, therefore, rightly appreciated the evidence of all the witnesses by concluding that the motorcyclist had invited the accident by trying to overtake the offending bus from the wrong side.

18. The learned Chairman, however, went on to determine the income, amount of compensation which could have been awarded to the deceased and all other relevant factors which, in the given set of circumstances, were not necessary for the simple reason that once it has been held that the Driver of the offending bus was not at all negligent in causing the accident, the question of determination of compensation becomes otiose.

19. For the reasons stated hereinabove, I do not find any merit in this appeal. The appeal stands dismissed. However, in the circumstances, there is no order as to costs.

20. In view of dismissal of the appeal, Civil Application No.352 of 2019 stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]