

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

**FIRST APPEAL NO. 583 OF 2015
WITH
CIVIL APPLICATION NO. 2837 OF 2015**

Kundlik s/o Kisan Daule,
Age: 71 years, Occ: Agri.,
R/o. Jogeshwari Akhada, Tq. Rahuri,
Dist. Ahmednagar.

...Appellant

versus

1. Sangita w/o Bhausahab Waghmare,
Age: 33 years, Occ.: Tailor,
R/o. Kharadgaon, Tq. Shevgaon,
Dist. Ahmednagar.

2. The Oriental Insurance Co. Ltd.,
Near Ambar Plaza, Station Road,
Behind S.T. Stand, Ahmednagar.

3. The Collector, Ahmednagar.

4. Block Development Officer,
Panchayat Samiti, Shevgaon,
Tq. Shevgaon, Dist. Ahmednagar.

...Respondents

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Mr. Hemant Dhage, Advocate for appellant.

Mr. D.R. Jaybhar, Advocate for respondent No. 1.

Mr. P.P. More, A.G.P. for respondent Nos. 3 and 4.

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CORAM : N.W. SAMBRE, J.

DATE : 14th JULY, 2015

ORDER :

This appeal is by respondent No.1 to Motor Accident
Claim Petition No. 355 of 2003 decided by the Motor Accident Claims

Tribunal, Ahmednagar on 26/12/2014.

2. The claim petitioner is preferred by one Sangita Bhausaheb Waghmare, who claimed to have met with an accident on 01/06/2003 and sustained injuries resulting into amputation of her right leg above knee. The claim petition, as such, brought into action under Section 166 of the Motor Vehicles Act against the owner of the vehicle as well as Insurance Company. It is claimed that on 01/06/2003 the claimant had been to public water tank near Shani temple at village Kharadgaon to fetch drinking water at about 5-20 p.m. While doing so, driver of the tanker bearing Registration No.MH-19/3228 owned by the present appellant-respondent No.1 to the claim petition took the vehicle in reverse in negligent manner and gave dash to the claimant resulted her right leg came under the back wheel of the tanker and therefore, crushed it up to knee. The claimant thereafter was shifted to hospital at Shevgaon and then to Ahmednagar. She was admitted in the hospital from 01/06/2003 to 27/06/2003 where it was diagnosed that she was suffered from compound fracture U/E Tibia Fibula with vascular injury to her right leg. As such, having regard to the nature of injury, amputated her right leg above knee. The claimant-applicant claims that she was doing business of tailoring and was earning around Rs. 3000/- per month and she suffered 100% permanent disability due to loss of her

right leg. She sought compensation of Rs.5,00,000/- and Rs.45,000/- towards medical treatment.

3. Pursuant to the accident in question, police registered Crime No. 80/2003 against the driver of the offending water tanker for offence punishable under Sections 279 and 338 of the Indian Penal Code.

4. The claim was contested by respondent Nos. 1, 2 and 4 vehicle owner, Collector and Block Development Officer. There was no dispute about occurrence of the incident. What was disputed by respondent No.1 was the liability to pay compensation, as according to him, State Government has requisitioned the vehicle bearing No. MH-19/3228 for carrying the water at the villages where scarcity was faced. According to him, pursuant to the Government order dated 07/04/2003 the vehicle involved in the accident was in possession of the State Government and therefore, respondent Nos. 3 and 4 being representatives of the State are liable to pay compensation to the injured.

5. Original respondent Nos. 3 and 4 have denied their liability to pay compensation, as according to them, tanker in question was never requisitioned under the provisions of

Maharashtra Requisitioning (and Control) of Motor Vehicles Act, 1966. According to the said respondents, as per policy of Government, services of tankers were made available to agency who was awarded work after inviting tenders. The transport society successful bidder has hired tanker of present appellant in the said contract process. The vehicle was taken on hire and as per terms and conditions of the tender and according to them, liability to pay compensation does not vest in them.

6. The tribunal framed issues at Exhibit-37 and observed that the claimant suffered permanent disability, as a result of accident which took place because of tanker bearing No. MH-19/3228 which was driven in rash and negligent manner. The tribunal also negated the claim of present appellant that at the time of accident, vehicle in question was in exclusive possession and control of respondent Nos. 3 and 4.

7. The tribunal, after analyzing the evidence in the light of pleadings, has proceeded to award compensation of Rs.6,01,600/- along with interest @ 7.5% p.a. to the claimant.

8. Learned Counsel for the appellant, while questioning the legality and validity of the award, has urged that the vehicle in

question was since at the disposal of respondent Nos. 3 and 4, it has to be read down as per provisions of Maharashtra Requisitioning (and Control) of Motor Vehicles Act, 1966 (hereinafter shall be referred to 'the Act' for the sake of brevity), as the one requisitioned by the State authorities. According to him, even though tender process was undertaken by the said respondents for hiring vehicle for supply of water during scarcity period, the vehicle in question was hired for sovereign act and as such, it has to be inferred that vehicle was for carrying out sovereign duty pursuant to the order of respondent Nos. 3 and 4. He would further urge that supply of water was executed subsequent to the order of said respondents and as such, there is deem requisitioning of vehicle under the Act. In support of his contentions, he has relied upon the judgments of the Apex Court in the matter of ***Purnya Kala Devi vs. State of Assam and another*** reported in **2014(4) Scale 586** and in ***National Insurance Company Limited vs. Deepa Devi and others*** reported in **2007 AIR SCW 7882** so as to canvass that if vehicle is requisitioned, it is responsibility of the State Government to pay compensation.

9. If the above referred contentions of the appellant are analyzed in the light of submission made by him pursuant to the judgments relied upon by him, it is required to be noted that vehicle in question was taken on hire by Rahuri Taluka Motor Wahtuk

Sanstha as is pointed out before this Court by appellant for period from 31/03/2004 from the date of approval of tender. The work order at Exhibit-93 dated 21/08/2003 was brought to my notice. Apart from above, along with the application, said work order for supply of tanker dated 08/05/2003, so also dated 17/06/2003 is placed on record.

9. In view of above, what could be inferred from present case is that the vehicle in question was taken on hire by the society, who is neither a party to the claim petition, nor added at the behest of the appellant owner or at the behest of claimant. It is further required to be noted that even if, in the terms of work order allotted to the said contractor, it is mentioned that the contractor will be responsible for the payment of compensation in case of any accident, the said fact was not duly established by present appellant by raising proper defence to that effect. As such, this Court is not inclined to go into said aspect of the matter.

10. Apart from above, the appellant hereto as is claimed in the appeal as regards requisitioning of his vehicle, has not produced any order of requisitioning nor any oral evidence pursuant thereto is adduced. As such, the case of appellant that his vehicle was requisitioned by respondent Nos. 3 and 4 and respondent Nos. 3 and 4 are liable to pay compensation is liable to be rejected.

11. Apart from, learned Counsel for the appellant has relied upon the judgment of this Court in the case of ***Prakash Mohanlal Duggad vs. Zilla Parishad, Ahmednagar and others*** reported in ***2012(5) Mh.L.J. 877*** so as to canvass that since his vehicle was at the disposal of Zilla Parishad, it is the Zilla Parishad who is liable to pay compensation.

12. Perusal of the facts of the said case reflects that truck (dumper) that was used for transportation in the said case was owned by State and was given in the custody of Zilla Parishad for execution of the work. The judgment as is delivered by this Court in the facts of the said case contemplates complete responsibility and liability of Zilla Parishad for making compensation.

13. In my opinion, the grounds as are sought to be raised by present appellant hardly have any substance so as to cause interference. As such, present appeal fails, stands dismissed.

14. At this stage, learned Counsel for the appellant has made motion that he be permitted to proceed against the contractor, who has hired vehicle for executing supply of water as per orders of respondent Nos. 3 and 4.

15. He is at liberty to initiate such proceedings against the said contractor in terms of Government order dated 17/06/2003 issued by the Collector, Ahmednagar who has hired his vehicle strictly in accordance with law. The appeal stands dismissed with above observations. Consequently, civil application stands disposed of.

[N.W. SAMBRE, J.]