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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1059 OF 2022

Maharashtra State Road Transport Corporation)
Through Divisional Controller)
Nashik Division Office, N D Patel Road)
Nashik) ...Appellant
(Ori. Respondent)

Versus

1. Renuka Somnath Bhutambare)
Age: 20 years, Occ: Household,)
2. Master Bharat Somnat Bhutambare)
Age: 01 years, Occ: NIL)
3. Amruta Manga Bhutambare)
Age: 47 years, Occ: Household)
4. Kasabai Amruta Bhutambare)
Age 42 years, Occ: Household)
Respondent No.1 for herself and)
Gaurdian to Minor Respondent No.2)
All 1 to 4 Resident of Ambai)
Tal: Trambakeshwar, Dist: Nashik)...Respondents

Mr. Dhananjay D. Rananaware a/w Manjeet Lotankar for the
Appellant.

Mr. Pritesh K. Bohade for the Respondents.

CORAM : S. G. DIGE, J.

DATE : 17th FEBRUARY 2023.

JUDGMENT :

1. The issue involved in this appeal is contributory negligence of the deceased.

2. It is contention of learned counsel for the Appellant that the accident had occurred due to contributory negligence of the deceased. The State Transport Bus was standing on the road and passengers were alighting from the said bus. At that time, deceased came from opposite direction and gave dash to the bus. It shows the accident occurred due to sole negligence of the deceased. At the most, it was contributory negligence of the deceased but tribunal has fixed liability on the driver of offending bus which is improper. Hence, requested to allow appeal.

3. It is contention of learned counsel for the respondents/claimants that in First Information Report, it is mentioned that the bus had given dash to the deceased. There is no mention of offending bus was standing on the road and passengers

were alighting from it. Only to avoid paying liability, the theory of contributory negligence is put forth by the appellant. The order passed by the Tribunal is legal and valid.

4. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal (for short '**the Tribunal**').

5. It is contention of learned counsel for the appellant that accident had occurred due to sole negligence of the deceased. The written statement of Respondent is at Exhibit-'9'. In the said written statement, appellant has not taken plea that at the time of accident bus was standing on road and passengers were alighting from it. For the first time, the Appellant has taken this defense before the this Court. Moreover, bus driver of the offending bus was not examined before the tribunal to prove the negligence of deceased. Hence, I do not see merit in the contention of learned counsel for the appellant that there was negligence of the deceased in the said accident.

6. In view of above, Appeal is devoid of merit and I pass

following order.

ORDER

- i. Appeal is dismissed. No order as to cost.
 - ii. Claimants are permitted to withdraw the deposited amount along accrued interest thereon.
7. All pending applications stands disposed of.

(S. G. DIGE, J.)