

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.1380 OF 2015
with
CIVIL APPLICATION NO.11764 OF 2014
CIVIL APPLICATION NO.4824 OF 2015
CIVIL APPLICATION NO.7551 OF 2015
CIVIL APPLICATION NO.7552 OF 2015

The Dy. Director of Health
Services Transport, Pune.

Applicant

V E R S U S

Aarefabee Sk. Juber and Ors

Respondents

Mr.U.S.Mote, AGP for the appellant.
Mr.Kulkarni Shrikant, Advocate for the respondent Nos. to 6.
Mr.S.R.Shirsat, Advocate for the respondent No.7

CORAM : A. V. NIRGUDE, J.
DATE : 22th July, 2015

PER COURT :

1. By consent, this Appeal is taken up for final hearing.
2. **Admit.**
3. Only question that is required to be decided whether the appellant deserves an opportunity to

defend the appeal by getting the case remanded back to the Tribunal. The respondents filed claim petition in Motor Accident Claim Tribunal, Ambejogai, alleging that the deceased died due to dash caused by motor vehicle No. MH-12-W-4573. From the record of the motor vehicle, they came to know that this vehicle belonged to Deputy Director, Health Service, State of Maharashtra. They filed the petition only against the Deputy Director and driver. The driver did not file his written statement. Whereas, despite service of summons, the Deputy Director did not appear before the Court. The Tribunal proceeded ex-parte against the appellant-Deputy Director. No evidence was recorded to oppose the petition. Therefore, the claim came to be allowed.

4. Rather belatedly this appeal is filed. The delay is condoned. In absence of any defence, there is no possibility of deciding the appeal on merits. Learned counsel for the appellant indicated the nature of defence that was required to be raised at the trial stage. He pointed out that the Deputy Director owned this vehicle earlier, but was sold in auction prior to accident. He indicated further that probably the purchaser of the vehicle was responsible for the use of the vehicle at the time of accident. In other words, it is sought to be suggested that the appellant-Deputy Director was not owner of the vehicle on the date of the accident. Such defence was required

to be brought on record at relevant time. It appears that the concerned Officer was negligent. Despite this, I am of the view that the claim petition should be decided on merits by giving opportunity to all concerned to defend the case. However, since the appellant Deputy Director is found to be negligent in handling the case, I am giving them an opportunity to go back in the Lower Court on their paying costs of Rs. 50,000/-(Rupees Fifty Thousand Only) to the claimants. The appeal is allowed in terms of following order.

O R D E R

i) From the amount deposited in the Court the office should deduct Rs.50,000/- and pay the same to the respondents/claimants, as costs.

ii) The impugned judgment and order is set aside.

iii) The case is remanded back to the Tribunal. The appellant Deputy Director shall submit his written statement on next date of appearance before the Tribunal.

iv) The learned Member of the Tribunal is requested to decide the case as early as possible.

v) Remaining amount shall stand transferred to Tribunal.

5. In view of disposal of first appeal, Civil Applications stands disposed of.

(A. V. NIRGUDE, J.)

VishalK