

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.69 OF 2001

- 1] The State of Maharashtra
through the Commandant
SRPF Group 12, Hingoli
Camp, Jalna
- 2] Bhimrao Buwaji Bharade
age Major, occ.Driver,
r/o. Jalna ..Appellants

Versus

- 1] Sindhubai w/o. Radhakishan
Jaiwal, age 20 years,
Occ.Household, at present
residing with her father -
Vithalrao Bhimrao Gadhekar,
Nutan Wasahat, Near Bus
Stand, Ambad, Tq. Ambad
Dist.Jalna
- 2] Vaibhav Radhakishan Jaiwal,
age 2 years, Minor u/g.
Claimant no.1, r/o. as above ..Respondents

--

Mr.S.G.Sangle, AGP for appellants - State

Mr.S.V.Kuptekar, advocate h/f. Mr.V.D.Salunke,
advocate for the respondents

--

WITH
CIVIL APPLICATION NO.1804 OF 2003
IN
FIRST APPEAL NO.69 OF 2001

Sindhubai w/o. Radhakishan
Jaiwal, age 20 years,
Occ.Household, at present
residing with her father -
Vithalrao Bhimrao Gadhekar,
Nutan Wasahat, Near Bus
Stand, Ambad, Tq. Ambad
Dist.Jalna and anr.

..Applicants

versus

The State of Maharashtra
through the Commandant
SRPF Group 12, Hingoli
Camp, Jalna

..Respondents

--

Mr.S.V.Kuptekar, advocate h/f. Mr.V.D.Salunke,
advocate for applicants

Mr.S.G.Sangle, AGP for applicants - State

--

CORAM : M.T. JOSHI, J.
DATE : FEBRUARY 03, 2015

ORAL JUDGMENT :

Heard both sides.

2] Being aggrieved by the direction to pay the compensation in Motor Accident Claim Petition, present appeal is preferred by the original respondents.

3] The case of the present respondents – original claimants was that deceased – Radhakisan was traveling by a motorcycle bearing registration No.MH-12-P-8729 on 23rd July, 1997 along with his sister. On that day, at about 4:30 p.m., near Manjrewadi Phata at Jalna-Mantha road, forceful dash was given by a police van bearing registration no.MH-12-P-8729 to the motorcycle of the deceased. It was claimed that the accident has occurred solely due to rash and negligent driving by the driver of the police van. Due to the dash, the deceased died on the spot. Hence, the compensation of Rs.6 Lakhs was claimed by the respondents/original claimants against present appellants/original respondents.

4] Present appellant no.2 – driver of the van remained absent before the Tribunal. Respondent no.1 – widow of the deceased was examined on behalf of the original petitioners. The certified copy of the F.I.R., panchnama of spot of occurrence, inquest panchnama, post mortem report were pressed into service by the claimants as regards the accident. As the deceased was working as a Teacher in Zilla Parishad, the salary certificate was produced at Exhibit 20. Considering the age of the deceased, learned Member came to the conclusion that the loss of dependency would come to Rs.5,76,000/- and with addition of amount of Rs.10,000/- on account of consortium, the amount was computed at Rs.5,86,000/-. Learned Member, however, held that since the investigation papers would show that the motorcycle had given dash to the van, the deceased was also equally responsible in causing the accident. In the circumstances, half deduction

was made and present appellant no.1 was directed to pay the compensation at the rate of Rs.2,93,000/- with interest at the rate of Rs.12% per annum.

5] Mr.Sangle, learned A.G.P. for the appellants submits that the investigation papers would clearly show that while the van was proceeding on the road, the motorcycle itself had dashed the van and thus, the case of the claimants that the van came from the opposite side and dashed the motorcycle, was belied. Therefore, there was no question to grant the compensation. In the alternative, he submits that as the present appellant no.2 failed to appear in the proceedings, the case may be remanded back to the trial Court.

6] On the other hand, learned counsel for the respondents submits that the evidence on record

clearly show that the accident has occurred solely due to the rash and negligent driving by the driver of the van, however, learned Member came to the conclusion that the deceased was 50% liable in causing the accident. He further submits that as the first appeal is 14 years old, the question of remanding the appeal to the trial Court now does not arise.

7] On the basis of this material, following points arise for my determination :-

(I) Whether the accident has occurred due to the rash and negligent driving of the motorcycle by the deceased ?

(II) Whether the case needs to be remanded back to the trial court ?

8] My finding to the above points is in negative and the appeal is dismissed for the reasons to follow.

R E A S O N S

9] The statement of respondent no.1 recorded before the trial Court as well as the case papers would show that both the motorcycle as well as the van were involved in the accident. The F.I.R. would show that after the information was received as regards the accident, no further investigation was carried. The panchnama of the spot would show that the motorcycle had given dash to the van on its rear side. In that view of the matter, though the appellant no.2 - driver of the van did not appear in the proceeding, learned Member on its own, on the basis of the material on record, came to the conclusion that the deceased has contributed in causing the accident. Therefore, 50% of the compensation amount was deducted. It

should be noted that the accident has occurred on 23rd June, 1997 and the claim petition was decided by the learned Member on 23rd September, 1999. Present first appeal was filed on 2001. In the circumstances, I do not find it fit to remand the matter back to the learned Member for decision afresh.

10] In that view of the matter, I pass the following order :-

i) The appeal is dismissed without any order as to costs.

ii) In view of disposal of the appeal, Civil Application No.1804 of 2003 for withdrawal of the amount, is allowed in terms of direction of the tribunal regarding investment.

[M.T. JOSHI, J.]

kbp