

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

BENCH AT AURANGABAD

...

922 FIRST APPEAL NO. 38 OF 1992

THE UNION OF INDIA AND ANR.

VERSUS

TARABAI MAROTI LOKHANDE AND ORS.

...

Advocate for Appellants : Mr. R P Phatke, Mr. R G Deo Mr.  
Alok Sharma, Mr. Nagode D.G.

Advocate for Respondents : Mr. K. G. Gawali, Mr. L. S.  
Shaikh h/for Mr. D. R. Jaybhar, Mr. N.B. Dighe

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**CORAM : S. V. GANGAPURWALA, J.****DATE : 21st October, 2015****PER COURT :**

1. The present respondents had filed application for compensation under section 110 of the Motor Vehicles Act. The same is partly allowed. Aggrieved thereby, the present appeal.

2. Mr. Nagode, the learned counsel submits that there is no proof of involvement of the vehicle owned by the present appellant. According to the learned counsel, vague statement is made that military vehicle is involved in the incident, however, there are no details of the vehicle given. Learned counsel submits that evidence of Mr. Shinde, who claims to be an eye witness is referred but his name nowhere appears in the FIR as eye witness nor his statement is recorded by the police. There are four persons who are stated as eye witnesses

but none of them has been examined before the court. According to the learned counsel, only on the assumption and presumption the tribunal has held that the vehicle owned by the present appellant is involved in the accident. However, there is no proof of it.

3. Learned counsel submits that even quantum of compensation awarded is on the higher side.

4. Mr. Gawali learned counsel supports the order and submits that the quantum of compensation is awarded on lower side. Involvement of military vehicle is proved by deposition of the eye witnesses. Four witnesses who were named in the FIR could not be located at the time of trial of the claim petition. No error is committed by the tribunal.

5. I have considered the judgment so also record and proceedings.

6. The basic challenge by the present appellant is with regard to the involvement of the vehicle. It has come in the evidence that 10 to 12 military vans were proceeding to the railway station. It is considered by the tribunal that military vans have distinct identity. Mr. Shinde, who is eye witness is examined before the court. Only because he is not named in the FIR as eye

witness, that would not be sufficient to negate his evidence. Evidence of Mr. Shinde is not shattered in the cross examination. The police authority, on investigation, has also come to the conclusion about the involvement of the military van in the accident. The totality of the evidence has been considered by the tribunal while arriving at the conclusion that the military vehicle was involved in the accident and was responsible for the accident.

7. As far as quantum is concerned, a paltry sum of Rs.82,000/- is awarded for the death of person aged 35 years, who was in service and whose monthly salary was Rs.577.40 at the time of death and towards love and affection, only Rs.10,000/- is awarded.

8. Considering the above, the appeal is dismissed. No costs.

9. Whatever amount is deposited by the appellant, the claimants are entitled to withdraw the same. Defendants 1 and 2 are dead. Legal heirs of respondents 1 and 2 are already on record. As such, no need to separately bring them on record.

( S. V. GANGAPURWALA, J. )