

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

FIRST APPEAL NO. 1291 OF 2015

JANABAI ASHRUBA KARGUDE & ORS. ... APPLICANTS

VERSUS

BABAN NAMDEV NAGARGOJE ... RESPONDENT

.....
Mr M. R. Deshmukh, Advocate for the applicants
Mr S. V. Kulkarni, Advocate for respondent No. 3
Mr A. N. Nagargoje, Advocate for respondent No. 1
.....

CORAM : **S. V. GANGAPURWALA, J.**
DATE : **16TH SEPTEMBER, 2015.**

PER COURT:

. The petition was filed for compensation on account of the death of Ashruba, in an accident. The said claim petition is dismissed. Aggrieved thereby, the present appeal.

2. Mr M. R. Deshmukh, learned Counsel for the appellants submits that, the inquest panchanama clearly shows that the complaint was lodged on the very same day of the accident however, the FIR is registered three days thereafter. According to Id. Counsel, the involvement of the vehicle is *writ large*. The number of offending vehicle is given in the FIR also. The Id. Counsel submits that, the Tribunal came to the conclusion that, the driver of the offending vehicle was not negligent. It was held that, the claimants have failed

to prove the same. According to Id. Counsel, the FIR states that the truck dashed the motorcycle driven by the deceased from the back side. As such, it will have to be held that the driver of the truck was negligent. Even the driver of the truck did not examine himself.

3. Mr Kulkarni, Id. Counsel for the Insurance Company supports the judgment and submits that, the involvement of the vehicle was not proved so also the factum of negligence of the driver of the truck is not proved. He submits that, the Tribunal has rightly rejected the claim petition.

4. I have considered the judgment. The Tribunal has observed that, the claimants failed to examine the eye-witnesses i.e. the pillion rider so also one Mr. Narayan Rakh or Mr. Narhar Desale.

5. Mr Deshmukh, learned Counsel submits that the claimants would lead evidence and opportunity be given to lead the evidence of the eye-witnesses.

6. Considering that this is an application for compensation on account of death of bread-winner in the family and considering the beneficial legislation so also the further fact that even the truck driver did not examine himself, I am inclined to grant one more opportunity to the claimants to lead evidence. In light of the above, the impugned order is quashed and set aside.

7. The parties are relegated before the Tribunal. The parties shall appear before the Tribunal on 12th October, 2015. It will not be

necessary to issue notice to the Insurance Company and respondents No. 1 and 2 viz. Baban and Bharat, as they are represented by learned Counsel in the present proceedings. The parties may adduce further evidence. Thereafter, the Tribunal shall decide the claim petition on its own merits, expeditiously, preferably within a period of nine months from the date of appearance. Record and Proceedings be sent back forthwith.

8. First Appeal stands disposed of accordingly. No costs.

[S. V. GANGAPURWALA, J.]

sgp