

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1278 of 2014**

Maharashtra State Road Transport)
Corporation Limited, Mumbai.)
(Owner of S. T. Bus No. MH-14-BT-0535))
Through its Divisional Controller,)
Pune Division, Pune.)....Appellants
(Orig.Opponent)

Versus

1. Jeevan Ashok Kohli)
Age : 54 years, Occu : Household,)
2. Ashok Agyaram Kohli)
Age : 58 years, Occu : Retired)
3. Divya Ashok Kohli)
Age : 23 years, Occu: Education.)

All R/o. Building No.G, Flat No.501,)
Inder Prabha, Vikas Nagar,)
Dehu Road, Pune 412 101.)....Respondents
(Orig.Petitioners)

Mr. Ansari Faiyaz Ahmed i/b. Mr. Amit , Advocates for the Appellants.

Mr. Soham Pawar i/b. Mr. Rajesh More, Advocate for the Respondent Nos. 1 to 3.

CORAM : S. G. DIGE, J.

DATE : 23rd FEBRUARY 2023.

Judgment :

1. The issues involved in this appeal are contributory

negligence of the deceased and driver of the offending bus was not made party.

2. It is contention of the learned counsel for the appellant that the accident had occurred due to sole negligence of the deceased but the Tribunal has fixed liability on the offending bus-driver. Learned counsel further submits that at the most, the Tribunal should have considered 50% contributory negligence of the deceased but it was not considered. Learned counsel further submits that the offending bus driver was not made party before the Tribunal, which is improper, hence requested to allow the appeal.

3. Learned counsel for respondent Nos.1 to 3 submits that the accident had occurred due to sole negligence of the driver of the offending bus. The deceased was proceeding on motorcycle when the offending ST bus came from opposite direction and gave dash to the deceased. Learned counsel further submits that the appellant is Corporation and the bus driver of the offending bus was the employee of the appellant-corporation, hence, not joining the bus driver cannot be a ground to vitiate the claim. Hence, requested to dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal (for short “the Tribunal”). The accident had occurred on 24th October 2010 at about 7.15 pm when the deceased was proceeding on motorcycle bearing MH-14-AY-5846 from Dehuraod to Nigdi, at that time, near Garden City, the offending bus bearing registration No.MH-12-EF-6360 came from opposite direction in high speed, rashly and negligently by wrong side and gave dash to the motorcycle of the deceased, resulting to which, deceased sustained multiple injuries and he died while taking treatment. Offence was registered against the driver of the offending bus. It is the contention of learned counsel for the appellant that the accident had occurred due to sole negligence of the deceased. At the most, there was contributory negligence of the deceased. To prove the negligence of the deceased, the appellant has not examined the driver of the offending bus. The FIR was lodged against the driver of the offending bus. The spot panchanama produced on record at Exhibit '19' shows that the offending bus went to its right side to some extent. On the basis of evidence on record, the Tribunal has considered 75% negligence of the bus driver and 25% contributory

negligence of the deceased. I do not find any infirmity in it.

5. In respect of issue of non-joinder of the offending bus driver as party, I do not find any merit in this contention as appellant is Corporation and the appellant is the employer of the offending bus driver.

6. The appeal is devoid of merits and I pass the following order:

1. The appeal is dismissed. No order as to cost.
2. The respondents/claimants are permitted to withdraw the amount deposited by the appellant along with interest accrued thereon.
7. Pending applications, if any, stand disposed of.

(S. G. DIGE, J.)