

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.236 OF 2003

Maharashtra State Road Transport }
Corporation, Thr. The Divisional } (Org. Opponent
Manager, Ratnagiri Division, Juna- } No.1)
Malnaka, Ratnagiri }Appellant

Versus

1. Smt.Aditi Ravindra Paradkar }
Age-38 years, Occupation : Service }
2. Kaustubha Ravindra Paradkar }
Age-14 years, Occupation : Education }
3. Rujuta Ravindra Pradkar }
Age-9 years, Occupation : Education }
Thr. Their Mother Applicant No.1 }
All R/o. 583-G, Near S.T. Colony, } (Org. Applicants)
Ratnagiri }Respondents

Ms.Pinky Mohanlal Bhansali, for the Appellant.

Mr.Milind Parab i/b Mr.P.R. Arjunwadkar, for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th FEBRUARY 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal is that, accident
caused due to negligence of the deceased.

2. It is contention of the learned counsel for the Appellant-Corporation that, accident occurred due to sole negligence of the deceased, who was driving car. The learned counsel further submitted that, to prove the negligence of the deceased, ST bus driver was examined. He has stated that, the car given dash to his bus, but this fact is not considered by the Tribunal and has held that accident occurred due to sole negligence of the bus driver, which is erroneous. Hence requested to allow the Appeal.

3. Though Respondent's are served, none present for the Respondent's. Appeal is of the year 2003. Hence, I am deciding it on merit.

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

5. It is Claimant's case that, on 17th July 2000, the deceased Ravindra Paradkar was going to Deorukh Court by his car bearing No.MH-04/X-6324. The S.T. bus bearing No.20-D/3900 came from opposite direction and gave dash to his car. He

sustained serious head injury. He was admitted in hospital. He succumbed to the injuries.

6. To prove the defence, the Appellant-Corporation has examined D.W.-1 driver of the ST bus Baburao Salukhe at Exhibit-39. He has stated that, on 17th July 2000 when he was going from Deorukh to Ratnagiri, near village Nive at about 2.00 p.m. the bus was negotiating one curve. It was raining. Therefore, the bus was in slow speed. At that time, he saw one Maruti car came from wrong side, when he stopped his bus on left side, driver of that car could not control it and gave dash to the S.T. bus. Thereafter, that car turtled in the gutter on his right side. In cross-examination he admitted that, there was kaccha road of having width of four feet available on the left side of the bus. He further admitted that, police has registered Criminal case against him in respect of the said accident. He further admitted that, the bus went ahead for 43 feet from the place of the accident.

7. While dealing with the issue of negligence the Tribunal has observed that, the spot panchnamma at Exhibit-31

shows that S.T. bus was standing about 30 feet ahead of the spot. It further shows that, brake marks were visible about 43 feet ahead of that spot. The contents of the spot panchnamma clearly falsify the version of DW-1. The Tribunal further observed that, DW-1 admitted in his cross-examination that, the bus stopped before the accident spot is wrong. The spot panchnamma at Exhibit-31 shows that the car was lying in the gutter on it's left side. From this inference can be drawn that, the car had not gone to its wrong side. Considering the evidence on record, the Tribunal has consider 2/3rd negligence of the ST bus driver and 1/3rd negligence of the deceased. I do not find infirmity in it.

8. In my view, no one witnessed the accident, except bus driver and passengers in the bus. The deceased who was driving the car, died in the said accident. The police registered offence against the bus driver after investigating the matter. Though, the driver of the offending bus states that, he had stopped the bus after seeing the car, but his evidence appears to be after thought as, spot panchnamma shows there were brake marks on the road, after the accident spot it shows after giving dash to car bus driver

tried to stop the bus which was in high and excessive speed. The Tribunal has considered all the aspects and on that basis the Tribunal has fixed the liability on bus driver. Considering the evidence on record, I do not see the merit in the contention that the accident occurred due to sole negligence of the car driver.

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

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The Respondent/Claimant is permitted to withdraw amount deposited by the Appellant-Insurance Company along with accrued interest thereon.
- (iii) The statutory amount with interest be transferred to the Tribunal. The parties are at liberty to withdraw it as per Rules.
- (iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)