
(2010) 08 BOM CK 0197
In the Bombay High Court
Case No : First Appeal No. 947 of 1997

Smt. Vandana Shedge and Others	Vs	APPELLANT
Narayan Dinkar Jadhav and Another		RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Citation : (2011) ACJ 2315 : (2011) 2 BomCR 257

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : Dhaval A. Patil, instructed by, S.P. Thorat, for the Appellant; G.S. Hegde, for the Respondent

Final Decision : Allowed

Judgement

D.G. Karnik, J.—This appeal by the original claimants is directed against the judgment and order dated 13 July 1993 passed by the Motor Accident Claims Tribunal (for short "the Tribunal") partially rejecting the appellant's claim for compensation.

2. Appellant No. 1 is the widow and appellant Nos. 2 to 4 are the minor children aged 1 month to 6 years of the deceased Hanumant. On 31 October 1990, Hanumant was sitting as a pillion rider on a "M-80 motorcycle" bearing registration No. MH-11-6099 travelling on Pune Bangalore highway. At about 1.40 p.m near village Virmade, Taluka Wai, a State Transport Bus (ST bus) belonging to respondent No. 2 coming from the opposite direction, gave a dash to the motorcycle. The driver of the motorcycle as well as Hanumant who was the pillion rider died on the spot due to the collision. Appellants thereafter filed a claim petition before the Tribunal. Heirs of the deceased as well as the owner-driver of the motorcycle filed a separate claim petition claiming compensation. The Tribunal after considering the evidence adduced before it came to the conclusion that the driver of the ST bus was driving it rashly and negligently and at a high speed. However, it also came to the conclusion that the owner-driver of the motorcycle was also negligent in driving it and his negligence also

contributed to the accident. The Tribunal assessed the negligence of the two drivers to be 50% each and after calculating the total loss on the basis of income and the multiplier held that the respondent No. 2 was liable to pay only 50% of the amount so computed. As no claim for compensation was made against the driver of the motorcycle and its insurance company, no compensation was awarded against the owner of the motorcycle.

3. After hearing arguments of the parties, the questions that arises for my consideration are:

(i) Whether the finding of the Tribunal that the driver of the motorcycle was guilty of contributory negligence, is correct?

(ii) If not, whether the Tribunal committed error in reducing the compensation to the extent of 50% on the ground of contributory negligence?

4. Before the Tribunal, the appellants examined Vandana, widow of the deceased (P.W.1), and Sudam Balasaheb Pawar (P.W.2), driver of the tractor was following the motorcycle. The respondents examined Narayan Jadhav, the driver of the ST bus as a witness.

5. Vandana (P.W.1) was not present at the time of the accident and her evidence is of little assistance on the question of negligence and/or contributory negligence. Sudam (P.W.2) in his deposition has stated that at the relevant time he was driving the tractor bearing No. MXX 7242 near the village Virmade towards Satara. He was proceeding at a moderate speed of about 10-15 km./hour. Near the village Virmade, the motorcycle, which was also proceeding at the moderate speed, overtook the tractor and was ahead of it at a distance of about 400 to 500 feet. At that time, the ST bus belonging to the respondent No. 2 came from the opposite direction at a very high speed and gave a dash to the motorcycle. The driver as well as the pillion rider on the motorcycle fell down and died on the spot. In the cross examination, he admitted that before the accident the motorcycle had overtaken the tractor. He however denied the suggestion that the motorcycle had dashed on the trolley attached to the tractor and because of that the driver and the pillion rider on the motorcycle fell down on the road and were run over by the ST bus coming from the opposite direction.

6. In his examination in chief, Narayan Jadhav, the driver of the ST bus, stated that at the time of the accident the motorcycle tried to overtake the tractor and while overtaking it, the motorcycle collided against the trolley attached to the tractor. The rider and the pillion rider both fell down and after the fall, the ST bus ran over the fallen motorcycle.

7. The version of the respondents that in the course of overtaking the motorcycle dashed the trolley attached to the tractor and the motorcyclist and the pillion rider fell down cannot be believed. D.W.1 Narayan, the driver of the ST bus has stated that during the course of overtaking, the motorcycle collided with the trolley of the tractor and the motorcycle as well as the rider and the pillion rider

fell down and the ST bus coming from the opposite direction ran over the fallen motorcycle. If the ST bus had run over the motorcycle, it would have been crushed by the weight of the ST bus and would have been completely destroyed. The panchanama does not show so. On the other hand, the panchanama shows that the motorcycle was dragged for some time and was stuck in the front bumper of the ST bus. The evidence of D.W.1 that the motorcycle had fallen down and the ST bus ran over the motorcycle, therefore, cannot be believed. Mr. Hegde for the respondent No. 1 then submitted that in any event the accident occurred while the motorcycle was attempting to overtake the tractor and in the course of overtaking, the motorcycle must have come on the wrong side of the road when the accident occurred. The motorcyclist ought not to have overtaken the tractor when the ST bus was coming from the opposite direction. The evidence of Sudam (P.W.2) shows that after overtaking, the motorcycle had gone ahead and was at a distance of 400 to 500 feet ahead of the tractor when the accident occurred. This shows that the act of overtaking had been completed long before the accident and there was sufficient time for the motorcyclist to go to proper side of the road after overtaking the tractor. It was only after overtaking and after going ahead for distance of 400 to 500 feet that the ST bus gave a dash to the motorcycle. Sudam is an eye witness to the accident. There is no reason for him to lie about the manner of the accident. He has stated that he was driving the tractor at a speed of 10 to 15 km/hour. With the load of the trolley carrying sugarcane attached to it, the tractor was moving slowly. Overtaking a slow moving vehicle on the road by itself would not amount to negligence especially when after the overtaking, the motorcycle had travelled about 400 to 500 feet ahead of the tractor.

8. Learned Member of the Tribunal has relied upon the panchanama for coming to the conclusion that there was a contributory negligence on the part of the driver of the motorcycle. Firstly, it may be noted that the panchanama was not proved. In *Smt. Ushakiran Shridhar Shinde and Others Vs. Arunkumar Kisaanlal Kalal and Others*, this Court has held that the contents of the panchanama are not admissible in evidence unless the panchanama was proved. Record does not disclose that the contents of the panchanama were admitted by the appellants and no panch witness was examined. But even if it is assumed that the contents of the panchanama could be read in evidence, they do not show any contributory negligence on the part of the rider of motorcycle. The panchanama only discloses the place where the ST bus was standing after the accident and says that the motorcycle was entangled between the front wheels of the ST bus. Admittedly, the ST bus had dragged the motorcycle and at the time of panchanama it was at some distance away from the actual spot of collision. From the panchanama no inference can be drawn as to the exact place of collision, whether it was on the left or right side of the road. In my view, when an eye witness has been examined, whose evidence I find to be trustworthy and there is no other reason to disbelieve him, it would be improper to draw any inference about the manner at which the accident occurred merely on the basis of the panchanama of two

vehicles standing at some distance away from the actual point of collision. In my view, the Tribunal erred in coming to the conclusion that rider of the motorcycle was guilty of contributory negligence in the accident. Consequently, the finding of contributory negligence is set aside. I hold that the accident was caused solely on account of negligence of the driver of the ST bus.

9. No arguments were advanced as to the income of the deceased and the multiplier applied by the Court. The finding regarding quantification of the loss is not challenged before me. As the finding of the Tribunal regarding the contributory negligence of the owner-driver of the motorcycle is set aside, the appellants would be entitled to the whole of the loss as computed by the Tribunal without any deduction as a compensation from the respondent Nos. 1 and 2.

10. For these reasons, the appeal is allowed. The impugned order to the extent it deducts 50% of the amount of compensation is set aside. The respondent No. 2 - State Transport Corporation is directed to pay to the appellants Rs. 2,03,000/- together with interest at the rate of 12% per annum from the date of the claim application made before the Tribunal till payment. Credit shall be given to the respondent No. 2 for the amount, if any, already paid and the interest shall be computed on reducing balance basis.