

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 410 OF 2009

	Maharashtra State Road Transport Corporation, having its office at Vahatuk Bhavan, Dr. Anandrao Nair Marg, Bellasis Road, Bombay Central, Mumbai – 400 008.	...	Appellant
	versus		
1	Vishwanath Shivlingappa Handrale alias Khandrale, Age 32 years, Occ : Mason, R/o. Deepak Niwas Chawal, Namdev Patil Wadi, Patharli Road, Dombivili (E) 421 201.		
2	Dhanjay V. Kale, 4, Dugade Patil Chawl, Sangarli, Dombivil (E), Thane.		
3	M/s. New India Assurance Co. Ltd., Kaustubh, 1 st Floor, Above Godrej Showroom, Manpada Road,Dombivili (E).	...	Respondents

with
FIRST APPEAL NO. 466 OF 2009

	M/s. New India Assurance Co. Ltd., Kaustubh, 1 st Floor, Above Godrej Showroom, Manpada Road, Dombivili (E).	...	Appellant
	versus		
1	Vishwanath Shivlingappa Handrale alias Khandrale, Age 32 years, Occ : Mason, R/o. Deepak Niwas Chawal, Namdev Patil Wadi, Patharli Road, Dombivili (E) 421 201.		
2	Divisional Controller, Maharashtra State Transport Corporation Thane Division Opp. Vandana Talkies, Thane. (Owner of ST Bus No.MH-20-D-5205)		
3	Dhanjay V. Kale, 4, Dugade Patil Chawl, Sangarli, Dombivil (E), Thane. (Owner of M-80 MH-05-A-679)	...	Respondents

Ms. Pinky M. Bhansali, Advocate for the Appellant in FA/410/2009.

Ms. Poonam Mital, Advocate for the Appellant in FA/466/2009 and for Respondent No.3-FA/410/2009.

Mr. Sachin Subhash Tigade, Advocate for Respondent No.1 in both the appeals.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st MARCH, 2024.

Oral Judgment :

1. Both these appeals are preferred against the judgment and order passed by Motor Accident Claims Tribunal, Kalyan (for short "the Tribunal"). As both these appeals are preferred against the same judgment, I am deciding it by this common judgment. The Tribunal has fixed 50% contributory negligence on appellant – Corporation and appellant – Insurance Company.

2. It is the contention of learned counsel for the Corporation that the accident occurred due to sole negligence of the rider of the motor-cycle. The rider of the motor-cycle had an opportunity to avoid the accident being a small vehicle but he did not avoid it. Moreover, the rider of the motor-cycle had not stepped into the witness box to prove the negligence of the driver of the offending bus 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 Insurance Company that an offence was registered against the driver of the

offending bus for the said accident. The claimant was pillion rider, he has been examined and he has stated that the accident occurred due to sole negligence of the driver of the offending bus. There is no evidence on record to show that there was negligence of the rider of the motor-cycle but this fact is not considered by the Tribunal. Learned counsel further submitted that 50% contributory negligence fixed on the rider of the motor-cycle is erroneous. Hence, requested to allow the appeal.

4. Learned counsel for respondent No.1-claimant submitted that appropriate order be passed.

5. I have heard all learned counsel, perused the judgment and order passed by the Tribunal.

6. It is the claimant's case that on 29th April 2025 at about 4.00 pm, the claimant and his friend Gopal Kale were proceeding on M 80 vehicle bearing No. MH-05-A-679 towards Katal Side for their work. Gopal Kale was riding the motor-cycle and the claimant was a pillion rider. When they came on the eastern side of the road, opposite Swami Sandesh CHS, at that time, one S.T.Bus bearing No.MH-20-D-5205 came in high and excessive speed and dashed against the M 80 Vehicle. As a result of heavy dash, the claimant and his friend fell down on the road and received multiple injuries. The claimant received crush injuries to his right leg and thereafter, his right leg is amputated. An offence was registered against the driver of the offending bus.

6.1. To prove the negligence of the bus driver, the claimant – Vishwanath Handrale examined himself at Exhibit-28A. He has stated that accident occurred due to sole negligence of bus driver. In cross-examination, he has stated that there was no divider on the said road. In cross-examination, he admitted that the road where the accident occurred was busy road. To prove their defense, the appellant-Corporation has examined the driver of the ST bus -Rao Saheb Sonawane at Exhibit-44. He has stated that when he was proceeding on road, motorcycle rider was coming in opposite direction in high and excessive speed and to avoid the accident, this witness applied urgent brakes and due to high speed, the rider of the motor-cycle could not control the speed of motorcycle and gave dash to his bus. In cross-examination, he admitted that he was prosecuted for the accident. The appellant- Corporation has examined PW2- Anna Pawar, conductor of the offending bus. He has stated that the accident occurred due to negligence of the rider of the motor-cycle. In cross-examination, he admitted that at the time of the accident, he was sitting at his place. While dealing with the issue of negligence, the Tribunal has observed that from the evidence on record, it shows that there was contributory negligence of driver of both the vehicles. Hence, the Tribunal has fixed 50% contributory negligence on the driver of the offending bus and rider of the motor-cycle. I do not find infirmity in it. In my view, from the spot-panchanama, it appears that the bus-driver had applied the brakes and

there were brake marks of 16 feet on the road. The rider of the motor-cycle had not stepped into witness box to prove the negligence of the bus-driver. Moreover from the spot-panchanama, it appears that there was negligence of the driver of both the vehicles. Hence, though the offence is registered against the driver of the offending bus, there is contributory negligence of both the drivers.

7 The appeals are devoid of merit and I pass the following order :

O R D E R

1. Both the appeals are dismissed. No order as to cost.
2. The claimant is 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.
8. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)