

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1044 OF 2017

	Karnataka State Road Transport Corporation, Division Office, Gulbarga (Karnataka State) (Owner of the S.T.Bus bearing No.KA-28/F-1688 in the accident)	...	Appellant
	versus		
1.	Bharata Nilkanth Sonkamble, Age 25 years, Occ.-Household.		
2.	Gensiddha Nilkanth Sonkamble, Age 5 years, Occ.-Education		
3	Amogsiddha Nilkanth Sonkamble, Age 3 years, Occ.-Nil		
4	Tukaram iNilkanth Sonkamble, Age 6 months, Occ.-Nil		
5	Irawwa Kerappa Sonkamble, Age 60 years, Occ.-Household, All R/o. At Post Achegaon, Tal. Akkalkot, District – Solapur, (Applicant Nos.2 to 4 minors through Guardian Mother, Applicant No.1)	...	Respondents (Orig. Applicant Nos.1 to 5)

Mr. C. M. Lokesh, Advocate for the Appellant.

Mr. Rajshekhar S. Alange, Advocate for Respondent Nos.1 to 5.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th MARCH, 2024.

Oral Judgment :

1. The issues involved in this appeal are accident occurred due to sole negligence of the deceased and claim petition was dismissed as not pressed and, thereafter the second claim petition was filed, which is considered by the Tribunal.

2. It is contention of learned counsel for the appellant-Corporation that the first claim petition was filed by the claimants before the C. J.M. Vijapur, and it was dismissed as not pressed. Thereafter, the claim petition was filed before the Motor Accident Claims Tribunal, Solapur, which is allowed. Against the said judgment and order, the present appeal is preferred. Learned counsel further submitted that when the earlier claim petition was dismissed, the Tribunal should not have entertained the 2nd claim petition. Learned counsel submitted that the accident occurred due to sole negligence of the deceased but this fact is not considered by the Tribunal. Learned counsel submitted that in the claim petition, the claim amount was claimed at Rs.25,00,000/- but the Tribunal has awarded Rs.26,53,000/-, which is more than the amount claimed. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondents/claimants that earlier claim petition was dismissed as not pressed means no evidence was led in the said claim petition. The claimants are residents of Solapur District and they are illiterate. Claimant No.1 does household work, whereas claimant Nos.2 to 4 were minor and claimant No.5 is the old aged lady. Claimant No.1 was illiterate lady and, at the instance of advocate, she had filed earlier claim petition at Vijapur but when someone told her that she can file claim petition at Solapur having proper jurisdiction, she did not press the earlier claim petition and it was dismissed. Learned counsel further submitted that to prove the

negligence of the deceased, no witness has been examined by the Corporation. The Tribunal has considered all the aspects while passing the judgment and order, no interference is required in it.

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

5. It is claimants’ case that on 28th October 2013, the deceased was returning to his village on his motorcycle along with his friend. When he was proceeding on road, one S.T bus bearing registration No.KA-28/F-1688 came from the opposite side in rash and negligent manner. The said bus was in high and excessive speed. The driver of the offending bus lost his control and came towards wrong side of the road and gave dash to the motorcycle of the deceased. Due to said dash, the deceased sustained injuries and succumbed to the injuries while taking treatment. An offence was registered against the driver of the S.T. bus.

5.1. To prove the negligence of the driver of the offending bus, the claimants have relied on police papers i.e. FIR at Exhibit-22 and spot-panchanama at Exhibit-23. The appellant-Corporation has not examined the driver of the offending bus to prove the negligence of the deceased. While dealing with the issue of negligence, the Tribunal has observed that the FIR was registered against the driver of the offending bus after making enquiry, it supports the contention of the claimants. The spot-panchanama discloses that there was fault on the part of the driver of the

S.T. bus. I do not find infirmity in it. In my view the contents of the FIR and spot-panchanama shows that the accident occurred due to sole negligence of the driver of S.T. bus. Moreover, the appellant-Corporation did not examine the driver of the offending bus to prove the negligence of the deceased. I do not see merit in the contention that the accident occurred due to negligence of the deceased.

5.2. It is contention of learned counsel for the appellant/corporation that the earlier claim petition was dismissed as not pressed, hence, the Tribunal should not have entertained the second claim petition without liberty of the earlier Court. In my view, admittedly the earlier claim petition was not tried before the concerned Court, it was dismissed as not pressed. In the said claim petition, no compensation was awarded to the claimants and it was not adjudicated. The Motor Vehicles Act is a beneficial legislation. It appears that claimant No.1 is illiterate. She is resident of Solapur District. After realising the fact that she had filed the claim petition at wrong place, she did not press it and filed other claim petition before the Motor Accident Claims Tribunal, Solapur. The Tribunal has considered all the aspects and has passed the judgment and order. Moreover, the appellant – Corporation has not disputed about the happening of the accident and death of the deceased. Hence, I do not see merit in the contention that the second claim petition is not maintainable.

6. In view of above, I pass the following order :

ORDER

1. The appeal is dismissed. No order as to cost.
 2. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 3. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)