

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

1060 FIRST APPEAL NO.3221 OF 2018

Maharashtra State Regional Transport
Corporation,
Through Divisional Controller,
MSRTC, Jalgaon Division,
Jalgaon.

.. APPELLANT

VERSUS

1] Amarsing Rupchand Pardeshi,
Age- 58 yrs., Occu-Agri.
R/o. Sadgaon, Tq.Pachora,
Dist. Jalgaon.

2] Pratap s/o. Amarsing Pardeshi,
Age- 30 Yrs., Occu-Agri.
R/o. Sadgaon, Tq.Pachora,
Dist. Jalgaon.

3] United India Insurance Co. Ltd.
Mansing Market, 7th Floor, Jalgaon
Tq. & Dist. Jalgaon.

.. RESPONDENTS

...

Mr.M.K.Goyanka, Advocate for the appellant.
Mr.M.R.Bhokariker & Mr.J.V.Patil, Advocate for respondent
no.1.
Mr.S.G.Chapalgaonkar, Advocate for respondent no.3.

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**CORAM : S.G.DIGE, J.
DATE : 13.10.2022**

P.C. :

1] Being aggrieved and dissatisfied with the judgment and award passed by the Motor Accident Claims Tribunal, Jalgaon [for short 'the Tribunal']. The appellant – original respondent no.3 preferred this appeal.

2] It is the contention of the learned counsel for the appellant that the accident was taken place between motorcycle bearing No. MH-19-AH-7433 and S.T. Bus bearing No. MH-20-D-4446. Respondent no.1 / original claimant [for short 'claimant'] was the pillion rider on the said motorcycle and respondent no.2 was driving the said motorcycle. The offence was registered against the driver and owner of the motorcycle i.e. respondent no. 2. As such, the appellant is not liable to pay any compensation. Respondent no.2 failed to control his motorcycle as he was driving the motorcycle in rash and negligent manner and had given dash to the S.T. bus by coming from extreme right side of its motorcycle. This fact is not considered by the Tribunal. The accident taken place due to the sole

negligence of the motorcycle rider. But the Tribunal has fastened liability on S.T. bus driver, which is improper, hence, requested to allow the appeal.

3] It is the contention of the learned counsel for the respondents that after the accident respondent nos.1 and 2 were admitted in the Hospital. The offence is registered against respondent no.2 - motorcycle rider on the report of the S.T. bus driver. It is obvious that the S.T. bus driver could not say against his own mistake. The spot panchnama shows that there is negligence of the S.T. bus driver. The Tribunal has passed the reasoned order showing how there was negligence of the S.T. bus driver in the said accident.

4] I have heard all learned counsel. Perused the judgment and order passed by the Tribunal. The issue involved in this appeal is the negligence. It is the contention of the learned counsel for the appellant that the accident was occurred due to sole negligence of the motorcycle rider. The FIR in respect of the accident is registered against

respondent no.2. The report of accident was given by the bus driver of the bus involved in the accident. The Tribunal has observed that from the spot panchanama and the evidence on record it appears that the accident was caused due to contributory negligence of respective drivers of the vehicle i.e. S.T. bus driver and motorcycle rider. I do not find infirmity in the said observation. Moreover, though S.T. bus driver has filed FIR against the motorcycle rider, but he has not stepped into the witness box to prove the negligence of the motorcycle rider. Hence, I do not find any infirmity in the observation of the Tribunal and pass the following order:-

ORDER

- i] Appeal is dismissed.
- ii] No order as to costs.
- iii] Respondent no.1 / claimant is permitted to withdraw the amount deposited by the appellant.

iv] In view of dismissal of the appeal, pending civil application does not survive and the same stands disposed of.

[S.G.DIGE]
JUDGE

DDC