

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.793 OF 2019

Through Divisional Officer, }
Maharashtra State Road Transport }
Corporation, Vahatuk Bhavan, Satara, }
District-Satara Thr. Its Divisional }
Officer. }

...Appellant

Versus

NILAM
SANTOSH
KAMBLE

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1. Sonali Jitendra Pawar }
2. Priyanka Jitendra Pawar }
3. Pritam Jitendra Pawar }
Respondent Nos.2 and 3 being minors }
Thr. Natrual Guardian Respondent }
No.1. }
4. Indubai Shamrao Pawar }
5. Shamrao Yashwant Pawar }
All R/at Chitali, Taluka-Khatav, }
District-Satara. }
Presently R/at Pawar Garage, Near }
Super Market, Shaniwar Peth, Karad, }
District-Satara. }

...Respondents

Mr.Nitesh V. Bhutekar, for the Appellant.
Mr.Sejal Todkar i/b Mr.Ashwin Kapadnis, for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 23 MARCH 2023

JUDGMENT :-

. The issue involved in this Appeal is negligence of the deceased.

2. It is contention of the learned counsel for the Appellant that the accident occurred due to the sole negligence of the deceased who was riding on the motorcycle. To prove the negligence of the deceased Appellants examined the driver of the offending bus who has stated that the accident occurred due to sole negligence of the deceased. But this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondents-Claimants that offending bus driver had given dash to motorcycle of deceased from backside. The FIR was lodged against the driver of the offending bus. Moreover, the bus driver had given two statements before the Police stating that, accident occurred between his bus and motorcycle. It shows that it was occurred due to sole negligence of offending bus driver. Hence, requested to dismiss the Appeal.

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

5. It is the case of the Claimants that on 22 April 2014 at about 3.30 p.m. when the deceased Jitendra Shamrao Pawar was going to Kolhapur on motorcycle on Pune-Benglore highway in the vicinity of village Ghunki, District-Kolhapur, his motorcycle received dash from backside by S.T. bus. In investigation Police found that the ST Bus No.MH-20/D-8200 was involved in the accident. It is contention of learned counsel for the Appellant that the said bus was falsely involved in the said accident and accident occurred due to sole negligence of the deceased to prove their defence. The Appellants examined driver of offending bus. He has stated that on 22 April 2014 he drove the bus on Pune Highway when he reached to Kolhapur, S.T. stand, he was involved in the accident. He has been acquitted from the offence registered against him and false case was filed against him. In cross-examination he has admitted that around 3.30 p.m. he reached near Ghunki Phata. He further admitted that in Crime No.76 of 2014 the Investigating Officer inquired with him and recorded his statement and he has given two statements before the Police and he has signed on these two statements. He further admitted that in the said statement he has stated that there was accident occurred between offending bus and motorcycle.

6. Considering the evidence on record and admission given by bus driver that there was accident between his bus and

motorcycle. The Tribunal has held that the accident was occurred due to the sole negligence of the bus driver. I do not find any infirmity in it. The driver of the offending bus admitted that at the time of the accident his bus was there at the spot of accident. He admits in his statement before the Police that there was accident between his bus and motorcycle, had there been false involvement of the offending bus. He would not have stated before the Police. Moreover he has made his signature on the statement, had he been falsely involved in this case, he would have made complaint to his superior but it has not come on record about it. It shows that offending bus was involved in the accident.

7. In view of above, Appeal is devoid of merit and I pass following order.

ORDER

- (i) Appeal is dismissed. No order as to costs.
- (ii) The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- (iii) The statutory amount be transmitted to the Tribunal. Parties are at liberty to withdraw it.

(iv) All pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)