

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1074 OF 2012**

	Maharashtra State Road Transport Corporation, Transport Bhavan, Dr. Anandrao Nair Marg, Old Bellasis Road, Opposite Bombay Central, Mumbai – 400 008.	...Appellant (Org.Opp.No.2)
	versus	
1	Sunita Avadhooth Raskar, age about 23 years, Occ. Household, R/o. Kalyaninagar, Wadgaonsheri, Pune.	
2	Jagannath Beru Raskar Age about 63 years, Occ.-Retired, R/o. Kadegaon, Talk Kadegaon, District. Sangli.	...Respondents (Respondent No.1, Org. Applicant and Respondent No.2 Opponent No.3)

Ms. Pinky M. Bhansali, Advocate for the Appellant.

Mr. Siddarth R. Ronghe Advocate for Respondent No.1.

Mr. Shrishailya S. Deshmukh, Advocate for Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th FEBRUARY, 2024.

Oral Judgment :

1. The issue involved in this appeal is false involvement of the offending bus.

2. It is contention of learned counsel for the appellant-Corporation that the motorcycle of the deceased was dashed by Scorpio vehicle and the said vehicle ran away from the incident spot. After 10 to 12 days of the incident, an offence was registered against the driver of the offending S.T. bus. It shows that there was false involvement of the offending bus but this fact is not considered by the Tribunal and has passed the impugned judgment and order, which is erroneous. Learned counsel further submitted that to prove their defense, the appellant – Corporation have examined the driver of the offending bus and the conductor of the offending bus but their evidence is not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.1/claimant that deceased and his wife were riding on the motorcycle, at that time, the offending bus gave dash to their motorcycle from backside. Due to the dash, husband of claimant died on the spot, whereas claimant was admitted immediately in the hospital and she was unconscious for seven days. After regaining conscious, she lodged complaint against the bus driver. Hence, there was delay in lodging the FIR. The Tribunal has considered all the aspects while passing the judgment and order. No interference is required in it.

4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Pune (for short “the Tribunal”).

5. It is claimant's case that on 29th July, 2007, deceased - Avdhoot along with his wife Sunita were proceeding on motorcycle bearing No. MH-12-CM-1141 . He was proceeding on Pune-Mumbai Road. At about 14.10 pm, he was passing from Ramnaka, Chadani Chowk. At the relevant time, one S.T. Bus bearing No.MH-12-CH-8401 came from behind in high and excessive speed, in rash and negligent manner and gave a forcible dash to the motorcycle of the deceased. Due to the said dash, deceased died on the spot. The claimant No.1 - wife of the deceased was seriously injured. After the accident, the S.T.Bus ran away from the accident spot. The claimant No.1- wife of the deceased was admitted in the hospital and she was unconscious for seven days. To prove the negligence of the driver of the offending bus, the PW1-claimant No.1 examined herself. She has stated that, on the day of accident, when she was proceeding on motorcycle with her husband, the offending bus came from backside and tried to overtake their motorcycle. While overtaking, the offending bus gave dash to the motorcycle, due to the dash, her husband died on the spot, whereas she was seriously injured. She was admitted in ICU of Lokmanya Hospital. She was unconscious and she regained consciousness after 7 to 8 days. Thereafter, the police recorded her statement. She has stated that the accident occurred due to negligence of the bus driver. In cross-examination, she has admitted that she does not know whether initially

FIR was lodged against an unknown person as she was unconscious and admitted in the hospital. Nothing elicited in her cross-examination to disbelieve her evidence.

In support of evidence of PW1, the claimants have examined PW3-Ramesh Pawar, PSI (Investigating Officer). He has stated that he investigated the crime registered against the driver of the offending bus and in the investigation, he found that the accident occurred due to negligence of the offending bus-driver. He further stated that the driver of the offending bus never made any complaint before him that he was wrongly arrested. The State Transport Department has also not made complaint that this witness had wrongly prosecuted its driver. Nothing elicited in cross-examination of this witness to disbelieve his evidence.

In support of evidence of PW1, the claimants have examined PW4-Vinay Yadav, driver of the ambulance of Lokmanya Hospital who was present at the time of accident. He has stated that he took the injured to the hospital.

To prove the defense, the appellant-Corporation has examined DW-1 – Ulhas Jadhav, conductor of the offending bus. He has stated that on the day of the accident when their bus was crossing Chandani Chowk, he heard noise of something, immediately he went to the driver and enquired with him. The driver told this witness that driver of the Scorpio Jeep had dashed one motorcycle rider and ran away. In cross-examination, he admitted that he was busy issuing tickets to the

passengers, he was not aware which vehicle was ahead of their bus.

The appellant-corporation examined the passenger of the offending bus – DW2- at Exhibit-61. He has stated that on the date of incident when he was proceeding from Chandani Chowk, one Scorpio jeep was trying to overtake the S.T. bus and in that attempt, the Scorpio Jeep dashed the motorcycle and ran away. He heard the noise of falling of motorcycle. After going ahead, the S.T. bus was stopped by Wakad Police, they inquired with conductor and driver and allowed the bus to proceed.

The appellant has examined DW3-driver of the offending bus, he has stated that motorcycle of the deceased was dashed by Scorpio Jeep and that Jeep driver ran away. In cross-examination, he admitted that he has not filed complaint to the superior police officer against registration of false crime against him.

While dealing with the issue of negligence, the Tribunal has observed that the inspection report of the offending bus is at Exhibit-73. In the inspection report of the offending bus, there was damage to the left side door of the S.T.Bus. The defense witnesses have not explained about the damage to the left side door of the S.T.Bus. The claimant's witnesses have stated about the involvement of the S.T.Bus. The Corporation has not denied that the offending bus was not plying at that time on the said road. Hence, the Tribunal has held that the accident occurred due to the negligence of the offending bus driver. I do not find

infirmity in it.

In my view, claimant No.1 is the eye-witness of the incident. She has stated that the accident occurred due to sole negligence of the bus-driver. The defense witnesses have admitted that at the time of the accident, the bus was proceeding on the said road. The only issue is whether dash was given by the driver of the Scorpio jeep or offending bus. There is no reason to PW1 to involve the offending bus in the said accident. Moreover, the inspection report which is at Exhibit-73 shows that there was damage to the left side door of the bus which corroborates the claimant's case that while overtaking, the bus had given dash to the motorcycle of the deceased. I do not find merit in the contention of learned counsel for the appellant that the bus was falsely involved as no complaint was filed by the driver of offending bus to the superior police officer about his false involvement in the said crime nor the appellant-Corporation gave complaint to the police authority about false involvement of their driver in the said crime.

6. Considering the above reasons, the appeal is devoid of merit and I pass following order :

ORDER

1. The appeal is 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.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)