

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 718 OF 2012
WITH
CIVIL APPLICATION NO. 1386 OF 2009 IN FA. NO. 718 OF 2012

The New India Assurance Co. Ltd. ... Appellant/Applicant
Vs.
Jayashree Maruti Mhatre & Ors. ... Respondents

Mr. S.M. Dange, Advocate for the appellant/applicant.
Mr. T.J. Mendon, Advocate for respondent nos. 1 to 3.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE : 27th November, 2015

P.C.:

Admit. By consent, the Appeal is heard finally and decided at the stage of admission.

2. This Appeal is directed against the judgment and award dated 21st October, 2008 passed by the learned Member, Motor Accident Claims Tribunal, Raigad at Alibag by the Ad-hoc District Judge-1, Raigad. The accident has taken place on the express way. Deceased Maruti Mhatre, who was police constable along with other police constable Mahesh Kalambkar was driving official motor cycle No. MH 12 AH6152 and was patrolling on the express way. When the said motorcycle was reaching Toll Plaza, tempo bearing No. MH 04 AG 8067 coming from Bombay side dashed the motorcycle. Maruti and Mahesh both fell down and Maruti

died on the spot. The claimants, i.e. widow of Maruti and on behalf of his three minor children and his mother filed application for compensation under section 166 of the Motor Vehicles Act. Pursuant to the notice, insurance company and owner of the transport company appeared. Evidence of Jayshree Mhatre/wife of deceased was recorded. She tendered evidence. She produced documents, i.e., spot panchnama, FIR, statement of other witnesses recorded in the criminal case which was lodged against the driver of the tempo. The insurance company though appeared in the Claim and filed written statement, denied liability to pay compensation. The learned Judge, after considering the oral as well as documentary evidence of the parties, allowed the claim partly and directed the respondents to pay compensation of Rs.8.32.245.28 jointly and severally by the judgment dated 21st October, 2008. Hence, this Appeal.

3. The learned counsel for the appellant/insurance company made his submissions on the basis of spot panchnama. He submitted that the driver of the tempo was driving from Mumbai to Pune and he was properly driving. The police, i.e., deceased and his colleague who were coming from Pune side, went on a wrong side and therefore, the impact took place. He submitted that it was entirely a negligence on the part of the police, as they were driving on the wrong side. It is submitted that motorcycle

skidded for 10 ft. and thus, marks are mentioned in the spot panchnama. He further submitted that the amount of compensation awarded by the Tribunal is excess and said award is to be set side.

4. The learned counsel for the original claimants opposed this Appeal.

5. I have gone through the examination-in-chief of Jayshree Mhatre. So also, perused the panchanama dated 22nd January, 2002. The accident has taken place on Mumbai-Pune Highway. The deceased was a police constable, who was on duty and patrolling. He was driving the official vehicle given to him. It is mentioned that brake marks of 10 ft. was found on the spot, however, panchanama discloses that right side of the motorcycle was completely dashed. The statement of the witnesses, who has seen the accident, are also produced. After going through the impugned judgment, it is found that the learned Member of the Tribunal has considered the spot panchanama and has tried to construe the accident. Moreover, if at all the insurance company has taken the defence of negligence, it was necessary on the part of the insurance company to examine the driver of the tempo who could have been the best witness on this point. However, the said witness is not put in the box and his evidence is not available for assessment on the point of negligence. In view of this,

the judgment and award passed by the learned Member of the Tribunal is maintained. The First Appeal stands dismissed. Civil Application is accordingly disposed of.

6. The statutory amount of Rs.25,000/- deposited in this Court is to be transferred to the Tribunal. The excess amount, if any, to be refunded to the original claimants.

(MRIDULA BHATKAR, J.)