

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

FIRST APPEAL NO.1521 OF 2009

Maharashtra State Road Transport Corporation, having its office at	}	
Vahatuk Bhavan, Dr.A. Nair Marg, Belassis	}	
Road, Bombay Central, Bombay-400008	}	...Appellant

Versus

1. Smt.Rupali Ravindra Paranjpe	}	
Age-30 years,	}	

2. Kumar Aaditya R. Paranjpe	}	
Age-1 month	}	

3. Shri.Shrikrishna Bhaskar Paranjpe	}	
Age-66 years, Occ: None	}	

4. Smt.Anuradha Shrikrishna Paranjpe	}	
Age-66, Occ: None	}	
All R/at Aashirwad Zari Road, Pagchiplun,	}	
Taluka-Chiplun, District-Ratnagiri	}	

Applicant No.2 is minor representing	}	
through Applicant No.1. Applicant No.1 for	}	
herself and also representing Applicant No.2	}	
because he is minor	}	...Respondents

Ms.Pinky M. Bhansali, for the Appellant.

Mr.Mohan N. Devkule a/w Mr.Rakesh R. Bhatkar, Ms.Mrunal Khedekar and Ms.Smita Same, for Respondent Nos.1 and 4.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 27th NOVEMBER 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal are accident occurred due to negligence of the deceased who was riding on motorcycle and at the time of the accident he was under the influence of alcohol.

2. It is contention of the learned counsel for the Appellant-Corporation that, at the time of the accident the deceased was riding motorcycle. He was under the influence of alcohol and he was riding motorcycle in zigzag manner. He gave dash to the offending bus. In the Postmortem report it is mentioned that, there was smell of alcohol to the food found in the intestine of the deceased. But these facts are not considered by the Tribunal and has awarded the compensation, which is erroneous. The learned counsel further submitted that, the Tribunal should have considered contributory negligence of the deceased. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the

Respondent-Claimant that, the accident occurred due to sole negligence of the driver of offending bus. The offence was registered against the driver of bus. To avoid the liability to pay the compensation, the defence is taken that, the deceased was under influence of alcohol. No blood of the deceased was sent for examination, to check presences of alcohol in it. The Tribunal has considered all the aspects while passing judgment and order. No interference is required in it.

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

5. To prove its defense the Appellant/Corporation has examined driver Shri.Chandrakant Pawar of the offending bus at Exhibit-29. He has stated that, on the date of the incident he was proceeding towards Borivali and he saw one motorcycle was coming in zigzag manner from Bahadur Shaikh Naka. Hence, he left the space of 14 feet on road to let him pass. It was 11.30 p.m., the said motorcycle rider gave dash to his bus and went away 80 feet and fell on road. As the deceased was under influence of

alcohol, hence, he was riding the motorcycle in zigzag manner. The accident caused due to sole negligence of the deceased and Police has filed false case against him.

6. In cross-examination he admitted that, at the time of accident, he was trying to overtake the luxury bus stationed on road. Admittedly, the offence was registered against the driver of offending bus.

7. It is contention of the learned counsel for the Appellant that, accident occurred due to negligence of the deceased as he dashed offending bus. The spot panchnamma is at Exhibit-16. It shows thirty feet break marks were appearing on the middle of road and broken glasses were scattered on the road. It is also mentioned that, the front portion of the bus was pressed and guard side plates were broken. The driver side guard plate was broken and driver side tin was pressed inside. The front wheel of the motorcycle was fully bended and the front portion of the motorcycle was damaged. Though DW-1-driver of the offending bus in his evidence has stated that, by giving the dash the deceased went ahead of the bus. But from the spot

panchnamma it appears that, dash was given to the motorcycle of the deceased from front side hence front portion of the bus was damaged and front wheel of the motorcycle was bended. The break marks applied by the the bus driver shows that, the bus was in high and excessive speed and he could not see the motorcycle of deceased, as he admitted in cross-examination that he was attempting to overtake the stationed luxury bus. It proves that, the accident occurred due to sole negligence of the driver of the offending bus. But to avoid liability of the payment of the compensation it appears that, the defence of the contributory negligence is taken after thought.

8. It is contention of the learned counsel for the Appellant that, at the time of the accident deceased was under influence of liquor. In the postmortem report, it is mentioned that, there was smell of alcohol in the food found in the intestine. PW-1 wife of the deceased has stated that, the deceased was suffering from cold and he was taking Ayurvedic medicine drakshasav, the said medicine contains alcohol, hence, it might have been smelling. In my view, no blood samples of the

deceased was send for checking presence of the alcohol in his blood. Mere smell of the alcohol to food articles cannot be a ground to consider that, he was under the influence of the alcohol.

9. In view of above, I do not see merit in the Appeal and I pass following order.

ORDER

- (i) The Appeal is dismissed.
- (ii) The Respondents/Claimants are permitted to withdraw deposited amount along with accrued interest thereon.
- (iii) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.
- (iv) Record and Proceedings be sent back to the Tribunal.
- (v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)