



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

3 FIRST APPEAL NO. 2300 OF 2024

Bhagwan Baburao Wagh (Patil) And Ors

VERSUS

Divisional Controller, State Transport Co. Jalgaon

...

Advocate for Appellant : Mr. V N Upadhye h/f Mr.V. Y.Patil

Advocate for Respondent : Mr. A D Wange

...

WITH

CIVIL APPLICATION NO. 14711 OF 2023 IN FA/2300/2024

CORAM : S. G. CHAPALGAONKAR, J.

Dated : February 20, 2025

FINAL ORDER :-

1. Heard learned advocates appearing for the respective parties.
2. The appellants/original claimants impugn the judgment and award dated 27.1.2023 passed by the M.A.C.T., Jalgaon, in MACP No.451 of 2018.
3. Appellants are the original claimants. They are aggrieved by findings of the Tribunal on the point of negligence. Tribunal considered contributory negligence of deceased in cause of accident. Eventually, deducted 30% amount from the assessed compensation.
4. Mr. Upadhye h/f Mr. Patil, learned counsel appearing for the appellants invites attention of this Court to the observations recorded by the Tribunal while deciding point

no.1. Apparently, Tribunal has considered 30% negligence on the part of deceased only on the ground that original driving license of the deceased is not placed on record. Mr. Upadhye, learned counsel points out that photocopy of the driving license was already produced on record and there is no denial as to availability of licence with the deceased.

5. Learned counsel appearing for the respondent/MSRTC submit that unless original copy of the driving licence is produced, no presumption can be drawn that deceased was holding license. Non-holding of the driving licence would be relevant while considering the issue as to negligence.

6. Considering rival submissions, it can be observed that incident was reported to police. Accordingly, FIR Exhibit-31 was registered against the bus driver. Spot panchnama is also placed on record, which shows that bus suffered damage from front side but there was no damage on driver side door of the bus. Tribunal recorded that this is a case of head on collision between the tempo and bus. It is trite that merely because vehicle involved in the accident collided head on, presumption of negligence cannot be drawn. Driver of the bus entered into witness box, however, his testimony is inconsistent to contents of the panchnama. Only reason employed by Tribunal while holding contributory negligence of deceased is non-production of original driving licence which cannot be countenanced.

7. In that view of the matter, there was no reason to discard case of the claimants that bus driver was sole author of

accident. In result, this Court conclude that accident occurred due to sole negligence on the part of the bus driver. Finding of the Tribunal presuming 30% negligence on the part of the deceased is therefore liable to be quashed and set aside. In the result, following order is passed :-

O R D E R

- i. First Appeal is **partly allowed**.
- ii. The claimants are held entitled for total compensation of Rs.12,55,000/- (Rs. Twelve Lakh Fifty Five Thousand) from respondents/Corporation with interest @ 7.5% p.a. from the date of the petition till realization of the amount.
- iii. The compensation amount already paid/disbursed to the claimants shall be adjusted.
- iv. On deposit of enhanced compensation amount, it be disbursed to the claimants.
- v. First appeal stands **disposed of**. Civil application also stand disposed of.

(S. G. CHAPALGAONKAR, J.)

...

aaa-