

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

FIRST APPEAL NO.1362 OF 2012

The Secretary,
Maharashtra State Road
Transport Corporation,
Through its Divisional Controller,
MSRTC Divisional Office,
at Ahmednagar.

.. APPELLANT

VERSUS

1. Arunabai w/o. Ashok Kolhe,
Age-40 years, Occu-Housheold.
2. Abhishek s/o. Ashok Kolhe,
Age-21 years, Occu-Nil.
3. Kundan s/o. Ashok Kolhe,
Age-16 years, Occu-Education.

[Respondent no.3 through Guardian
Respondent no.1 i.e. Arunabai Ashok Kolhe]

4. Deoram s/o. Dhondiba Kolhe,
Age-71 years, Occu-Nil.
5. Kaushalya w/o. Deoram Kolhe,
Age-71 years, Occu-Nil.

All R/o. Yesgaon, Tq.Kopargaon,
Dist. Ahmednagar.

..RESPONDENTS

...

Mr.M.K.Goyanka, Advocate for the appellant.

Mr.Sanket S. Kulkarni, Advocate for respondent nos.1 to 3.

Mr.A.T.Kanawade, Advocate for respondent nos.4 and 5.

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CORAM : S.G.DIGE, J.

DATE : 25.08.2022

ORAL JUDGMENT :

1] The issue involved in this appeal is in respect of contributory negligence.

Brief facts of the case are as under :

2] On 22nd July, 2001 at about 3.15 p.m. the S.T. bus bearing MH-12/FA-1390 was proceeding from Pimpalgaon-Baswant to Shirdi on Ahmednagar-Manmad Highway at that time the deceased Ashok Kolhe was proceeding on his motor cycle from Kopargaon by left side of the road. At Chitrawani centre S.T. bus driver lost his control and due to his reckless driving dashed against the motor cycle resulting into death of Ashok.

3] Respondent nos. 1 to 4 – original claimants filed claim petition before the Motor Accident Claims Tribunal, Kopargaon [for short ‘the Tribunal’] for getting compensation. Considering the evidence on record and after

hearing the parties, the Tribunal has awarded compensation. Against the said judgment and order, the appellant – original respondents preferred this appeal.

4] It is the contention of the learned counsel for the appellant that the accident occurred due to negligence of the deceased. The deceased himself gave dash to the S.T. bus. The spot panchnama shows that the dash was given on the driver side of the S.T. bus. The width of the road was 22 feet. Had the deceased proceeding from left side of the road, accident would not have occurred. The spot panchnama shows that there was negligence of the deceased. At the most it can be considered as contributory negligence, but this fact was not considered by the Tribunal.

5] It is the contention of the learned counsel for the respondents that offence was registered against S.T. bus driver. The spot panchnama shows that the S.T. bus driver had applied the break and there were 50 feet break marks appeared on the road. It shows that the S.T. bus was in high speed. The appellant did not examine any witness to prove

that there was contributory negligence or contributory negligence of the deceased. The judgment and order passed by the Tribunal is legal and valid.

6] I have heard both learned counsel. Perused the judgment and award passed by the Tribunal. The First Information Report is at Exh.42. The complaint was given by A.S.Kokane Police Sub Inspector. Initially, the report was lodged by the offending bus driver Dilip Salve stating that the deceased gave dash to the bus. On the basis of his report, on the same day the Police went to the spot of incident and inquired about the incident to the witnesses. In investigation, the police recorded the statements of eye witnesses, who saw the accident. Those eye witnesses are viz. Raghu Genu Zaware, Devidas Kachru Lasalkar, Janardan Trimbak Kolhe and Subhash Babarao Gaikwed. These witnesses have stated that the S.T. bus driver was driving S.T. bus in excessive speed and gave dash to the motor cycle of the deceased. These witnesses have stated that the accident was occurred due to the negligence of the

S.T. bus driver. There is no reason to disbelieve the statements given by the eye witnesses, who saw the accident. The spot panchnama is at Exhibit 44. This spot panchnama shows that the width of road is 22 feet where the accident was happened and motor cycle was lying on the road around 22 feet behind the S.T. bus and S.T. bus was standing on the left side of the road. There were tyre marks on the said road from 50 feet. It shows that the bus driver has applied break from the distance of 50 feet but he could not control it and gave dash to the motor cycle. Considering the statements of the eye witnesses given to the police and the documents on record shows that there was negligence of the bus driver and he could not stop his bus after giving dash to the deceased immediately but it stopped at the distance of 22 feet it shows that S.T. bus was in excessive speed. It proves that there was sole negligence of S.T. bus driver.

7] In view of the above, I pass the following order:-

ORDER

- i] Appeal is dismissed.
- ii] No order as to costs.
- iii] In view of disposal of Appeal, Civil Application No.1678 of 2022 does not survive and the same stands disposed of.

[S.G.DIGE]
JUDGE

DDC