

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1114 OF 2019

Commissioner	}	
Pune Municipal Corporation	}	
Shivajinagar, Pune-411 005.	}	...Appellant

Versus

1. Smt.Swaleha Mohammed Farhan	}	
Momin	}	

2. Aleeza Mohammed Farhan Momin	}	
Being minor through her Natural	}	
Guardian being Respondent No.1.	}	

3. Smt.Sherbano Mohammed Farhan	}	
Momin (Thr. Lrs.)	}	
3A) Momin Faizan Mohamamed Ibrahim	}	
R/at C-5/21, Kubera Park, Kondhwa	}	
Road, Lulla Nagar, Pune-Maharashtra-	}	
411040.	}	

4. Samreen Firdaus Mohammed Farhan	}	
Momin	}	
R/at Kubera Park, Kondhwa Road,	}	
Wanawadi.	}	...Respondents

Mr.Vishwanath Patil, for the Appellant.
Mr.Yogesh Pande, for Respondent Nos.1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4 MAY 2023

JUDGMENT :-

. The issue involved in this Appeal is the accident

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occurred due to sole negligence of the deceased.

2. It is contention of the learned counsel for the Appellant that the deceased was riding on motorcycle and he gave dash to offending truck from backside, but this fact is not considered by the Tribunal. To prove the negligence of deceased, the Appellant has examined the driver of the offending truck and he has stated that accident occurred due to sole negligence of the deceased. At the most, the Tribunal should have considered contributory negligence of the deceased, but it is not considered. Hence, requested to allow the Appeal.

3. The learned counsel for the Respondents-Claimants submits that in cross-examination, the driver of the offending truck has admitted that Police had filed charge-sheet against him for said accident and he was arrested. Departmental enquiry was conducted against him for said accident. He further admitted that he had not made any complaint to the superior Police Officer alleging that he has been falsely implicated in the offence. It shows that accident occurred due to negligence of the driver of the offending truck. The order passed by the Tribunal is proper.

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

5. It is Claimants' case that on 12 December 2016 at 12.50 p.m. deceased Mohammed Farhan was riding his motorcycle. When he reached at Fatimanagar Chowk signal, at Wanwadi, Pune, a Truck/dumper bearing Registration No.MH-12-HD-5459 suddenly took right turn in rash and negligent manner and dashed motorcycle of the deceased resulting into multiple injuries to him. Deceased was taken to the Inamdar Multiplicity Hospital but he died during treatment on same day. An offence was registered against the truck driver.

6. It is contention of learned counsel for the Appellant that in the offending truck garbage was carrying, the truck was fully loaded and it was being driven in slow speed. Deceased came from backside of the truck in high speed and lost his control over motorcycle and accident took place. The driver of offending truck had stated the same facts before the Tribunal but it was not considered by the Tribunal. Admittedly, the FIR in respect of the said accident was registered against the driver of the offending truck. Kumar Maruti Yadav, the driver of the offending truck examined himself at Exhibit-53. He stated that he was carrying garbage in the said truck. The truck was in slow speed and he wanted to take right turn. He further stated deceased himself drove motorcycle in high speed and lost control over it and fell on the road and sustained injuries. In cross-examination, this witness admitted that Police had filed charge-sheet against him

and he was arrested. He further admitted that Departmental Enquiry was conducted against him for said accident. He further admitted that he had not made any complaint to superior Police Officer alleging that he has been falsely implicated in the case by the Investigating Officer.

7. Considering the evidence of this witness, it reveals that this witness wanted to take right turn, as well as when this witness was driving the truck how he came to know that deceased was driving the motorcycle in high speed. This witness further states that the deceased lost his control and fell on road and sustained injuries, which appears improbable. As per Claimant's case, driver of the offending truck wanted to take right turn. The said truck was in high speed and by rear side of truck dash was given to the motorcycle of the deceased due to which deceased sustained injuries, which corroborates by evidence of driver, he stated that he wanted to take right turn. It appears that to avoid the liability of accident, the driver of the offending truck deposed falsely before the Tribunal. The Police has recorded the statement of Chiman Chavan, who was another driver on the said truck. In the statement, before the Police he has stated that due to dash of vehicle to the motorcycle of deceased, accident occurred.

8. Mere submission of the learned counsel for the Appellant is not sufficient to prove that there was negligence of

deceased when FIR was lodged against the driver of the offending truck. There are statements of witness recorded by Police who states that accident occurred due to dash by offending truck. Moreover, the defense taken by Appellant is improbable as it is Appellant's case that due to loss of control of motorcycle, deceased fell on ground and sustained injuries. If it is so, the driver of offending truck did not file any complaint before superior Officer that he was falsely implicated in this case. It is significant to note that Departmental Enquiry conducted against the driver of offending truck for said accident as well as Police filed a charge-sheet against the driver of the offending truck.

9. Considering the above reasons, I do not see merit in the contention of the learned counsel for the Appellant that accident occurred due to sole or contributory negligence of deceased.

10. In view of above, I pass following order.

ORDER

(i) The Appeal is dismissed. No order as to cost.

(ii) The Claimants are permitted to withdraw deposited amount along with accrued interest.

(iii) The statutory amount be transmitted to the Tribunal. Parties are at liberty to withdraw it as per rule.

(SHIVKUMAR DIGE, J.)