

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

FIRST APPEAL NO.846 OF 2009

Maharashtra State Road Transport Corporation	}	
Vahatuk Bhavan, De.A. Nair Marg, Bellasis Road, Bombay Central, De.A.Nair Marg, Bombay-400 008.	}	
	}	(Org.Opp.No.1)
	}	...Appellant

Versus

1. Sou.Nanda W/o. Tanaji Patil	}	
Age-35 years, Occ: Household	}	

2. Dattatraya S/o. Tanaji Patil	}	
Age-13 years, Occ : Education	}	

3. Atish S/o Tanaji Patil	}	
Age-11 years, Occ : Education	}	

Applicant Nos,2 & 3 Minor Thr. Their	}	
Legal Guardian Mother Applicant No.1 All	}	(Org.Claimants)
R/at Warvade Taluka, Madha Fist, Solapur.	}	...Respondents

Ms.Pinky M. Bhansali, for the Appellant.

Mr.Sandeep S. Salunkhe, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 26th APRIL 2024

ORAL JUDGMENT :-

. This Appeal is preferred by the Appellant-

Corporation against the judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Pandharpur.

2. It is contention of the learned counsel for the Appellant-Corporation that, the accident occurred due to sole negligence of the deceased as he came under the wheel of bus. The learned counsel further submitted that offence under Section 302 of the Indian Penal Code ('IPC' for short) was registered against the driver of offending bus so, it cannot be considered as negligent act. But these facts are not considered by the Tribunal, hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, the complaint under Section 302 was not filed by the Claimant No.1-wife of the deceased, it was filed by the brother of the deceased. The learned counsel further submitted that death of the deceased was accidental death. The Tribunal has considered all the aspects while passing the judgment and order, no interference is required in it. Hence, requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment

and order passed by the Tribunal.

5. It is Claimant's case that on 12th July 2003 deceased had been to ST Kurduwadi depot and he was hit by the bus bearing No.MH-12-1573 he fell down and came under the wheel of bus and died on the spot. The offence was registered against the driver of the offending bus. It appears from the record that brother of deceased lodged complaint against driver of the offending bus under Section 302 of the IPC. The driver of the offending bus has been acquitted from the said offence.

6. While dealing with the issue of charges under Section 302, the Tribunal has observed that the Claimant No.1 has not filed complaint of murder and has not given evidence against the driver of offending bus even her statement was not recorded by the Police under section 161 of the Criminal Procedure Code ('Cr.P.C.' for short). The Tribunal further observed that it has not brought on record to show that deceased was died under the bus with intention to kill him. Considering evidence on record the Tribunal has considered that the accident occurred due to 60% contributory negligence of the driver of the offending bus and

40% contributory negligence of the deceased. I do not find infirmity in it.

7. In my view, it appears from record that the deceased was conductor and on the day of the incident when driver of the offending bus tried to take the bus from depot as about 5.30 a.m. and tried to reverse the bus, there was quite dark and he noticed that something had come under the wheel, therefore he took the bus at some distance and stopped. Then he got out from the bus and noticed conductor from the depot had come under left side inner wheel. Thereafter, he went to police station and informed about the accident. Nothing has come on record how accident had occurred but it is clear that deceased died due to accidental death. Hence, the contributory negligence of 60/40 fixed by the Tribunal is proper and I do not see merit in the contention that accident occurred due to sole negligence of the deceased or offence was registered under Section 302 of the IPC and the death of deceased was not accidental death.

8. In view of above, I pass following order.

ORDER

- (i) The Appeal is dismissed.
- (ii) The Respondents-Claimants are permitted to withdraw the deposited amount by the Appellant 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) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)