

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

FIRST APPEAL NO.22/2004

- 1] The Divisional Controller
Maharashtra State Road
Transport Corporation
Division Ahmednagar
District Ahmednagar.
- 2] Abdul Gani Sayyed Yasin
Age 32 years, Occ-S.T.Driver
Resident of C/o M.S.R.T.C.
Ahmednagar Division, Ahmednagar
(formal party)

.. APPELLANTS
[ORI.OPPONENTS]

VERSUS

Shaikh Nurmohmed Janmohmed-
Deceased through his L.Rs.

- 1] Janmohmed Daud Shaikh
as deceased
- 2] Gulshan Janmohmed, Deceased
L.Rs. Nos.1 and 2 :-
- 3] Fatimabi Marda Noormohmed,
age 48
- 4] Nurjahan Babloo Shaikh,
age 28
- 5] Shabina Sadiq Shaikh
age 20
- 6] Rubina Nurmohmed Shaikh
age 23
- 7] Asha Nurmohmed Shaikh
age 14
- 8] Raisa Nurmohmed Shaikh
age 11
- 9] Shahrenaz Nurmohmad Shaikh

age 16

10] Abukar Nurmohmed,
age 16

11] Umar Nurmohmed Shaikh
age 14

12] Wasim Nurmohmed
age 23

Nos.7 to 11 minors, through
respondent No.3.

All r/o Naikwadapura, Tal.Sangamner
Dist.Ahmednagar.

.. RESPONDENTS
[Orig.Claimants]

...
Shri M.K.Goyanka, Advocate for appellants

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CORAM : S.V.GANGAPURWALA,J.

DATED : 29TH OCTOBER, 2015

ORAL JUDGMENT :

The respondent had filed application for damages on account of the damage caused to the property in an accident. The said claim petition is partly allowed. Aggrieved thereby, the present appeal. It is submitted that the damage to the property was quantified by the tribunal at Rs.21764/- The tribunal awarded an amount of Rs.22000/- on the ground that the vehicle was lying idle. According to the learned counsel for the appellant, said damage does not come within the ambit and purview of Sections 165 and 166 of the Motor Vehicles Act. The learned counsel submits that there is also no proof or evidence on record to substantiate that the vehicle was lying idle from 27/9/1990 to 9/11/1990.

2] Though respondents are served, none appears for the respondents.

3] I have considered the judgment. Section 166 of the Motor Vehicles Act more particularly sub section 1 provides the maintainability of application for compensation arising out of an accident in the nature specified in sub section 1 of Section 165 for the injury sustained by person or by owner of the property. In case of death resulting from the accident by legal heirs the owner of the vehicle is entitled to maintain the application for the damage to the vehicle. Section 165 of the Motor Vehicles Act clarifies the said position. The damage to the vehicle has been quantified and the compensation to that effect has been awarded. The Court has not given any cogent reasons while quantifying the damages on account of the vehicle lying idle. Only the contention of the applicant has been believed without any proof for it. The other concepts such as theory of mitigating damages has also not been applied. It has also not been shown that how the damages on account of the truck lying idle could be awarded by virtue of Section 165 of the Motor Vehicles Act. Considering aforesaid aspect of the matter, appeal is partly allowed. Judgment to the extent of Rs.22,000/- is quashed and set aside and the order is modified to the extent that claimants are entitled to Rs.21,764/- with interest at the rate of 12% p.a. from the date of filing of claim petition till deposit of the amount. It is submitted that the amount is deposited as per the award. The appellant is entitled to withdraw the amount of Rs.22,000/- with interest. First Appeal accordingly partly allowed. No costs.

[S.V.GANGAPURWALA,J.]

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