

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

FIRST APPEAL NO.1108 OF 2011

New India Assurance Co. Ltd.	}	
87, M.G. Road, Fort, Mumbai-1.	}	(Org. Insurers)
Policy No.111900/94/27772	}	Appellant
<i>Versus</i>		
1. Kum.Priyanka Gul Kripalani	}	
Age-24 years, R/at Mark Haven,	}	
3 rd Flooe, Apollo Bunder, Colaba,	}	
Mumbai-400039	}	
2. Maharashtra State Road Transport Corporation, The State Corporation Ltd	}	(Respondent
Vahatuk Bhavan, Bellasis Road, Mumbai	}	No.1 is Org.
Central, Mumbai-8	}	Applicant &
(Owner of S.T. Bus No. MH-12-Q-2792)	}	Respondent
	}	Nos.2 and 3 are
	}	Org. Nos.2 and 3
	}	Respectively)
3. M/s.Pijikay International Exports Pvt. Ltd.	}	
7, Elysium Mansion, Walton Road, Colaba	}	
Causeway, Mumbai-400 001.	}	Respondents

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Ms.Poonam Mital , for the Appellant.

Mr.Niketani Nakhawa, for Respondent No.1.

Ms.P.M. Bhansali, for Respondent No.2.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 20th FEBRUARY, 2024.

ORAL JUDGMENT :-

. The issue involved in the Appeal is negligence of the driver of the ST bus is not considered by the Tribunal.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, the car was dashed by the bus by coming from opposite direction by coming wrong side of the road, but this fact is not considered by the Tribunal. The accident occurred due to sole negligence of the bus driver, but this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for Respondent-Corporation that, the accident occurred due to sole negligence of the car driver. Offence was registered against the car driver. The car driver did not step into witness box to prove the negligence of the bus driver. The order passed by the Tribunal is proper. No interference is required in it.

4. The learned counsel for the Respondent-Claimant submit that, appropriate order be passed.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal')

for short), Mumbai.

6. It is Claimant's case that, on 4th August 1995 at about 17.15 hours Claimant's were travelling in Car No.BLN-2718 from Mumbai towards Pune. When the said car reached at the spot of the accident at that time the ST bus bearing No.MH-12-Q-8792 was coming from opposite direction. There was collision between the Car and ST Bus. Due to that Claimant has suffered serious injuries. The offence was registered against the driver of the car.

7. It is contention of the learned counsel for the Respondent-Corporation that, the accident occurred due to negligence of the driver of the car. To prove their defence the Corporation has examined ST bus driver Sanjay Chaukhande at Exhibit-41. He has stated that, he was proceeding on the road at that time the tyre of offending car was burst and it dashed to his ST bus. He further stated that, the accident occurred due to sole negligence of the car driver. Nothing elicited in the cross-examination of this witness to disbelieve his evidence. The Appellant-Insurance Company has not examined driver of car, to prove the negligence of the ST bus driver. While dealing with this issue of negligence the Tribunal has observed that considering the oral evidence

of DW-1 i.e. ST bus driver and spot panchnamma and circumstances prevailed on the spot it goes to establish that it was car driver failed to take reasonable care while driving. I do not find infirmity in it. In my view, the offence was registered against the car driver. The car driver did not step into witness box, to prove negligence of the ST bus driver. The spot panchnamma produced on record shows the negligence of the car driver. Hence, I do not see merit in the contention that the accident occurred due to contributory negligence of the ST bus driver.

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

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The Claimant is permitted to withdraw deposited amount along with accrued interest thereon.
- (iii) The statutory amount along with 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.)