

(2017) 07 BOM CK 0046
In the Bombay High Court
Case No : 622 of 2012

The Controller, Maharashtra State Road Transport Corporation	APPELLANT
Vs	
Smt. Sunita wd/o Mangesh Suryawanshi, & Ors.	RESPONDENT

Date of Decision : 07-07-2017

Acts Referred:

Indian Penal Code, 1860, Section 279,
Section 304A - Rash driving or riding on a public way -
Causing death by negligence

Citation : (2017) 07 BOM CK 0046

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : B.V. Reddy, V.H. Kedar, Saboo

Final Decision : Dismissed

Judgement

1. This appeal takes an exception to the judgment and award dated 17/01/2012 passed by Chairman, Motor Accident Claims Tribunal, Nagpur in M.A.C.P. No. 65/2006, thereby awarding the compensation of Rs.17,36,960/to the respondentsclaimants, with interest at the rate of 6% per annum from the date of petition till realization.

2. Brief facts of the appeal can be stated as follows: On 22/11/2005, in the afternoon, deceased Mangesh was proceeding on his Hero Honda Passion motorcycle bearing no. MH-31-BV-1206 towards Mokshadham Square at Nagpur. When the deceased was moving along Ghat Road, near Mokshadham S.T. Quarters, MSRTC Bus bearing No. MH-40-9634 which was moving in the same direction, dashed at the backside of the motorcycle. As a result of which, deceased fell down and sustained injuries. He was rushed to the Government Medical College & Hospital, Nagpur, where he succumbed to the injuries on the very day.

3. The police had registered the case against the Bus driver for negligence and accident. The respondent nos.1 to 3 herein, who are the widow and the children

of the deceased, therefore, filed claim petition before the Tribunal claiming compensation of Rs.10,00,000/, which was subsequently enhanced to Rs.35,00,000/.

4. This petition came to be resisted by the appellant vide written statement at Exh.14 contending inter alia that the sole cause of accident was the rash and negligent driving of the deceased himself. It was submitted that deceased was coming from opposite direction on his motorcycle in a very high speed. He then came to extreme right side of the road and gave dash to the right side of the Bus. Therefore, as the cause of accident was entirely the rash and negligent driving of the deceased, Bus driver cannot be held liable for the same in any way. Hence, liability of paying the compensation cannot be fastened on appellant.

5. On these respective pleadings of the parties, the Tribunal framed necessary issues at Exh.27. In support of their claim, respondent no.1 examined herself and produced on record the copy of FIR (Exh.41), spot panchnama (Exh.42) and the income tax returns of the deceased at Exh.46 and Exh.47.

6. As against it, on behalf of the appellant, the concerned Bus driver, by name Subhash Chipade entered into witness box to prove that the cause of accident was rash and negligent driving of the deceased himself.

7. On appreciation of their evidence, the Tribunal was pleased to allow the claim petition granting compensation of Rs.17,36,960/to the respondents.

8. While challenging this judgment and order of the Tribunal, submission of learned counsel for appellant is that, respondents have not examined any eye witness to the accident. The only evidence available on record is that of Bus driver, who has categorically deposed that it was the motorcycle of the deceased, which came from behind and gave dash to his Bus. Bus driver Chipade came to know about the accident only when he heard the commotion from backside of his Bus. It is urged that the learned Tribunal has not at all considered the oral evidence of Bus driver and wrongly fastened the liability for the accident on Bus driver alone. It is urged that spot panchnama also supports the evidence of Bus driver to prove the manner in which the accident has occurred. Hence, according to learned counsel for appellant, the impugned judgment and order of the Tribunal holding appellant liable to pay the compensation amount to the respondents, needs to be quashed and set aside.

9. Per contra, learned counsel for the respondents had supported the judgment of the Tribunal for the reasons stated therein.

10. In view of these rival submissions advanced before me, the first point which arise for my determination is, whether the cause of the accident was rash and negligent driving of the Bus driver or that of the deceased?

11. In this case, admittedly, respondent no.1, who has examined herself in support of her claim, was not an eye witness to the accident. Hence, her evidence is not of any relevance to decide this point. She has simplicitor relied

upon the FIR (Exh.41) and spot panchnama (Exh.42). Both these documents go to show that after carrying out necessary enquiry, the police have found that it was the Bus driver, who was responsible for the accident, and accordingly, as admitted by the Bus driver Chipade himself, the criminal case was registered against him, which was pending at the time of trial before the Tribunal. The criminal case registered against him was for the offence under Sections 279 and 304A IPC.

12. The spot panchnama, the copy of which is produced on record at Exh.42 also goes to show that the motorcycle was lying adjacent to the Bus and hence, the case put up by Bus driver that the dash was from behind the Bus, cannot be accepted. The spot panchnama also shows that the head lights and side guard of the left side of motorcycle were damaged, thereby proving that the dash was from the side and not from behind. If the dash to the motorcycle was from behind the Bus, then the portion of the motorcycle which could have been damaged was front portion and not the left side portion. The spot panchnama also nowhere shows that the rear portion of the Bus was damaged, but it shows that the right side portion of the Bus was damaged. Hence, the case put up by the Bus driver Shri Chipade in his evidence that the dash was given by the deceased himself from behind the Bus, cannot be accepted.

13. Moreover, the case put up by the Bus driver Shri Chipade in his oral evidence that the dash was from behind the Bus, is not appearing in the written statement. As per the case put up in written statement, the deceased was coming on his motorcycle from opposite direction in a very high speed, then he came to extreme right side of the Bus and gave dash to Bus, as a result of which accident has occurred. Whereas, in the evidence of Bus driver Shri Chipade, he has stated that motorcycle gave dash from behind and he came know about the same only when he heard the commotion. Therefore, having regard to this entire evidence on record, no fault can be found in the finding recorded by the Tribunal that the cause of the accident was the rash and negligent driving of the Bus driver, and therefore, appellant becomes liable to compensate the respondentsclaimants.

14. As regards the quantum of compensation, respondent no.1 has produced on record the income tax returns of the deceased which are at Exh.46 and 47. According to her evidence, the deceased was running hardware shop in the name of "Suryawanshi Traders" at Manewada Road, Nagpur and also having dealership of Ultratech Cement and Lafarage Cement. He was earning Rs.47,000/per month at the time of accident. The balancesheet of his business was also produced on record along with the income tax returns for the assessment year 2004-05, which prove that his annual income was Rs.1,82,166/. After deduction of the tax amount of Rs.21,201/, the Tribunal has rightly considered the annual income of the deceased as Rs.1,60,965/.

15. The evidence of respondent no.1 also that at the time of accident deceased was running the age of 39 years. She has also stated that his date of birth was

02/06/1966, and hence the Tribunal has rightly applied an appropriate multiplier of "16".

16. As at the time of accident the deceased was married, hence the Tribunal has deducted 1/3rd amount of his annual income towards his personal expenses as Rs.53,655/and considered his contribution to the family as Rs.1,07,310/. Applying the multiplier of "16" the financial dependency of the respondents comes to Rs.17,16,960/. Adding the amount of compensation towards additional heads of loss of consortium, funeral expenses etc., the Tribunal granted total amount of Rs.17,36,960/as compensation to the respondents. The said amount being just, reasonable, fair and correct, no interference is warranted in the impugned judgment and award of the Tribunal for the same.

17. Appeal, therefore, holds no merits, and hence stands dismissed with no order as to costs.