



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application [CAF] No.1544 of 2024

in

First Appeal St.No.1161 of 2024

The Divisional Controller, Maharashtra State Road Transport Corporation, Nagpur

vs.

Manoj s/o Kuwarlal Athankar and another

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

Court's or Judge's Orders

Mr. V.H. Kedar, Advocate for Applicant/Appellant.

Mrs. U.A. Bhattad, Advocate for the Non-Applicants/Respondents.

CORAM : M.W. CHANDWANI, J.

DATE : 3rd SEPTEMBER, 2024.

Heard.

02. For the reasons mentioned in the application, delay of 510 days caused in filing the first appeal is condoned.

03. The first appeal be registered. The application is allowed and disposed of accordingly.

First Appeal No.909 of 2024 :

With the consent of learned Counsels for the parties, the appeal is taken up for final hearing.

02. **Admit.**

03. Correctness of the award dated 27/06/2022 passed by the Motor Accident Claims Tribunal, Nagpur (*hereinafter referred to as "Tribunal" for short*) in Claim Petition No.190/2018 is questioned in

this appeal, whereby the Tribunal has granted compensation to the parents of deceased-Aryan Manoj Athankar, who died in a vehicular accident that occurred on 22/12/2017.

04. The main ground raised in this appeal is that, though there was no negligence on the part of the bus driver of the appellant, the liability has been fixed on the appellant. According to the learned Counsel for the appellant, at the most there can be contributory negligence on the part of the bus driver of the appellant as well as the deceased, but the Tribunal did not consider this aspect and without there being any material on record, the Tribunal has erroneously made the appellant solely liable.

05. Perusal of the award goes to show that, relying on the spot-panchnama, the Tribunal has found the bus driver of the appellant at fault. I have gone through the police papers. It is a matter of record that offences under Sections 279, 337 and 304-A of the Indian Penal Code have been registered against the bus driver of the appellant for driving the vehicle in a rash and negligent manner.

06. Bare perusal of the spot-panchnama reveals that the accident took place on the eastern side of the road, whereas, proper and right side for the driver to drive the vehicle should have been the western side of the road, since he was proceeding towards Saoner from Kalmeshwar. This can be perused from the rough sketch map of the alleged spot of incident appearing in the spot-panchnama.

07. Be that as it may, the fact remains that the case in hand is of composite liability and not of contributory negligence. In such cases, the owners of both the vehicles are jointly and severally liable to pay compensation to the dependents of the deceased. In that scenario, it is the sweet choice of the dependents of the deceased to file a claim

petition against both or either of them. A reference can be made to the decision of the Hon'ble Supreme Court in the case of **T.O. Anthony vs. Karvarnan and others – (2008) 3 SCC 748**, wherein it has been held in paragraphs 6 and 7 as under :

“6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was

50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.”

08. In view of the above, the appeal is devoid of merits and hence, it is dismissed. There shall be no order as to costs.

JUDGE

**sandesh*