

(2016) 03 GUJ CK 0086

In the Gujarat High Court

Case No : First Appeal Nos. 274 to 276 of 1993

Gujarat State Road Transport Corporation

APPELLANT

Vs

Puja Ashokkumar Sankalecha and Others

RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Citation : (2016) 03 GUJ CK 0086

Hon'ble Judges : R.P. Dholaria, J.

Bench : Single Bench

Advocate : Hemant S. Shah, Advocate, for the Appellant; Ravindra Shah, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Dholaria, J.—1. This group of three appeals have been preferred by appellant-GSRTC against common judgment and award dated 06.07.1992 passed by Motor Accident Claims Tribunal (Main), Mehsana, in Motor Accident Claim Petition No. 924/86 and 19 other connected petitions.

2. S.T. Corporation, original opponent No. 1, has preferred these three appeals, inter alia, contending that the Tribunal has not properly appreciated the evidence on record, more particularly the driver of S.T. Bus, who was driving the bus as well as the passengers of the S.T. Bus, who gave oral evidence, and wrongly recorded the finding on the part of the driver of bus attributing sole negligence on his part. It is further contended that considering the place of accident, having only 12 ft. width road the Tribunal ought to have attributed contributory negligence on the part of the driver of the fiat car involved in the accident. Ultimately, it is prayed to reverse the finding of the Tribunal in so far as the sole negligence attributed on the part of the S.T. Bus driver and also to hold contributory negligence on the part of the driver of fiat car also.

3. The facts of the case are that the deceased Ghevarchand Khimraj Chopra was driving the Fiat Car No. GRE 5934 and was holding valid driving licence and it is

owned by the opponent No. 3 and insured with opponent No. 4 and the deceased Ashokkumar and his other relatives and family members had gone to Aglod for the Darshan of Manibhadravir and near Ganeshpura Village on Vijapur-Aglod road on 14.09.1986 at about 1:30 p.m. one S.T. Bus No. GRS 8226 coming from Vijapur to Gundarrasan in a rash and negligent manner and with full speed dashed the fiat car and the car was dragged upto a distance of 50 feet with the result that the fiat car was smashed and five persons including driving sitting in the fiat car died and others were seriously injured. This accident had happened due to the rash and negligent driving on the part of the opponent No. 1 who was driving the said S.T. Bus. The fiat car was going on the left side of the road and with moderate speed but the S.T. Bus had dashed the fiat car in front portion and it was completely smashed.

4. As the learned advocate for the appellant has argued the matters on the aspect of negligence on the part of the driver of the S.T. Bus, this Court has also concentrated only this aspect. As the submissions came to be made on behalf of the learned counsel for the respective parties that in the other appeals so far as quantum of compensation is concerned, this Court has upheld the findings of the Tribunal and therefore this court has only dealt with the said issue and not touched the compensation awarded to the claimants.

5. Heard learned advocates for the respective parties.

6. Learned advocate for the appellant-GSRTC has vehemently contended that the Tribunal has failed to consider the documentary as well as oral evidence, FIR and panchnama and wrongly attributed the negligence on the part of the driver of the S.T. Bus, which requires to be reversed. He has taken this Court through the oral as well as documentary evidence on record of the case.

7. On the other hand, Mr. Ravindra Shah, learned advocate for the original claimants, and Ms. Amee Yagnik, learned advocate for the respondent-United Insurance Company Limited, have argued that the Tribunal has elaborately dealt with the rival submissions came to be made before it in light of the evidence on record and elaborately discussed the aforesaid evidence while rendering the judgment and the findings recorded by the Tribunal are in accordance with the settled position of law, which do not call for any interference. They have supported the judgment and award passed by the Tribunal.

8. In order to appreciate the contentions raised by the learned Counsel for the respective parties, it is necessary to extract the findings recorded by the Tribunal in the aforesaid judgment and award: (in Paragraph Nos. 18)

"18. The main point for determination in all these petitions is as to whether the incident had happened due to the sole negligence on the part of the driver of S.T. Bus No. GRS 8226 or due to sole negligence on the part of driver of fiat car No. GRE 5934 or due to contributive negligence of any of the driver and if so, to what extent the contributory negligence can be apportioned. The driver of the S.T. Bus opponent No. 1 is examined and he was prosecuted in the Court of Law at

Vijapur but he was acquitted. All the petitions claim the allegation of sole negligence on the part of the driver of the S.T. Bus. All the applicants have averred in their petition that this incident had happened due to sole negligence on the part of the driver of the S.T. Bus and the fiat car was going with moderate speed and on the correct side of the road. It is also to be borne in mind that the Fiat car is a very light vehicle as compared to the S.T. Bus. It is also pertinent to note that this S.T. Bus was a local bus going from Vijapur to Gundarasan halting at every bus-stand and at every halting place. It is borne out from the evidence of the opponent No. 1 Pravinbharthi Shankarbharti at Exh. 269 that the road in question is 12" in width and it is a pakka tar road. It is also to be borne in mind that after the dash, the S.T. Bus dragged the fiat car upto a distance of 50 feet. It is also an admitted position that on the western side there is a kacha road admeasuring 7"-4" and kacha road on the eastern side admeasuring 5"-8". The S.T. Bus was going from south to north and the fiat car was going from north to south and the fiat car was facing eastern side after the incident. The fiat car is completely smashed as per the panchnama of the place of accident. Madanlal Kundanlal Exh. 193 has got no personal knowledge as to how the incident had happened. Devichand Bhagwandas Exh. 194 has also no personal knowledge as to how the incident had happened. Chandmal Kundamal Exh. 261 has also no personal knowledge as to how the incident had happened. Nareshkumar Devichand Exh. 111 was traveling in the fiat car and the fiat car was driven by Ghevarchand with moderate speed and he was sitting on the left side in front and it was going with moderate speed on the left side of the road. Near Ganeshpura village one S.T. Bus was coming from the opposite side in a rash and negligent manner and dashed the fiat car by coming over wrong side with the result that the fiat car was dragged up to a distance of 50 feet and it was completely smashed. He has denied that the S.T. Bus was going with moderate speed and on the left side of the road. It is argued by the learned advocate Mr. N.M. Patel for the S.T. Corporation that this witness has admitted that they were in a hurry to reach their home and hence, he has submitted that it should be presumed that the fiat car driver was driving the vehicle with full speed. It should be borne in mind that it was merely an inference or at the most a desire or a wish of the occupants of the fiat car as every occupant of the private vehicle or that of taxi wish that their vehicle should reach their place early and that they should go home early but that does not mean that their wish would finally be the wish of the driver of the vehicle who has to take so many factors into consideration in determining the speed with which the vehicle should be driven by him. The wish of the occupants to reach the home quickly cannot be equated with the wish of the driver of the fiat car and it may not be his wish also because he would drive the vehicle in his own fashion and his state of mind, his mood, his health are the important factors for determining with which speed he would drive his vehicle. So simply because this witness has desired to go to his native place hurriedly it cannot be interfered or a circumstances to come to a conclusion that the driver had driven the vehicle in a rash manner and ultimately he has contributed towards the occurrence of this incident. It is also to be borne in mind that after

the dash of the S.T. Bus the fiat car was dragged upto the distance of 50 feet and as there was a tree the bus climbed over the fiat car and then it was turtled. Vajirmiya Galumiya Exh. 24 is the passenger in this S.T. Bus and he has stated that both the vehicles had collided with each other and so the bus was turtled and the door of the S.T. Bus was pressed and this incident has happened due to the rash and negligent driving on the part of the driver of the S.T. Bus. He has specifically stated that the bus was going with full speed. The complaint and the panchnama of the place of incident are required to be perused for the instant case because the occupants of the S.T. Bus and the occupants of the fiat car have specifically deposed that the bus was going with full speed and in rash and negligent manner and the fiat car was going with moderate speed and the incident has happened due to the rash and negligent driving on the part of the driver of the S.T. Bus. It should be borne in mind that on 14-9-86 Vijapur Police was informed about this incident and so Second P.S.I. Made an inquiry and he had come to know and he has arrived at a conclusion that the driver of the S.T. Bus had driven the vehicle in a rash and negligent manner and had dashed the front portion of the fiat car and it was dragged upto a distance of 50". He had also arrived at a conclusion that he had lost the control on his S.T. Bus and so it was turtled and even the occupants of the S.T. Bus had received injuries. The damage to the fiat car is assessed at Rs. 70,000/- whereas damage to the S.T. Bus is assessed at Rs. 10,000/-. Over and above the oral evidence, we have got the affidavits of Dashrathbhai Manilal at Exh. 46, Zala Chandansinh Gulabsinh at Exh. 49, Prajapati Dashrathlal Chhaganlal at Exh. 52, Babubhai Shankerbhai Patel at Exh. 55, Patel Somabhai Ishwarlal Laldas at Exh. 58, Agarsingh Kalusing Thakor at Exh. 78, Laxmiben Ranjitsinh Rathod at Exh. 83, Gulabben Amarsinh at Exh. 74, Kakiben wife of Parbatsinh Kalusinh Rathod at Exh. 88, Patel Jorabhai Medhavlal at Exh. 89 and all of them have deposed that this incident has happened due to the rash and negligent driving on the part of the driver of the S.T. Bus Nilpaben Devichand Exh. 268 has also filed an affidavit in support her case bearing M.A.C.P. No. 195/87. Same is the case with the affidavit of Navinbhai Ishwarbhai Exh. 101 who was injured in this incident and he has filed M.A.C.P. No. 668/87."

9. On going through the aforesaid reasoning assigned by the Tribunal it clearly reveals that the Tribunal has properly dealt with the oral evidence came to be adduced before it by the rival parties to the proceedings. However, Mr. Hemant S. Shah, learned advocate for the appellant-GSRTC, has argued that the Tribunal has not properly appreciated the oral evidence of Vajirmiya Galumiya, which has been examined as witness No. 1 (Exh. 24).

In his deposition, he has clearly stated that on the date of incident he was traveling in the bus proceeding from Vijapur to Gundarrasan as a passenger and the driver of S.T. Bus was driving the bus in very hectic speed and while the bus was passing near Ganeshpura Village one car was coming from the opposite direction and both the vehicles collided with each other, in the result the bus turned turtled.

In his cross-examination made by the learned advocate appearing on behalf of the Insurance Company he has admitted that after colliding with the fiat car the bus proceeded ahead and turned turtled and at that time the bus was at very hectic speed, wherein in the cross-examination came to be advanced by learned advocate for the S.T. Corporation he has admitted that the bus was proceeding in moderate speed on its left side, whereas the car, which was coming from the opposite direction, was coming on the middle of the road, as a result of which, it dashed with S.T. Bus. Driver of the offending bus, Shri Pravinbharthi Shankarbharthi, who has been examined as witness No. 1 of the opponent (Exh. 269) in the examination-in-chief he has narrated that 14.09.1986 he was driving S.T. Bus No. GRS-8226 from Vijapur to Gundarrasan and while the bus was proceeding in the vicinity of Village Ganeshpura at that time one a fiat car came from the opposite direction in the middle of the road. As a result thereof, while he noticed the car about 200 ft. away he applied the break of the bus and therefore the bus was went away on the side by road and dashed with the stone. Though he tried to avoid the accident the driver of fiat car dashed with his bus. In the result, the car dragged with the bus.

10. In the cross-examination he has admitted that after completion of investigation the police filed charge-sheet and he was acquitted in the criminal case. He also admitted that at the place of incident the width of road was 12 ft. He did not admit the suggestion that the bus was in hectic speed and the car was in normal speed. He admitted in the cross-examination that he was proceeding from the South to North, whereas the fiat car was lying after the accident on the Eastern edge of the road. He did not admit that the fiat car was dragged upto 50 ft.

11. On over all appreciation of oral evidence came to be adduced on the part of each one of the claimants, who were traveling in the S.T. Bus as well as others, it clearly reveals that the incident happened during the day light at about 1:30 p.m. on 14.09.1986. The bus was in a very hectic speed and that was a clear finding of the Tribunal. However, Mr. Hemant S. Shah, learned advocate for the appellant-GSRTC, has tried a futile exercise by drawing attention of two witnesses, who have of course in the examination-in-chief attributed negligence on the part of the driver of the S.T. not only that even cross-examination carried out by the learned advocate for the insurance company also they stuck to their version. However, in the cross-examination from the S.T. Corporation, they have changed their testimony but the testimony of the aforesaid two witnesses even otherwise also does not lead any credence as it has not corroborating even the other persons" oral evidence as well as whatever forthcoming from the panchanama. The driver of the offending bus in the examination-in-chief tried to attribute the negligence on the part of the driver of the car, however, in the cross-examination he has clearly and categorically mentioned that the car was found on the Eastern edge of the road, that was left side so far as the driver of the fiat car is concerned.

12. In light of the aforesaid oral evidence it is also necessary to refer to the panchnama of scene of offence which came to be drawn by the investigating agency soon after the accident wherein it is clearly emerging out that at the place of incident road runs from North to South and South to North, having width of 12 ft. tar road and having shoulder road of 6 ft. on both sides of the road. Undisputedly the S.T. Bus was proceeding from Vijapur to Gundarrasan i.e. from South to North and therefore Western half of the road is the left side so far as the driver of the bus is concerned, whereas the fiat car was proceeding towards Vijapur and therefore Eastern side of the road is the left side so far as fiat car is concerned.

13. In the panchnama wherein it is clearly mentioned that on the eastern edge the car was lying about 1 ft. away from the Eastern edge of the road. S.T. Bus was also found nearby the fiat car in a turtled position and the bus was found facing towards the eastern side of the road and having rear portion on the Western side.

14. In light of the aforesaid oral as well as documentary evidence in the nature of panchnama if at all the story put forward by learned advocate for the appellant may be believed to be true then it is very difficult to believe that the car has dragged the bus on its wrong side. Size of the vehicle is also important. The car is very smaller as compared to the passengers S.T. Bus and it is clearly emerging from the deposition of the driver of the bus also the car was found in the eastern edge of the road i.e. the car was on extreme left side and was also dragged about 50 ft. and thereafter the bus turned turtled, which suggests the speed of the bus as well as velocity of the impact on the part of the driver of the bus and therefore even if the oral evidence of the aforesaid two witnesses may be taken into consideration it is not corroborated with the panchnama. The finding of the Tribunal is in accordance with law oral as well as documentary evidence and the Tribunal has rightly held the driver of the S.T. Bus sole negligence in commission of accident.

15. For the reasons recorded hereinabove, the appeal deserves dismissal and is hereby dismissed.

16. Registry is directed to forthwith return the record and proceedings, if available, to the Tribunal. No costs.

17. Registry is also directed to place a copy of this order in connected matters.