

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO. 358 OF 2021

1. Maharashtra State Road Transport CorporationAppellant
Limited, Mumbai (Owner of S.T. Bus No.
MH-12/CH-7455) Through Its Divisional Controller

Versus

1. Shri. Keshavlal Babulal Oswal
Age-46 years, Occu-Business

2. Sou. Asha Keshavlal Oswal
Age-40 years, Occu-Household

3. Kirti Keshavlal Oswal
Age-18 yrs, Occu-Education
(All Above R/o. Koregaon, Tal. Koregaon,
Dist.Satara. (Orig Claimant Nos. 1 to 3)

4. Santosh Sarang Mane
Age- 35 years, Occu- Business, R/o. Mohol, Tal.
Mohol, Dist. Solapur (Orig. Opponent No. 4)

5. Shriram General Insurance Finance Insurance
Co. SR. No. 233, Sagardeep Complex, D-wing,
Besides Behre Classes, Nave Peth, Pune 411 030
(Orig. Opponent No. 5)

....Respondents

Mr. Yashodeep Deshmukh, a/w Adv. Vaidehi Pradeep, Advocate for
the Appellant.

Mr. R. B. Kulkarni, i/by Adv. Prasad B. Kulkarni, Advocate for the
Respondent No. 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 17th JANUARY, 2024.

ORAL JUDGMENT:

1. The issue involved in this appeal is negligence of tempo driver.
2. It is contention of learned Counsel for Appellant that there was dash between tempo and ST bus. The accident occurred due to sole negligence of tempo driver but this fact is not considered by the Tribunal and has fixed sole liability on the driver of the bus, which is not proper. Atleast the Tribunal should have considered 50% contributory negligence of the tempo driver hence, requested to allow the appeal.
3. It is contention of learned Counsel for Respondent No. 4 tempo owner that the offence was registered against the driver of the offending bus. The police paper shows that accident occurred due to sole negligence of driver of bus. Considering the evidence on record the Tribunal has passed reasoned order, no interference is required in it.
4. I have heard both learned Counsels. Perused the Judgment

and Order passed by the Motor Accident Claims Tribunal, Satara, (for short “the Tribunal”).

5. It is the Claimant’s case that on 21/02/2011 deceased Mr. Sunil Keshavlal Oswal was travelling in S.T. bus bearing registration No. MH-12/CH-7455 to Solapur. On the way to Solapur, when the said bus reached near Mali Vasti of Pokharpur within the limits of Taluka Mohol. At about 09:30 a.m., initially the said bus gave dash to the tempo bearing registration No. MH-13/AN-2515 and then hit the S.T. bus bearing registration No. MH-12/EF-6476, which was running behind the tempo and caused the accident. Due to accident deceased Mr. Sunil died on the spot. Offence was registered against the driver of ST bus in which deceased was travelling.

6. To prove negligence the Claimants have examined PW-2 Sanjay Dattatraya Kshirsagar (Exhibit-57) independent eye-witness of the accident. He was proceeding to Pandharpur from Mohol in his jeep. He witnessed the accident, he has stated that offending bus dashed against the another S.T. bus and caused the accident. To prove their defence the Appellant examined the driver of offending bus Navnath Parit. He has stated that accident caused due to negligence of tempo driver. To support evidence of PW-1, the

Appellant examined Babasaheb Shaikh (Conductor of offending Bus) and Pandharinath Gaikwad (Driver of another S. T. Bus) involved in accident while dealing with issue of negligence the Tribunal has observed that offence was registered against the driver of offending but the Spot Panchanama is at (Exhibit 46) shows accident occurred due to negligence of driver of offending but. The evidence of DW-2 (conductor of offending bus) cannot be accepted as, road was not visible from his seat. DW-3 driver of other bus states about negligence of Tempo Driver but is is contrary to police papers. I do not find infirmity in. Observations of the Tribunal, as there was accident between two buses, driver of offending but gave dash to other bus. Tempo driver immediately lodged the complaint in police station police after investigation registered offence against the driver of offending bus. The Spot Panchanama is at (Exhibit 46) shows negligence of driver of offending bus. Moreover the PW-2 who is independent eye witness has stated that accident occurred due to negligence of driver of offending bus. Hence, I do not see merit in contention that accident occurred due to negligence of tempo driver.

7. In view of above, I pass following Order:-

ORDER

a) The Appeal is dismissed. No Order as to costs.

b) The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

c) The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

8. All pending Applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)