

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

FIRST APPEAL NO. 1311 OF 2004

Maharashtra State Road Transport
Corporation,
Through its Divisional Controller,
Dhule.

.. APPELLANT

VERSUS

1. Shakuntala Santosh Bedse,
Age 42 years, Occ. Household.
2. Sandhya d/o. Santosh Bedse,
Age 22 years, Occ. Education.
3. Anil Santosh Bedse,
Age 20 years, Occ. Education.
4. Chandrakant Santosh Bedse,
Age 19 years, Occ. Education.

All Residents of Sakri,
Taluka Sakri, District Dhule.

.. RESPONDENTS

...

Mr.D.S.Bagul, Advocate for the appellant.

Mr. Sanket N. Suryawanshi, Advocate for respondent nos.1
to 4.

...

CORAM : S.G.DIGE, J.

Reserved on : 29.06.2022

Pronounced on: 21.07.2022

JUDGMENT :

1. Being aggrieved by the judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Dhule, directing the appellant to pay to the respondents a sum of Rs.1,29,776/- with costs along with interest, the appellant has approached this Court.

2. Brief facts of the case are under :-

It is the case of the claimants (respondents) that on 05.12.1988 at about 1.30 p.m. when deceased Santosh Bedse, was traveling on his Rajdoot motor cycle along with his friend Jagdish Bhika Bhadane, Bus bearing No. MWQ 6251 came from opposite direction, which was driven by Bus driver (original respondent no.2) in a high speed rashly and negligently, gave dash to Rajdoot Motor Cycle from front side. In the said accident, Santosh Bedse and his friend died on the spot. The damage was caused to motor cycle to the tune of Rs.15000/-.

3. The appellant contested the claim petition by

filing written statement before the learned Tribunal contending that driver of the bus was not negligent in driving the bus. The deceased himself was at fault and without observing rules, tried to over take another bus in rash and negligent manner, as a result of which the accident took place. Actually, it was negligence of deceased and not bus driver, therefore, prayed for dismissal of the petition.

4. The learned Member, Motor Accident Claim Tribunal has been pleased to partly allow the claim petition and awarded the compensation as referred above. Against the said order, this appeal.

5. The learned counsel for the appellant has raised the following points :-

- (A) That the learned Member of the Tribunal failed to consider that the motor cyclist was on the wrong side, therefore, the accident took place.
- (B) That the act of trying to overtake a vehicle without verifying about on-coming traffic is an act of negligence.

- (C) That merely because the vehicle in front had allegedly given signal to overtake, does not mean that the motor-cyclist should have proceeded to over-take without verifying about the vehicles coming from the opposite side.
- (D) That the learned Member of the Tribunal failed to appreciate that the motor cyclist had not verified about the on-coming traffic and on account of his error of judgment the accident had taken place.
- (E) That the ST Bus was on the correct side and the driver had not committed any breach of duty or rule and hence he was not negligent.
- (F) That the learned Member of the Tribunal failed to discuss the duties of the motor-cyclist while trying to overtake another vehicle and he has merely considered the duties of the Appellant's driver.
- (G) That the driver's version should have been accepted and it was wrongly disbelieved.
- (H) That the bus is bound to be in great speed, as it was a clear road and at any rate speed is not a

criteria for fastening liability.

- (I) That the question of negligence was wrongly decided.
- (J) That at any rate it is a case of contributory negligence. Further, the amount of income and dependency calculated are excessive.
- (K) That Multiplier adopted and amount awarded is on the higher side.
- (L) That no deduction is granted for lump sum payment.
- (M) That the judgment and award under challenge are against equity, justice and good conscience.

6. The learned counsel for the respondents submits that spot panchnama shows that bus was in high speed. The S.T. driver could not control his bus as it was in a high speed. The deceased were dragged to the distance of 110 feet, it shows that the bus was in high speed. The driver of the bus was negligent while driving the bus. The order passed by the Tribunal is legal and valid.

7. I have heard both the learned counsel. Perused the judgment and award passed by the learned Member, Motor Accident Claims Tribunal.

8. Appellant has raised mainly two grounds in present appeal-(i) negligence of deceased and (ii) quantum of amount granted as compensation.

9. Firstly, I would deal with the issue of contributory negligence. It is contention of the learned counsel for the appellant that the deceased overtaken the bus wrongly due to which accident is occurred.

10. Admittedly there is no eye witness to the incident, hence who was negligent for accident can be seen from the evidence on record. The bus driver (respondent no.2 in claim petition) Dharma Pundlik Nandode examined himself at Exhibit-35. He stated that he had seen Taloja-Shirdi bus was coming from opposite direction, the said bus given him side. The motor cyclist, who were following that bus thought that signal was given to them by that bus, they

tried to overtake that bus and dashed against bus of this witness. He further stated that his bus speed was 35 to 40 per hour per kilometer and motorcyclist were in speed. In cross examination, this witness stated that he cannot assign any reason why he has not mentioned in the report given by him, about accident occurred due to overtaking.

11. In cross examination, this witness stated that his bus was stopped at the distance of 5 feet after giving dash. The evidence of this witness is negated by the documents produced on record. Complaint was filed against respondent no.2 for accident, it is at Exhibit-28. It was recorded as per the information given by the respondent no.2. After accident respondent no.2 himself went to Police Station and informed police about the incident. In said information respondent no.2 has not stated that accident occurred due to overtake of bus by the deceased. The spot panchanama is at Exhibit-30. It is significant to note that this panchanama shows that bus dragged the deceased and his friend to 110 feet. It shows bus was in very high speed and falsifies the evidence of respondent no.2 that his bus

was in moderate speed and stopped at 5 feet distance after accident. When driver of bus (respondent no.2) himself informed about accident to Police, he had not stated that accident was caused due to wrong overtake by the deceased. The method and manner in which the accident has taken place leaves no room for doubt that it was caused due to negligence of bus driver. Man may lie but circumstances do not is the cordial principle of evaluation of evidence. No efforts made by the appellant to examine the driver of Taloja-Shirdi bus to corroborate evidence of driver (respondent no.2). Considering the documentary evidence produced on record and evidence of respondent no.2, it proves that accident was occurred due to negligence of respondent no.2 and not the deceased.

12. In respect of issue of quantum of compensation, it is contention of the learned counsel for appellant that compensation is awarded on higher side. The learned Tribunal has awarded Rs.1,14,776/- exclusive of N.F.L. amount, while awarding this compensation the learned Tribunal has considered all aspects. Hence no interference is

required.

13. In view of the above, I pass the following order :-

ORDER

The First Appeal is dismissed.

**[S.G.DIGE]
JUDGE**

sga/-