

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

FIRST APPEAL NO. 817 OF 2023

Maharashtra State Road Transport Corporation)
Through Divisional Controller Raigad Divisional)
Office, Ramwadi Pen District Raigad.)Appellant
(Org. Opponent)

Versus

1. Rupali Rohidas Waghe)
Age: 24 years, Occ: Labourer,)

2. Ransh Rohidas Waghe)
Age: 03 years, Occ: Nil)

3. Ganpat Dharma Waghe)
Deceased Through Res. No.1&4)

4. Weni Ganpat Waghe)
Age: 59 years, Occ: Labourer)

All Nos. 1 to 4 R/o. Walap Post Padghe,)
Vavanje Road, Near Gavdevi Temple,)
Tal: Panvel, District: Raigad.)....Respondents
(Orig. Claimants)

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Mr. Dhananjay D. Rananaware, Advocate for the Appellant.
Ms. Neha Nagotanekar, Advocate for the Respondent Nos. 1 & 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 28th FEBRUARY, 2024.

Oral Judgment. :

1. The issues involved in this appeal are accident occurred due to negligence of the deceased and at the time of accident deceased was not wearing helmet and he was not holding effective and valid driving licence.

2. It is contention of learned counsel for the Appellant/Corporation that accident occurred due to negligence of the deceased as, he came on wrong side of the road and gave dash to the offending S. T. Bus. Learned counsel further submitted that at the time of accident, deceased was not wearing helmet and his wife has admitted in cross-examination that the deceased was not holding effective and valid driving licence. Learned counsel further submitted that the Tribunal has considered monthly income of the deceased at Rs.6,000/- per month, which is on higher side. The Tribunal should

not have awarded future prospects. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondents/Claimants that accident occurred due to sole negligence of the driver of S. T. bus, who went on the wrong side of the road and gave dash to the motorcycle of the deceased. The deceased was doing painter work and he was earning Rs.15,000/- per month but, the Tribunal has considered his monthly income at Rs.6,000/- per month. The Tribunal has considered all the aspects while passing the order hence, no interference is required in it.

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

5. It is claimant’s case that on 15th November, 2019 at midnight about 2:15 a.m, the deceased was riding on motorcycle bearing registration No. MH-46-BT-0514 from Nagothane to Vadkhal, when he reached in the vicinity of village Karanjtep, at that time

offending bus bearing registration No. MH-06-BW-0445 came from opposite direction and gave dash to the motorcycle of the deceased. Due to dash, deceased died on the spot. The offence was registered against the driver of offending bus.

6. To prove the negligence of the deceased, the Claimants have examined wife of deceased but, she was not present at the time of accident hence, the Tribunal has not considered her evidence. To prove the negligence of the deceased, the Appellant has examined driver of offending bus Mahadev Deokar at Exhibit-29(c). He has stated that when he was proceeding on the road at that time the deceased came on motorcycle from the wrong side. This witness slowed down speed of bus but the deceased lost his control and gave dash to the bus. This witness further stated that accident occurred due to negligence of the deceased. In cross-examination, he admitted that police inspected the accident spot and registered offence against him for said accident and police had given him notice under Section 209 of Cr.P.C. but, he did not reply to said notice.

7. While dealing with the issue of negligence, the Tribunal has

observed that the contents of FIR supports the Claimants case, FIR was registered against the driver of offending bus after making enquiry. From spot panchanama, it appears that, the offending bus had gone on wrong side and gave dash to the motorcycle of the deceased and dragged it to 27 feet. On that basis, the Tribunal has observed that the accident occurred due to sole negligence of the bus driver. I do not find infirmity in it. The FIR is at Exhibit-19, it is filed by Darshan Patil. In the FIR, it is mentioned that it is registered after recording the statements of eye witnesses. In the FIR, it is mentioned that the driver of offending bus was driving the bus in high and excessive speed and in rash and negligent manner. It is mentioned that at the relevant time of accident, the driver of offending bus could not control the speed of bus hence bus went on wrong side of the road and gave dash to the motorcycle of the deceased. The contents of FIR supports the Claimants case. The spot panchanama which is at Exhibit-20 also supports the Claimants case that accident occurred due to negligence of the bus driver. Hence, I do not see merit in the contention that accident occurred due to negligence of the deceased. No evidence is produced on record by the Appellant that at the time of accident, the deceased was not wearing helmet. Moreover, not

wearing helmet defense was not taken in the written statement, mere in the cross-examination of the PW-1, she has stated that deceased was not wearing the helmet, it cannot be a ground to raise the issue before this Court.

8. It is contention of learned counsel for the Appellant/Corporation that wife of the deceased has admitted in her cross examination that the deceased was not holding effective and valid driving licence. In cross-examination, the PW-1 has admitted that at the time of accident her husband was not holding the driving licence, it does not mean that deceased was not holding effective and valid driving licence. He may not have his driving licence at that time. It was onus on the Appellant/Corporation to prove this fact by producing evidence. It is settled principle of law that if, defense is taken that driver of offending vehicle was not holding effective and valid driving licence, it is burden on the party to prove it by examining proper witness but, in the present case it was not proved. Hence, I do not see merit in it.

9. It is Claimant's case that the deceased was earning Rs.15,000/- per month. The PW-1 has categorically stated about it but the Tribunal has considered his notional monthly income at

Rs.6,000/- per month. In my view, at the time of accident deceased was 26 years old. He was maintaining family of four person. He was the Karta of his family hence, income considered by the Tribunal is proper.

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

ORDER

- i. Appeal is dismissed.
 - ii. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - iii. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
11. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)