



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

FIRST APPEAL NO.1344 OF 2019

Divisional Controller, Maharashtra State Road Transport Corporation, through its
Divisional Controller, Division Officer, at Kaulkhed, Tah. & Dist. Akola

Vs.

Smt. Meera Wd/o Gunwant Thorat and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri A.R. Fule, Advocate for appellant.

CORAM : M.W. CHANDWANI, J.

DATE : JUNE 27, 2024.

This appeal preferred under Section 173 of the Motor Vehicles Act (for short, "M.V. Act") assails the judgment and award dated 05.04.2017 in M.A.C.P. No.63 of 2015 rendered by the learned Member, Motor Claims Accident Tribunal, Akola (for short, "Tribunal").

2. The appellant is Insured and the respondents are dependents of deceased Gunwant Thorat, who died in a vehicular accident that occurred on 01.03.2015. The deceased was travelling in an auto-rickshaw bearing registration No.MH-30/8490 from Akola to Chikhalgaon. When the auto-rickshaw reached at the spot of accident, S.T. bus bearing registration No.MH-07/C-9422 driven by the driver of the appellant gave a violent dash to the auto-rickshaw, wherein the passengers including the deceased sustained severe injuries. The deceased died as a result of those injuries.

3. The respondents filed a claim petition under Section 166 of the M.V. Act which came to be allowed by the impugned award. The learned Tribunal directed the appellant to pay amount of Rs.7,43,000/- alongwith interest at the rate of 7% per annum from the date of petition till actual realization of the amount. Feeling aggrieved with the said impugned award, the present appeal came to be filed by the appellant.

4. Heard learned counsel for the appellant.

5. Though various grounds have been raised in this appeal but the principal ground which has been pressed by the learned counsel for the appellant is that of non-joining of the driver, owner and insurer of the auto-rickshaw (MH-30/8490) in which the deceased was traveling as a party. The contention of the learned counsel for the appellant is that two vehicles were involved in the said accident but the claim has been made against the appellant as the alleged accident took place between two vehicles as head-on collusion. Therefore, it is a case of negligence on the part of the drivers of both the vehicles but, the learned Tribunal failed to appreciate this aspect and the entire liability has been fixed on the appellant.

6. It is settled law that in an accident involving two or more vehicles, when third party claims damages for loss or injuries, compensation is payable in respect of the

composite negligence of the drivers of the those vehicles. In such cases each wrong doer is jointly and severally liable for the payment of entire damages and the injured person has the choice to proceed against both of them or any one of them. The claimant is not required to establish the extent of responsibility of each wrong doer separately.

7. Reference can be made to the decision in the case of *T.O. Anthony Vs. Karvanrnan and others*¹, wherein the Supreme Court has observed in para 5 and 6, which reads thus:

“5. The Tribunal assumed that the extent of negligence of the appellant and the first respondent is fifty: fifty because it was a case of composite negligence. The Tribunal, we find, fell into a common error committed by several Tribunals, in proceeding on the assumption that composite negligence and contributory negligence are the same. In an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss or injuries, it is said that compensation is payable in respect of the composite negligence of the drivers of those vehicles. But in respect of such an accident, if the claim is by one of the drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver concerned.

¹ 2008 (5) MhLJ 7

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 on 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."

8. Perusal of the impugned judgment and award goes to show that the learned Tribunal has very well dealt with these aspects and rightly overruled the objection of the appellant regarding non-joinder of the driver and the owner of another vehicle. Therefore, I do not find any substance in the contention of the learned counsel for the appellant.

9. It appears that the respondents have claimed an income of Rs.10,000/- per month. However, the learned Tribunal considered Rs.3,000/- per month as income of the

deceased. I do not find force in the submission of the learned counsel for the appellant that the learned Tribunal has assessed the income of the deceased excessively. Thus, the appeal is devoid of merit and the same stands dismissed.

JUDGE

Wagh