

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.716 OF 2014

Shilpa d/o. Shankar Salve
and anr.

..Appellants

Versus

Mangesh s/o. Kisan More
and ors.

..Respondents

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Mr.S.B.Rajebhosale, advocate for appellant

Mr.R.V.Gore, advocate for respondent nos.1 and 2

Mr.S.G.Chapalgonkar, advocate for respondent no.3

Mr.H.H.Padalkar, advocate for respondent nos.4 to
8

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CORAM : M.T. JOSHI, J.

DATE : JANUARY 14, 2015

PER COURT :

Heard both sides.

2] Admit. By consent of the parties, heard
finally.

3] Learned counsel for the appellants points out that while the F.I.R. at Exhibit 49, which was immediately filed after the accident, would show that the driver of the passenger car i.e. TOYOTA QUALIS namely, Mangesh More, was relative of the deceased, which has been deposed by the witnesses in the evidence, learned Member of the Motor Accident Claims Tribunal did not discuss the same to find out whether, the said passenger car was being used in gratis. Therefore, without considering this material, learned Member came to the conclusion that the passenger car (Jeep, as described by learned Member) was being used on hire against the terms of the policy of insurance and in the circumstances, present respondent no.3, the insurer of the said car, was exonerated from payment of the compensation.

4] On the other hand, Mr.Chapalgaonkar, learned counsel for respondent no.3, submits that the

learned Member has not considered the issue of dependency of appellant no.2 – Shankar (since deceased) and appellant no.1 (unmarried daughter of the deceased female). He, therefore, submits that the compensation arrived at by learned Member also requires reconsideration.

5] Taking into consideration all the facts on record, in my view, present appeal needs to be partly allowed and the matter needs to be remanded back to learned member allowing both the sides to argue the matter before learned Member on all the aspects and to decide the petition afresh.

6] Hence, the following order :-

a] The First Appeal is hereby partly allowed without any order as to costs.

b] The award passed by the learned Member, Motor Accident Claims Tribunal, Aurangabad, is hereby quashed and set aside. The matter is remitted back to the learned Member for a decision afresh.

C] Learned Member shall allow the parties to make submissions regarding the material already placed on record and shall deliver the judgment afresh within a period of three months from the date of appearance of the parties.

D] The parties are directed to appear before the learned Member on 24th February, 2015. Learned Member need not issue notice afresh to the parties.

E] Record and Proceedings be remitted back to the concerned Court.

[M.T. JOSHI, J.]

kbp