
(2009) 08 GUJ CK 0042
In the Gujarat High Court
Case No : First Appeal No. 173 of 1989

Guj. State Road Transport Corpn. and Others	APPELLANT
Vs	
Bhartiben and Others	RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Citation : (2009) 3 GLH 758

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : M.D. Pandyas 1 - 3, for the Appellant; Suresh M. Shah For Defendants 1 - 3, None for Defendants 4 - 6, Mr. Darshan M. Parikh and Mr A.V. Trivedi For Defendant 7, for the Respondent

Final Decision : Dismissed

Judgement

Mr. H.K. Rathod, J.—Heard learned Advocate Ms. Mayaben Desai for appellant GSRTC, learned Advocate Mr. Satta for respondent No. 7 Insurance Company and learned Advocate Mr. S. M. Shah for respondents Claimants. By filing this appeal, appellant Corporation has challenged award made by Claims Tribunal at Jamnagar in Claim petition No. 121 of 1982 Exh. 82 dated 14.3.1988 wherein Claims Tribunal, Jamnagar has awarded Rs.4,50,000.00 with 10 per cent interest in favour of Claimants.

2. Considering facts as emerging from impugned award, accident occurred on 24th May, 1982 at about 4.45 a.m. near village Dhrol at Jamnagar. One Dr. Dineshchandra G. Parmar was coming from Gandhidham to Jamnagar in ST Bus bearing No. GRT 8356 to attend Court on the day of incident i.e. On 2 4.5.82. While ST Bus reached near Dhrol, it collided with truck No. GTY 3396 which was parked on side of road. Due to collision, truck turned on its side with luggage therein. That the left side of ST Bus got teared due to this accident and three passengers were injured. Dr. D. G. Parmar died on spot. ST Bus was being driven by opponent No.1 in rash and negligent manner at the time of accident. That the passengers sitting in bus had also requested driver at Bhachau depot to be slow

and diligent in driving but even then, driver did not pay any heed to request of passengers and continued his rash and negligent driving due to which said fatal accident had taken place wherein Dr. D. G. Parmar lost his life and, therefore, Claimants filed aforesaid Claim petition wherein Claims Tribunal made aforesaid award which is under challenge in this appeal at the instance of GSRTC.

3. Before Claims Tribunal, written statement was filed by opponent No.1 at Exh. 42, ST Corporation filed its written statement at Exh.22. Opponent Nos. 4 and 5 filed their written statement at Exh. 25. Opponent No. 6 Insurance Company filed its written statement at Exh. 34. Each respondent denied averments made by Claimants in their Claim petition and thereafter, issues were framed by Claims Tribunal at Exh. 31. Certain documents have been produced by respective parties before Claims Tribunal.

4. Before Claims Tribunal, on behalf of Claimants, witness No. 1 Bharatiben Ramniklal widow of deceased was examined at Exh. 53 and thereafter, another witness Digant Kapilprasad was examined at Exh. 57. Thereafter, Claims Tribunal considered FIR at Exh. 62 and panchanama at Exh. 63. FIR is filed by ST Bus Driver Mahendrakumar Vaishnav. At Exh. 68, witness Nathabhai Kanjibhai was examined. Driver Manendrabhai Vaishnav was examined at Exh. 73 who was cross examined by Advocate for Claimants as well as other Advocate. After considering evidence on record. Claims Tribunal has come to conclusion that accident occurred due to sole negligence on the part of driver of ST Bus.

5. Learned Advocate Ms. Desai for Corporation has submitted that driver of truck was not examined before Claims Tribunal who has to explain standing condition of truck, on which side it was parked and whether indicator was on or not and whether it was cordoned by stones or not but driver of truck was not at all examined before Claims Tribunal to clarify these aspects and, therefore, Claims Tribunal ought to have held that it is a case of composite negligence because both drivers were negligent and, therefore, accident occurred. She also submitted that there is also negligence on part of deceased Dr. D. G. Parmar because he was travelling in cabin of bus of ST Corporation and he should not have seated in cabin for journey. She also submitted that Claimant Bharatiben was not an eye witness of accident and, therefore, her evidence is not relevant for deciding negligence of driver of ST Bus. She further submitted that ST Bus is having controlled speed of 50 to 55 kms per hour and, therefore, allegations made against driver of bus about negligent driving cannot be believed. She further submitted that Claims Tribunal has committed gross error in not properly appreciating evidence of driver of ST Bus. She further submitted that in absence of evidence of driver of truck. Claims Tribunal ought to have accepted evidence of driver of ST Bus and ought to have held that there is composite negligence. Except these submissions, no other submission is made by learned Advocate Ms. Desai for appellant.

6. Learned Advocate Mr. S. M. Shah for respondents Claimants submitted that Claims Tribunal has rightly examined matter on basis of evidence and passenger

suggested that inspite of repeated requests made by passengers not to drive bus in excessive speed in rash and negligent manner, driver of ST Bus drove bus in excessive speed which resulted in accident. He also submitted that sufficient width of road was there as admitted by ST Driver and yet it dashed with truck parked on correct side which is apparent on the face of it because damage was caused to ST Bus. He submitted that if ST Bus would have been driven slowly in normal speed, then, such damage would not have been caused to ST Bus and, therefore, finding given by Claims Tribunal in respect of negligence cannot be considered to be perverse but it is based on proper appreciation of evidence on record and, therefore, it does not require any interference of this Court.

7. I have considered reasoning given by Claims Tribunal in impugned award. In para 7 to 10 of award. Claims Tribunal observed as under:

"7. Applicant No. 1 and witness No. 1 Bhartiben Ramniklal, widow of deceased, has deposed at Exh. 53 that the deceased was her husband, he hold a degree of MBBS, DGP, he was MO at Gandhidham, the incident happened near Dhrol because of collision with the truck. Her cross examination at para 4 and onward shows that she was not present in the bus as she was not travelling in it and she has no personal information about the incident. The other witness is AW 4 Digant Kapilprasad Exh. 67. He has stated that he was working as Assistant News Reader at All India Radio Bhuj Station he was travelling in the said bus to take report of Pattabhishek of Jagadguru Shankeracharya, he boarded the ST Bus at 11.00 night, the driver of the bus was driving it very fast, on more than one occasions the passengers complained, first at a halt near Bhachau the bus was at such a great speed that ail the passengers were bumped, he and other passengers told the driver to drive the bus slowly otherwise he would kill somebody but in reply the driver on the contrary stated that still nothing has happened and the real things will happen when they go beyond Bhachau the real bumps were to come after Bhachau, that near Dhrol when it was 5.30 a.m. in the morning the accident happened that the truck stationary near Dhrol cremation ground was on the correct side loaded with goods but the bus collided with it, that entire left side of the bus was cut and the bus itself fell down in the pit. So, he got down and saw the dead body of Dr. D. G. Parmar, that three was another dead body and the driver and conductor both ran away from there, that one another bus came from the opposite side and they reached Dhrol, that police had recorded his statement, that he has given the statement. He is cross examined for the opponent driver and the ST Corporation and it is put to him that nobody had instructed driver to drive the bus slowly. It is also put to him that he cannot go with the speed but the witness has specifically stated that a bus which could have taken two hours from Bhuj to Gandhidham had taken only one and half hours on the day of accident. It can positively be said that the bus was very fast and it is what happened in the bus is stated. He was further cross examined to demonstrate that he does not know as to what is the distance between Bhuj and Gandhidham. He says that he had experienced speedy driving of the bus from Bhuj itself to Gandhidham, that the instructions were given to the driver to drive

the bus slowly while sitting, as to what was the reaction of the driver, he does not know. Three passengers died in this very accident. He has denied that he is deposing falsely.

8. The FIR is produced at Exh. 62 and in it the driver of the ST Bus is mentioned as Mahendrakumar Vaishnav. So, the FIR is filed against him. The panchanama of the scene of incident is at Exh. 63 and it also shows that the road was six metres broad and on both sides of road there was metal road of four ft. on each side. It is clear that the bus had collided with the truck. The impact itself as described by Digant Kapilprasad Exh. 67 is such that the only conclusion Exh. 67 is such that the only conclusion possible would be that the bus driver was very very fast.

9. Nathalal Kanji AW 5 Exh. 68 has deposed. AW 5 Exh. 68 has deposed that he had gone to fetch Dr. Parmar for deposition in Court of sessions on 23rd at Jamnagar. He was a Doctor. The bus No. GRT 8356. The bus was packed. The doctor was sitting in the cabin of the driver, the bus was going very fast and he and several other passengers told the driver not to drive the bus fast but the driver paid no heed and it ultimately caused accident near Dhrol cremation ground, that the incident happened while the truck was on its correct side, that when when they got down they saw that the side of the bus was cut up and torn, that Doctor was unconscious, there were about 125 passengers in the bus. In cross examination on behalf of the driver and ST Corporation, all that is put to the witness is that he is deposing falsely that the permission of the driver was taken by the doctor for sitting in cabin. He has been cross examined and he has said that the trick was seen before dash, that he was standing near conductor. So, from this evidence there can be no manner of doubt that it was only the driver of the ST Bus who was rash and non else but for his negligence and rashness inspite of the repeated requetss which were really warnings, he paid no heed, not only that as there were 125 passengers in the bus which is actually permitted to carry about 50 passengers with ten standing, this itself is a negligence on the part of opponents because heavily loaded vehicle is difficult to be controlled in exigency. Therefore, in the instant case both the employees of the ST Corporation driver and conductor were negligent and therefore there can be absolutely no manner of doubt about their negligence. Driver Mahendrakumar who is examined at Exh. 73 has admitted during cross examination that there was no hindrance on the highway and the bus could have passed the wide road very safely if the driver was careful. However if there was any doubt in the mind of the driver of the bus about the bus passing safely he could have halted the bus and then positively the impact would not have been of this dimensions and probably it would have been just a dash or collision.

10. The only point which can be urged is that the driver of the truck is not examined but then it may be that because the damages are not disputed and the fact that the truck was standing is also not disputed and beyond that there is hardly anything which a driver can say and so, his non examination assumes no

importance. Not only that in the judgment recorded in MACP No. 126, 127, 128 of 1982 delivered on 7.2.85 which is produced in this case also shows that it is the driver of the bus who has been held responsible and not the driver of the truck. In view of the voluminous evidence, the non examination of driver becomes of no importance. Therefore, the authority relied on and cited for the ST Corporation by Mr. M. L. Anadakat loses its importance. The authority is the case reported in Saudagarsing Chhajusing and Others Vs. Jashodaben and Another and Ranjitsingh Valusing Jadeja, . I have therefore no hesitation in finding issue No. 1 holding opponents Nos. 1,2 and 3 liable for the death of Dr. D. G. Parmar and holding the rest of the opponents not liable."

11. Looking to the evidence of witness Digant Kapilprasad, he was working as Assistant News Reader at All India Radio Bhuj Station and he was travelling in the said bus to take report of Pattabhishek of Jagadguru Shankeracharya. It was clearly deposed by him that driver of the bus was driving it in excessive speed and not drove it in slow speed inspite of repeated requests made by passengers but replied that still nothing has happened and the real things will happen when they go beyond Bhachau the real bumps were to come after Bhachau, that near Dhrol when it was 5.30 a.m. in the morning the accident happened that the truck stationary near Dhrol cremation ground was on the correct side loaded with goods but the bus collided with it. It was also deposed by him that entire left side of the bus was cut and the bus itself fell down in the pit and so, he got down and saw the dead body of Dr. D. G. Parmar, that there was another dead body and the driver and conductor both ran away from there, that one another bus came from the opposite side and they reached Dhrol, that police had recorded his statement, that he has given the statement. Looking to evidence of witness Nathalal Kanji Exh. 68 also, it is clear that bus was driven by its driver in rash and negligent manner in an excessive speed and driver not drove it in slow speed inspite of repeated requests made by passengers which ultimately resulted in accident wherein doctor lost his life who was sitting in cabin of driver. Therefore, considering such evidence of witnesses, Claims Tribunal came to conclusion that there cannot be any doubt that it was only due to ST Bus driver who was rash and negligent in driving bus, accident has taken place and, therefore, Claims Tribunal has come to conclusion that there was sole negligence on part of driver of ST Bus in driving bus which resulted into accident.

12. Considering finding given by Claims Tribunal after appreciation of evidence on record, according to my opinion, Claims Tribunal has rightly appreciated evidence on record and has also rightly considered evidence of bus driver as well as passengers and has rightly held that there was sole negligence of ST Driver in driving bus. According to my opinion, Claims Tribunal has rightly held that there is sole negligence of driver of ST Bus in which 125 passengers were travelling. Therefore, contentions raised by learned Advocate Ms. Desai for appellant cannot be accepted and according to my opinion, question of negligence has been rightly decided by Claims Tribunal and, therefore, contentions raised by learned Advocate Ms. Desai are rejected.

13. As regards contention raised by learned Advocate Ms. Desai for appellant that there was negligence of Doctor and he ought not to have travelled in bus while sitting in cabin of ST Bus. according to my opinion, such contention cannot be accepted because conductor and driver of bus had not objected against deceased for sitting in cabin of driver and that amounts to permission given by ST Corporation to travel by sitting in cabin of bus. Therefore, that contention is required to be rejected and accordingly said contention is rejected. In view of aforesaid discussion, there is no substance in this appeal and same is, therefore, dismissed with no order as to costs.