

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 864 OF 2002

WITH CIVIL APPLICATION NO. 5641 OF 2002

1. Shobhabai w/o Mohan Ackware
Age : 24 years, occ : household
2. Varsha Mohan Ackware
Age : 5 years, minor, U/G of
of real mother appellant No.1.
3. Subham Mohan Ackware
Age : 2 years, U/G of
of real mother appellant No.1.
All r/o Nagsenwadi, Vishnunagar,
Deopur, Dhule.

Appellants

Versus

Divisional Controller
Owner of S.T. Bus bearing registration
No. MH-20-A-4359 M.S.R.T.C.
Dhule Division, Dhule.

Respondent

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Mr. C.R. Deshpande, Advocate for the appellants.
Mr. D.S. Bagul, Advocate for the respondent.

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 07.12.2022.
Judgment pronounced on : 07.01.2023.

Judgment:

1. The appellants – original claimants, who are the legal heirs of deceased Mohan Changul Ackware, have challenged judgment and award dated 03.03.1998 passed by the learned Member, Motor Accident Claims Tribunal, Dhule (hereinafter referred to as “the learned Tribunal”) in Motor

Accident Claim Petition No. 633/1996 whereby the claim for compensation of the appellants has been rejected. In the appeal, the main ground of challenge is that the learned Tribunal wrongly held that the alleged offending S.T. bus bearing registration No. MH-20-A-4359 was not involved in the accident.

2. The deceased Mohan was riding on his bicycle by Dhule-Malegaon road on 10.02.1995. At that time at about 2.00 p.m., near Fauji Hotel in the vicinity of Avdhan village, S.T. bus bearing registration No. MH-20-A-4359 had given him dash by coming from opposite direction in very high speed. Due to said dash, Mohan got severely injured and died on the spot.

3. The learned Counsel for the appellants vehemently argued that the claim petition of the appellants – claimants was dismissed only on the ground of non-involvement of S.T. bus, but the Investigating Officer had in fact lodged First Information Report against S.T. bus driver after due enquiry. As such, he claimed that the involvement of the aforesaid S.T. bus was already established, but only it's driver could not be ascertained due to non-cooperation of the M.S.R.T.C. staff. With these submissions, he prayed for allowing this appeal and to direct the respondent to pay compensation as assessed

by the learned Tribunal.

4. On the contrary, learned Counsel for the respondent - M.S.R.T.C. strongly opposed the submissions made on behalf of the appellants and pointed out that despite examination of two witnesses by the appellants before the learned Tribunal, no eye witness to the actual accident was examined. On the contrary, M.S.R.T.C. examined in all four witnesses i.e. driver of the alleged offending bus and the concerned staff of M.S.R.T.C., Dhule Depot Workshop. He pointed out that all of them have clearly established that the said bus was kept in Dhule Depot on account of technical problem from the night of 09.02.1995 to 16.02.1995. Moreover, even though the concerned Investigating Officer had lodged F.I.R. involving the said bus, but later on could not file charge-sheet, since it was transpired that the said bus was not at all involved in the accident in question.

5. With the assistance of respective Counsel of the rival parties, I have gone through the impugned judgment as well as record and proceeding of the original claim petition.

6. It is significant to note that nobody had witnessed the actual accident. On the contrary, from the certified copies of the F.I.R and spot panchnama it appears that Mohan met with an accident on 10.02.1995 at about 2.00

p.m. on Mumbai – Agra National Highway near village Avdhan. F.I.R. (Exh.34) was admittedly lodged against one unidentified S.T. bus. Further, the original complaint (Exh.46) indicates that Mohan was found lying dead on the side of highway and some customer of Fauji Hotel had told the said complainant about dash given to Mohan by one S.T. bus. When the Investigating Officer, after getting such clue, visited Dhule S.T. Depot, he found certain scratch marks over the bus from cleaner's side alongwith small stains of blood. He presumed that the said bus must have involved in the accident, and therefore, lodged F.I.R. (Exh.34) on 13.02.1995.

7. It is extremely important to note that the appellant No.1 Shobhabai, who examined herself as CW-1, was not an eye witness of the accident. Moreover though the claimants examined the aforesaid Investigating Officer, Police Head Constable Purushottam Dattatraya Deshpande as their witness No.2, but his evidence indicates that despite taking efforts, he could not locate the name of bus driver. Moreover, this Investigating Officer clearly admitted in his cross-examination that only because he found some scratch marks and blood stains over the bus lying in the Dhule S.T. Depot, he filed F.I.R. Further, he also admitted that no charge-sheet was filed against any driver of the S.T. bus till the date when

his evidence was being recorded. Even he has admitted in the cross-examination that from 10.02.1995 till lodging of the F.I.R. on 13.02.1995 by him, he could not find any eye witness who had seen that the bus bearing registration No. MH-20-A-4359 was involved in the accident. In fact, his cross-examination shows that during his entire investigation he did not come across any witness who had seen as to how the accident took place. He also accepted in the cross-examination itself that the officers of M.S.R.T.C. had orally told him that on 10.02.1995 i.e. on the day of the accident, the aforesaid S.T. bus had not left the Depot at all. Such evidence of CW-2 Investigating Officer Purushottam Deshpande clearly indicates that he had lodged F.I.R. only presuming the fact that the aforesaid S.T. bus might have involved in the accident since he found certain scratch marks and blood stains on the same. His entire evidence is silent on the involvement of bus in question for want of any eye witness.

8. On the contrary, it appears that the respondent M.S.R.T.C. has examined in all four witnesses including driver of the said S.T. bus, Head Mechanic, Vehicle Examiner and also other Head Mechanic from Dhule Depot, to substantiate the fact that on the day of the accident the

aforesaid bus was lying at Dhule Depot itself for the purpose of carrying out the repairs. It is the case of respondent M.S.R.T.C. that right from 8.00 a.m. on 10.02.1995 the bus was lying at Dhule Depot and its gear box was removed by 1.00 p.m. on the same day, and therefore, it could not have been plied on the road at the time of accident which admittedly occurred on 2.00 p.m. on the same day. To substantiate such contention, there is evidence of DW-1 Shankar Damu Shankhpal on record who was the driver of that bus. The evidence of this witness clearly indicates that the said bus was brought to Dhule from Shirpur on earlier day of the accident i.e. 09.02.1995 and since a defect developed in its gear box, the said bus was given in the custody of Dhule Depot at about 10.00 p.m. on the same day. His evidence also indicates that even on the next day i.e. on 10.02.1995 which is the day of the accident, he visited the Depot at 8.30 a.m. and at that time gear box of the said bus was open and repairing work was in progress. He further stated that as it was not possible for him to take delivery of the said bus on that day, he returned back to his Shirpur Depot without bus.

9. The evidence of next witness i.e. DW-2 Vijay Shinde, who is the Head Mechanic of Dhule Depot, indicates

that on 10.02.1995 he had sent gear box to the workshop in the morning and the same was received from the workshop on 16.02.1995 and it was fixed on that day only. Further, according to him, during the aforesaid period the bus never left the Depot as it was without gear box. There are also relevant extracts brought on record at Exhs. 54 and 55 which indicate that the said bus received in Dhule Depot during night time on 09.02.1995 and on 16.02.1995 it was sent for transportation. Further, respondent M.S.R.T.C. examined DW-3 Ishwar Sharma, who is Vehicle Examiner and he has also deposed that the aforesaid bus after taking into custody by Dhule Depot on 09.02.1995, remained in the Depot itself upto 16.02.1995. Further, DW-4 Sahebrao Bhadane who is the retired Head Mechanic of M.S.R.T.C Dhule Depot, also deposed that the gear box of the aforesaid S.T. bus was removed in the morning itself of the day on which the accident took place i.e. 10.02.1995 and thereafter for the whole day the said bus remained stationary in the Depot itself.

10. Thus, a very strong evidence has been adduced by the respondent M.S.R.T.C. showing that the bus allegedly involved in the accident was in fact remained stationary in Dhule Depot itself from 09.02.1995 till 6.02.1995. Therefore,

it is highly difficult to hold that the same bus had given dash to Mohan on 10.02.1995 at about 2.00 p.m. It is extremely important to note that there is no eye witness to the accident and the Investigating Officer Purushottam Deshpande had also lodged F.I.R. only on presuming that the said bus might have involved in the accident. Further, it is also pertinent to note that despite taking efforts, he could not find any substantial material about involvement of the bus in the accident, and therefore, could not file the charge-sheet also. Thus, considering all these aspects the conclusion drawn by the learned Tribunal that the aforesaid bus bearing registration No. MH-20-A-4359 was not involved in the accident, appears proper. Thus, there is no substance in the appeal and it stands dismissed without any interference. Accordingly pending Civil Application No.5641 of 2002 stands disposed of.

(SANDIPKUMAR C. MORE, J.)