

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

**FIRST APPEAL(ST) NO.25895 OF 2014**

The Deputy Engineer,  
Mechanical Sub Department,  
Ghulewadi, Tal. Sangamner,  
and another.

...Appellants

versus

Smt. Sindhubai Raosaheb Bhujabal  
R/o. Rahata, Tal. Rahata,  
Dist.Ahmednagar & ors.

...Respondents

.....  
Mr. P.P. More, A.G.P. for appellants  
Mr. A.S. Gandhi, Advocate for respondent Nos.1 to 4.  
.....

**CORAM : N.W. SAMBRE, J.**

**DATE : 22nd JUNE, 2015**

**ORAL ORDER :**

With the consent of the parties, the appeal is taken up for final disposal at admission stage.

2. Learned A.G.P., while questioning the legality and validity of the award delivered by learned M.A.C.T. Kopargaon, would urge that driver of the dumper which was involved in the accident was examined and in his evidence brought on record that the claimants' husband/father was negligent in driving the jeep which met with an

accident. In addition to above, he was negligent in driving the jeep and established from the fact that jeep dashed dumper in question from back side. He would canvass that the criminal case was filed against the dumper owner, however in the same prosecution, he was already acquitted and his negligence in driving dumper was not proved.

3. According to him, the tribunal committed error in granting compensation.

4. Mr. Gandhi, learned Counsel for the respondents-claimants would urge that the claim petition is rightly granted by the tribunal. He would further urge that claimants were travelling in vehicle with their father, who was driving jeep and it is really hard to believe that father will drive vehicle negligently when his family members were travelling in the vehicle. According to him, dumper driver has suddenly brought dumper on the high way from canal service road, which has resulted in jeep in question was dashed against the dumper and sudden arrival of dumper on the road was the cause of above referred accident. According to him, negligence of dumper driver is very much proved.

5. Having regard to the rival contentions of the parties, it is

noticed that before the tribunal, documentary evidence which was brought on record is in the form of UPC at Exhibit-34, letter of Deputy Engineer at Exhibit-35, copy of notice issued to Executive Engineer at Exhibit-36, copy of letter issued to Deputy Engineer at Exhibit-37, death certificate at Exhibit-38, certified copy of complaint at Exhibit-39, spot panchnama at Exhibit-40, P.M. report at Exhibit-42, inquest panchnama at Exhibit-41, ration card at Exhibit-43, RC book filed at Exhibit-44, 7/12 extracts (3 in numbers) at Exhibit-45 collectively, R.T.O. certificate of jeep in question at Exhibit-46, receipt showing sale of cows (3 in numbers) at Exhibit-47. The appellants have relied on oral evidence of appellant at Exhibit-31 and copy of judgment passed in STC No. 58 of 2013.

6. Based on the above referred evidence, the tribunal has proceeded to frame following points for its consideration and same are answered accordingly.

- |                                                                                                                                         |                          |
|-----------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| (1) Do petitioners prove that accident took place due to rash and negligently due to rash and negligent driving of Tipper No. MTD 2318? | Yes                      |
| (2) Do petitioners prove that Raosaheb Ekanath died in the said accident?                                                               | Yes                      |
| (3) Are petitioners entitled for compensation? If yes, from whom and in what proportion?                                                | Yes. As per final order. |

(4) What order and award?

As per final order.

7. The tribunal from the evidence noticed that it has been in categorical terms brought on record by the claimants that tipper driver without any signal has brought the vehicle on the high way in negligent manner, which has resulted into accident in question. It is also noticed by the tribunal that though the vehicle in question i.e. jeep has dashed tipper from back side, however, upon analyzing the conduct of the tipper driver and particularly in the documentary evidence brought on record and in the evidence of claimant No.1 that the tipper driver has brought his vehicle on main high way suddenly without any signal though he was duty bound to first observe traffic rules by giving proper signal and then to bring his vehicle on the high way. Apart from above, the tribunal has taken into account the oral and documentary evidence brought on record in support of claim and as such, has ordered payment of Rs.5,65,000/- towards the compensation.

Admittedly, for the accident in question, the tipper driver was prosecuted for the charge of negligent driving.

8. In my opinion, grounds as are sought to be canvassed by learned Counsel for the appellant hardly has any support from the evidence of this case and such does not need any consideration,

particularly having regard to the above referred observations. As such, present appeal fails, stands dismissed.

9. In view of dismissal of appeal, the amount deposited in this Court is permitted to be withdrawn by the applicants. Civil Application No.3962 of 2015 for withdrawal of amount stands disposed of.

**[ N.W. SAMBRE, J. ]**