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Judgment F .A. 1080-2021

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

FIRST APPEAL NO. 1080 OF 2021

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Nanded.

..Applicant

V E R S U S

1. Jyoti W/o Nandkishor Kurude,
Age : 38 Years, Occ. Household
2. Saiprasad S/o Nandkishor Kurude,
Age : 19 Years, Occ. Education
3. Prakash S/o Nandkishor Kurude,
Age : 17 Years, Occ. Education
4. Karan S/o Nandkishor Kurude,
Age : 11 Years, Occ. Education
5. Siddhi S/o Nandkishor Kurude,
Age : 10 Years, Occ. Education

Respondent Nos 3 to 6 are minors,
U/G of their real mother i.e.
respondent No.1

All Resident of Raywadi A/p Mandhi
Taluka Loha, District Nanded.

.. Respondents

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Shri. A.D. Wange, Advocate for the Appellant
Shri. S.P. Salgar, Advocate for Respondent Nos. 1 to 6

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CORAM : VINAY JOSHI, J.

Closed for Judgment on : 16.02.2022.
Judgment pronounced on : 26.02.2022.

JUDGMENT:

. By this appeal, Insurance Company claims exception to the Judgment and award dated 16.01.2020 passed by the learned Member of Motor Accident Claims Tribunal, Nanded in Motor Accident Claim Petition No. 189 of 2018, whereby the claim for compensation was partly allowed.

2. Respondents/claimants are the legal heirs of deceased Nandkishor who died in vehicular accident dated 10.04.2018. At the relevant time, deceased was proceeding by motorcycle to whom the offending vehicle namely Maharashtra State Transport Corporation Goods carrying bus bearing Registration No. MTB-2292 coming from opposite direction gave severe dash. The accident resulted into the death of Nandkishor. Thereafter, the legal heirs of Nandkishor have filed claim petition before the Tribunal seeking compensation for his death. The compensation has been claimed from the appellant who is the owner of State Transport Bus involved in the accident. The tribunal held that due to rash and negligent

driving of bus driver, accident occurred and accordingly, assessed the compensation on the basis of notional income of the deceased to the tune of Rs. 9,52,000/-.

3. In this appeal, the appellant Maharashtra State Road Transport Corporation has primly challenged the involvement of State Transport bus in accident apart from other defences. Rather, the defence of non-involvement was the center of focus. In this regard, the appellant relied on the evidence of bus driver, Deepak Madeswar and the S.T. Depot Inward register. It has come in the evidence of bus driver that on that day, though he plied concerned bus on the same road, however, the bus was not involved in the accident. He deposed that, on that day he proceeded from Loha to Kandhar and deposited the bus in Kandhar Depot around 7.45 p.m. In support of his contention, inward register of Kandhar Depot has been produced showing the entry that bus bearing Registration No. MTB 2292 was deposited in S.T. Depot at 7.45 p.m.

4. As against this, the claimants have submitting that a false defence has been raised to escape from the statutory liability. The widow of the deceased led evidence on affidavit contending that at the relevant time, the deceased was proceeding towards Shivaji

Chowk, Loha. When the deceased reached near the gate of Patbandhare (Irrigation) office, the offending State Transport goods carrying bus came from opposite direction in high speed and gave dash to the motorcycle. True, widow was not the eye witness to the incident. Obviously, her evidence was based on hearsay information. The claimants have heavily relied on the F.I.R registered on the following day against the bus driver. It is specifically contended that, at the relevant time State Transport Goods carrying bus bearing Registration No. MTB-2292 gave a forceful dash to the motorcyclist. In addition to that, claimants have relied on the copy of charge sheet which has been filed against the State Transport bus driver. By relying on the decision of the Hon'ble Supreme Court in the case of **Sunita and Others Versus Rajasthan State Road Transport Corporation and Another 2019 DGLS(Supreme Court)233**, it is argued that in accident claims, the evidence is to be assessed on the touchstone of preponderance of probability. The standard of proof beyond the reasonable doubt is not required.

5. Though the learned counsel for the claimant would submit that except inward register, there is no other material, however,

there cannot be evidence to prove a negative fact. Principally, it is to be seen whether the applicant's evidence is reliable to hold the involvement of offending vehicle. If it is so, then as a natural corollary, the defence raised by the appellant is untenable.

6. So far as the factum of death of Nandkishor in vehicular accident is concerned, it is undisputed one. It is the case of the claimants that due to rash and negligent driving of Bus driver, accident occurred. By taking defence of non-involvement of bus, the appellant has lost the opportunity to explain the manner of accident, therefore, there is no reason to discard the evidence of applicant on the point of negligence.

7. As regards to the involvement of offending bus is concerned there are words against words. However, the claimant's evidence is strongly supported by the police papers. The accident occurred on 10.04.2018 in the late hours whilst on the very following day, at the instance of widow crime was registered against the driver of offending bus. The First Information Report bears explanation that after last rites of her husband, widow went to police station and lodged the report. The said explanation is quite acceptable on the point of delay in lodgement of First Information

Report. Moreover, police have carried investigation and concluded that the accident was the result of rash and negligent driving of Bus driver. Accordingly, final report has been filed against the bus driver. During the course of evidence, bus driver has admitted that concerned criminal case is pending against him. Inasmuch as he admits that he has not applied for quashing of the First Information Report. In above referred case of Sunita, the Supreme Court also took a note (paragraph 23) of such a fact of not challenging the propriety of the F.I.R and charge sheet while considering the defence. It is to be noted that the offending vehicle was not a private vehicle, but the State Transport bus. In the circumstances if the vehicle of State transport bus was planted falsely, then certainly it would have been challenged for quashment of charge sheet.

8. The defence of non-involvement is mainly based upon the inward register of Kandhar Bus Depot. Admittedly, accident took place on 10.04.2018 at 7.30 p.m at Loha on Kandhar road. It is not disputed that Kandhar Bus Depot is 13 K.m away from Loha i.e. place of occurrence. The inward register bears hand written entry that bus was deposited at 7.45 p.m. On that basis, it is argued that when the accident took place at 7.40 p.m at Loha, it is highly

impossible to travel the distance of 13 K.m within five minutes and to deposit bus in Depot at 7.45 p.m.

9. Perused photocopy of relevant page of inward register. Since the defence was totally based on said document the appellant ought to have examined the custodian, of said document to prove the entry. It is not made clear as to in whose handwriting at the end of page concerned last entry was taken. The reliability of said entry is seriously in question. The possibility of making anti time entry after accident cannot be ruled out for the reason of escaping from the liability. It is not brought on record as to who was the custodian of said register and under whose supervision, the relevant entry was made by whom. The said entry appears to have been hand written in casual manner. The driver of bus has admitted that at the relevant time, his bus came from Loha to Kandhar. In the circumstances, a stray unreliable entry cannot be trusted to throw away a genuine claim. The tribunal has justly relied on the police papers while negating the said entry by expressing the possibility of manipulation. Therefore, it is not possible to accept the defence of non-involvement of offending vehicle.

10. So far as remaining aspects are concerned, no submissions are advanced to that effect. The learned counsel for the appellant has only submitted that the tribunal has granted interest at excess rate. The impugned judgment reveals that the tribunal has held notional income of the deceased to the extent of Rs. 7,000/- per month and accordingly, calculated the compensation by using settled norms. It reveals that there was no addition on account of future prospects, however, neither there is cross appeal nor cross objection nor the said point was canvassed. In view of above peculiar facts, I do not find any reason to reduce the rate of interest which is 9% per annum.

10. Resultantly, the appeal carries no substance, hence it is hereby dismissed. The amount of compensation be transmitted to the tribunal for its disbursement to the claimants as per award.

[VINAY JOSHI, J.]

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