
(2004) 07 BOM CK 0040

In the Bombay High Court

Case No : F.A. No"s. 115 and 265 of 1990 and 453 of 1991

Prakash Mohanlal Chopda

APPELLANT

Vs

Yalaji Rahuji Ghule and Others

RESPONDENT

Date of Decision : 14-07-2004

Acts Referred:

Bombay Motor Vehicles Tax Act, 1958 — Section 81

Citation : (2005) 1 MhLj 759

Hon'ble Judges : N.V. Dabholkar, J

Bench : Single Bench

Advocate : S.B. Pallod, in First Appeal Nos. 115 and 265 of 1990, S.B. Pallod, holding for R.T. Sharma, in First Appeal No. 453 of 1991, for the Appellant; K.V. Kulkarni, for respondent Nos. 8 and 11 in First Appeal Nos. 115 and 265 of 1990, Anjali Dube, for respondent Nos. 3 and 8 in First Appeal Nos. 265 of 1990 and 453 of 1991 and V.N. Upadhye, in First Appeal No. 453 of 1991, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Dabholkar, J.—These three appeals arise out of a common accident. Three appeals are preferred as against decisions in three claim petitions filed by the claimants before Motor Accident Claims Tribunal Ahmednagar i.e., M.A.C.T. Nos. 105/86, 152/86 and 121/86. All three appeals can be heard and disposed of together because common issue is raised by the appellant, who is owner of one of the vehicles, involved in the accident, in all three appeals.

2. The accident in question took place on 6th of May, 1986 at about 1.00 p.m. near mile stone No. 131, about 6 Kms. from Rahuri towards Ahmednagar side on Manmad - Ahmednagar road. Jeep No. MHV 8110 is the vehicle owned by present appellant and which was not insured at the material time. It was being driven by respondent Parshuram Todmal at the material time. The other vehicle involved in the accident was goods truck No. MJF 6634 owned by respondent Gurudayalsingh and driven by deceased respondent Shaikh Muhammad at the

material time. The truck was insured with respondent, The New India Insurance Company, at the material time.

Although drivers of both the vehicles have accused each other to be responsible for the accident by rash and negligent driving, admittedly, accident took place in somewhat following manner. The jeep was proceeding ahead. Dayanand Ramchandra Gandhe, Chandrabhagabai Harde, Dnyandeo Pawar and 2-3 others were the passengers in the jeep. Dayanand, Ramchandra and Chandrabhagabai lost their lives in the accident. Dnyandeo has survived and is examined as eye witness by all the claimants in all three petitions. In fact, all claims are decided by recording common evidence, by the Tribunal. It is said that the truck was running in the same direction as the jeep i.e., towards Ahmednagar. At the location of accident, jeep had halted so that some passengers can alight. The jeep was knocked by the truck from backside, allegedly with full force while in full speed. As the panchanama of scene of occurrence shows, after the accident both the vehicles have gone outside the road beyond right edge (wrong side for the vehicles) and they are lying in a ditch at a distance of about 40 ft. from the edge of the road.

3. While granting all claim petitions for compensation towards death, the Tribunal has held both the vehicles liable for rashness and negligence and the percentage of liability is fixed as 40 per cent upon the jeep and 60 per cent upon the truck. The respective owners are directed to deposit the amount of total compensation in that proportion. Appellant, in all three matters, who is owner of the jeep, is aggrieved by this finding of the Tribunal and consequent liability imposed upon his shoulders. Hence, only point that arises for consideration in all three appeals is :

"Whether Tribunal erred in holding the jeep responsible of contributory negligence to the extent of 40%."

Advocate Shri Pallod has taken us through the judgment in M.A.C.T. No. 105/86 with more emphasis on judgment paragraph Nos. 12 to 28, wherein the learned Judge has considered the aspect of rashness and negligence on the part of both the vehicles. The evidence on record, on the point of the manner in which the accident took place, is that of two drivers, surviving passenger Dnyandeo and panchanama of scene of occurrence as registered by the police after the accident was reported. Learned Member of the Tribunal, after considering the evidence of drivers, Parshuram and Shaikh Muhammad, arrived at a conclusion that they are making self serving statement and much sanctity and reliability cannot be attached to their deposition. The learned Judge has believed the evidence of Dnyandeo, although he was compelled to admit during the cross-examination that in his statement before the police he had claimed to be occupying a seat in the neighbourhood of the driver, thereby suggesting that he could not have seen the occurrence behind his back, since admittedly, the jeep was knocked on the backside by the truck coming from behind. The Judge has rightly laid considerable emphasis on the panchanama of scene of occurrence.

4. On reference to panchanama of scene of occurrence, the gravity of the incident or force with which the collusion had taken place is evident from following details.

The vehicles are lying at a distance of 40 ft. beyond the edge of the road and in a ditch although there are bushes of 5 to 6 ft. height on both sides of the road. Both the vehicles have suffered extensive damage, the truck to its bonnet part and also left shoulder, the jeep to its rear portion and right side. The force with which the impact must have taken place can be judged from these contents of the panchanama, and it can be safely inferred that the truck must have bumped into the jeep without any attempt on the part of the truck driver to slow down. The absence of any tyre marks as a result of application of brakes by the truck driver in the panchanama of the scene of occurrence; further confirms that there must not have been attempt to stop or reduce the speed on the part of the truck driver. The truck, is therefore, rightly held responsible for the accident. The learned Judge has shifted 40% responsibility for causing the accident upon the jeep driver.

5. It is the contention of the jeep driver that he had halted and halted after observing all traffic rules. He claimed that he had indicated his intention to halt by his arm, as also by red light (time of the incident is 1.00 p.m. in the month of May which must be bright sunny afternoon in all probability). While deposing from the witness box Parshuram also tried to improve the story and he is exposed by contradictions with his police statement. In the deposition, he tried to make out a story that, after he halted a lady passenger got down, subsequently she realised that she had forgotten foot wear in the jeep, hence she came back, collected foot wear and while he was alighting from the jeep on second occasion the impact took place. On reference to his police statement, this has turned out to be a false improvement because in his police statement he had narrated that no sooner the jeep stopped the truck bumped into the backside of the jeep. Thus, according to information by jeep driver to the police immediately after the incident and without premeditation, the collusion had taken place at the same moment when jeep had come to a halt. This story is more acceptable than the improved story by jeep driver and if this story is accepted, version of the truck driver cannot be lightly brushed aside, that jeep was halted without any signal.

6. Presuming it for the sake of argument that jeep halted after giving a signal, a vehicle cannot remain on the road in static condition so as to cause inconvenience to other traffic. Panchanama of scene of occurrence does not enable us to judge the position of the vehicles at the time of the impact, but oral evidence provides some clues. According to deposition of Dnyandeo, the driver of the jeep stopped the jeep because a lady passenger wanted to get down. The jeep was stopped in such a manner as to substantially cover the kachha road on the left side. Thus, although Dnyandeo says that major portion of the jeep was on the kachha road, he does not rule out the possibility that some width of the

jeep was occupying the tar road. On reference to deposition of Parasram himself, he says that he stopped the jeep as one of the passengers was to get down. For the purpose he took the jeep to extreme left side of the road. He does not refer to jeep going on the shoulders of the tar road. He only says that he took the vehicle to extreme left of the road. He also confirms that there was traffic on the road.

As already discussed hereinabove, Parasram had tried to shirk his responsibility by deposing a new theory of accident having taken place after lapse of some time since the jeep came to halt. Now in his deposition he does not make out a case that jeep was totally on the shoulders of the tar road or it was so halted as not to cause any inconvenience to other traffic. In this context, Section 81 of Bombay Motor Vehicles Act, 1939 may usefully be referred :

"81. No person incharge of a vehicle shall cause or allow the vehicle or any trailer to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or be likely to cause danger, obstruction or undue inconvenience to other users of the road."

Admittedly, vehicle had traveled a distance of 6 Kms. from Rahuri township. It is nobody's case that it was a regular stop for buses or vehicles and it is not the specific case of the jeep driver that he had left the tar road fully open and available for other traffic, before coming to halt. With the material available, it can safely be inferred that the jeep was halted in such a manner as to amount undue inconvenience to other vehicles. Damage to the left side portion of the truck and right side portion of the jeep suggests that even after the forcible bump in the backside with the momentum, truck had proceeded ahead, and the vehicles had brushed against each other.

7. In view of above circumstances, it is not possible to concede to the submissions of advocate Shri Pallod that the jeep was not at all responsible for the accident or that percentage of responsibility of the jeep can be on the lower side than 40%.

8. Hence the appeals are required to be dismissed and are dismissed with no orders as to costs.