

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

19 FIRST APPEAL NO. 372 OF 2014

**NAZIR USMAN SHAIKH AND ANOTHER
VERSUS**

BEBI @ HURJAHAN AJMAT SHAIKH AND OTHER

...

Advocates for Appellants : Mr. Talekar S.B. and Mr.
Ajinkya Kale

Advocate for Respondents 1 to 5: Mr.H I Pathan

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CORAM : S. V. GANGAPURWALA, J.

DATE : 5th October, 2015

PER COURT :

1. Mr. Talekar, the learned counsel for the appellant submits that the tribunal, while allowing the application filed by the present respondents seeking compensation on account of death of one Ajmat Shaikh in accident, has failed to appreciate evidence in its proper perspective. The aspect of negligence is wrongly attributed to the driver of the truck owned by the appellant.

According to the learned counsel, the claim petition is filed four years after the accident. Involvement of the vehicle is not proved. It cannot be said that the driver of the truck was responsible for

accident. According to the learned counsel, no eye witness has been examined by the claimant to prove the said fact. The Court below, on hypothetical consideration, has decided the said claim petition. The learned counsel submits that the age has also been wrongly considered as 38 years. Even the claimant No.1 in the evidence has admitted the age of the deceased as 40 years. The learned counsel has also taken me through the evidence.

2. Mr. Pathan, the learned counsel for the respondents, supports the order.

3. I have considered the judgment so also record and proceedings.

4. Driver of the truck would have been the best witness, he is not examined. The tribunal has observed that it was imperative on the part of the truck driver i.e. respondent no.1 to explain what made the truck to deflect while proceeding from eastern side of divider to the western side near *kaccha* road. The deceased was going on a bicycle. The offence is registered. The charge sheet is also filed against

the driver of the truck. The involvement of the truck in the accident is borne out from the document on record so also the evidence. The respondent did not adduce any evidence on the point of involvement of the truck nor on the point of negligence of the deceased. Adverse inference needs to be drawn for non examination of the driver of the offending vehicle.

5. The Tribunal has considered the quantum in modest manner. The notional income of Rs.3000/- is considered. Deduction towards personal expenses is made as 1/3, which is also on the higher side, considering the number of claimants i.e. 5.

6. Considering the above, the first appeal is dismissed. No cost.

7. The claimants are entitled to withdraw the amount deposited by the appellant, in the proportion as awarded by the tribunal.

(S. V. GANGAPURWALA, J.)

JPC