

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 257 OF 2014

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| 1 | Shindubai w/o Apparao Awargand, Age 44 years, Occupation Agriculture, Resident of Shirpur, Taluka Palam Parbhani | Appellants |
| 2 | Sopan s/o Apparao Awargand, Age 19 years, Occupation Education, Resident of as above | |
| 3 | Shital d/o Apparao Awargand, Age 17 years, Occupation Education, Minor, U/G of real mother Shindubai w/o Apparao Awargand, i.e. appellant no.1, resident of as above | |
| 4 | Gita d/o Apparao Awargand, Age 15 years, Occupation Education, Minor U/G of real Mother Shindubai w/o Apparao Awargand, i.e. appellant no.1, resident of as above | |
| 5 | Dnyanoba s/o Munjaji Awargand [Died] therefore deleted as per Order dated 11/10/2006 passed by the M.A.C.T. Gangakhed | |
| 6 | Sushila w/o Dnyanoba Awargand, AGE 68 years, Occupation Household, Resident of Shirpur, Taluka Palam Parbhani | |

V E R S U S

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| 1 | Rameshwar s/o Baburao Pawar, Age 39 years, Occupation owner and driver, Resident of Khali, Taluka Gangakhed, District Parbhani | Respondent |
| 2 | United India Insurance Co. Ltd., Through Branch Manager, Parbhani, Taluka and District Parbhani | |

Mr. Suryakant S. Pawar, Advocate for the appellants
Mr. S.R. Bagal, Advocate for respondent no.2

CORAM : A. V. NIRGUDE, J.

DATE : 20th JULY, 2015

ORAL JUDGMENT :

1. Heard.

2. Appeal is admitted and taken up for final hearing. Heard finally.

3. The appellants are the claimants. Their relative died in a motor accident. It was their case that a four wheeler was involved in the accident. They even mentioned the name of the owner of the four wheeler. They further mentioned that the owner of the four wheeler was prosecuted for the offence punishable under Section 304-A of the Indian penal code. They even examined the Investigating Officer of the criminal case. The learned Member of the Tribunal however on the basis of evidence that came before the Court held that the evidence was not sufficient to connect the accident to the four wheeler. Therefore, the claim failed.

4. Learned counsel for the appellants pointed out that his clients wanted to examine two more witnesses. He further pointed out that these two witnesses were not only eye witnesses but were occupants of the four wheeler at relevant time. They

even recorded their affidavits in support of his clients' case. He however admitted that his clients could not record evidence of these two witnesses. Why this fatal lapse took place is a matter of independent investigation. However, I am not inclined to go into such question. In my view, the appellants/claimants deserve an opportunity to examine two witnesses in support of their case. Upon appreciation of their evidence, the lower Court can independently come to it's own conclusion as to whether the witnesses are truthful or otherwise. Without expressing any view on the evidence which is so far recorded in the lower Court, I am inclined to allow the appeal and remand the case back to the Tribunal. Hence, the following order:-

O R D E R

- 1] The appeal is allowed.
- 2] The judgment passed by the Ex-Officio Member M.A.C.T., Gangakhed in M.A.C.P. No. 11 of 2004 [Old M.A.C.P. No.39 of 2001] stands set aside.
- 3] The case is remanded back to the Motor Accident Claim Tribunal, Gangakhed, to decide the following issues:-

- A] Whether vehicle Tempo Trax bearing registration No.MH-22-4179 was involved in the accident in question?
- B] Whether the Insurance Company is also liable for paying compensation to the petitioners ?

These two issues should be decided on the basis of existing evidence as well as new evidence which is likely to be adduced by the parties to the case.

- 4] Liberty to lead new evidence is given to all the parties.

(A.V. NIRGUDE, J.)