

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

904 FIRST APPEAL NO. 889 OF 2014

ANITA SANJAY CHAUDHARI AND ANOTHER

VERSUS

GULAB RATAN JADHAV

...

Advocate for Appellants : Kutti Prassana N.

Advocate for Respondents : Mr. Bharaswadkar M. B.

...

CORAM : S. V. GANGAPURWALA, J.

DATE : 27th October, 2015

PER COURT :

1. The application for compensation filed by the appellant under section 166 of the Motor Vehicles Act is rejected. Aggrieved thereby, the present appeal.

2. Mr. Kutti, the learned counsel for the appellant submits that the court below, while rejecting the application for compensation, has failed to appreciate the evidence led by the appellant and his witnesses in its correct perspective and has arrived at erroneous conclusion. According to the learned counsel, the driver of the tractor was driving vehicle in rash and negligence manner. The court erroneously arrived at conclusion that the deceased was sitting on the mudguard of the tractor; no person is supposed to sit on the mudguard of the tractor and if he falls down, it was his own fault.

According to learned counsel, the owner of the vehicle cannot absolve his liability when the person dies in an accident which has occurred on the said vehicle. The said aspect is not considered.

3. Mr. Bharaswadkar, the learned counsel for the respondent submits that the tractor was being driven slowly. The driver was not responsible for the accident. There were ditches on the road. The learned counsel submits that the respondent No.1 could not adduce evidence. He be allowed to adduce evidence.

4. I have considered the submissions.

5. It appears that no instructions purshis was filed by the advocate of respondent no.1 and subsequent thereto, the court has not issued any notice to respondent no.1. Be that as it may, respondent no.1 has shown his *bona fide* by depositing an amount of Rs.1,50,000/- before this Court.

6. Considering the aforesaid aspect, I am inclined to grant one more opportunity to respondent No.1. As the matter is being remanded back to the the claimants will also be given an opportunity to adduce further evidence, if they chose to.

7. In the light of above, I pass following order:
- i. The impugned judgment and award is quashed and set aside.
 - ii. The matter is remitted to the tribunal. The party shall appear before the tribunal on 20th November, 2015.
 - iii. The tribunal shall give opportunity to the parties to adduce evidence and thereafter shall decide the claim application expeditiously, preferably within nine months.
 - iv. Amount of Rs.1,50,000/- deposited by respondent no.1 in this court be transmitted to the tribunal and shall be disbursed in accordance with the final judgment passed by the tribunal.

(S. V. GANGAPURWALA, J.)

JPC