

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 467 OF 1995

1. Parwatibai w/o. Yadav Sasane,
Age 50 years, Occu. Household,
2. Adinath s/o. Yadav Sasane,
Age 32 years, Occu. Apprenticeship, P.H.C.,
3. Navnath s/o. Yadav Sasane,
Age 27 years, Occu. Nil,
4. Rajendra s/o. Yadav Sasane,
Age 25 years, Occu. Education,
5. Sanjay s/o. Yadav Sasane,
Age 21 years, Occu. Education,

All are resident of Pathardi,
Tq. Pathardi, Dist. Ahmednagar.

**....Appellants.
(Ori. Applicants)**

Versus

1. Raghunath s/o. Eknath Hiwale,
Age major, R/o. Kondwad Post Aradgaon,
Tq. Rahuri, Dist. Ahmednagar.
2. Vishwanath s/o. Shankar Dhanwat,
Age Major, Occu. Service (Driver),
R/o. Najik Babhulgaon,
Tq. Shevgaon, Dist. Ahmednagar.
3. New India Assurance Company,
Zendi Gate, Ahmednagar.
through its manager.
4. Panchayat Samiti, Pathardi,
Tq. Pathardi, Dist. Ahmednagar.
through its B.D.O. Pathardi.
5. The State of Maharashtra,

Through Collector,
Ahmednagar.

....**Respondents.**

Mr. V.S. Bedre, Advocate for appellants.

Mr. V.D. Hon, Senior Counsel for respondent No. 1.

Mr. V.N. Upadhye, Advocate for respondent No. 3.

Mr. S.T. Shelke, Advocate for respondent No. 4.

Mrs. R.P. Gaur, AGP for respondent No. 5.

CORAM : T.V. NALAWADE, J.

DATED : 1st March, 2016.

JUDGMENT :

1) Appeal is filed against judgment and order of Claim Petition No. 235/1987, which was pending before the Claims Tribunal, Ahmednagar. Claim filed by present appellants in respect of death of one Yadav Sasane under section 110-A of the Motor Vehicle Act (new section 166 of M.V. Act) is dismissed by the Tribunal. Both the sides are heard.

2) Deceased Yadav was working as a Gramsevak of Village Panchayat of Manik Dawandi, Tahsil Pathardi, District Ahmednagar. This Village Panchayat comes under Panchayat Samiti, Pathardi. Accident took place on 27.6.1987 on Manik Dawandi to Pathardi road within local jurisdiction of Pathardi Police Station. It is the contention of the claimants that the deceased was present in the truck tanker bearing No. MWA-548

and he was discharging his duty at the relevant time. It is contended that due to rash and negligent driving of the vehicle by its driver, respondent No. 2, the deceased fell from the truck and then he came under the wheels of truck and he died on the spot.

3) The claim was filed by widow, aged about 43 years and four issues, out of whom one issue was minor. It is contended that the deceased was aged about 50 years and he was getting monthly salary of Rs. 1600/- at the relevant time. It is the case of claimants that they were totally depending on the deceased for their livelihood.

4) It is the case of claimants that at the relevant time, the vehicle was being used by Panchayat Samiti Pathardi, though respondent No. 1 - Raghunath Hiwale was the registered owner of the vehicle. Respondent No. 2 - Vishwanath Dhanwat was driver of Raghunath, but the vehicle was requisitioned by Collector, Ahmednagar District for the use of Government and Local Body for supplying water to drought hit persons. The claim was filed against the owner, driver and Insurance Company of the truck and also against the State Government and Panchayat Samiti, Pathardi.

5) Insurance Company filed written statement and it denied everything. It contended that the policy did not cover the risk in respect of passengers travelling in the vehicle and so, the risk in respect of deceased was not covered under the policy.

6) Respondent No. 4 - Collector filed written statement and it admitted that the vehicle was requisitioned for Government by the Collector.

7) Respondent No. 1, owner filed written statement that the vehicle was not in his custody and it was being used by Panchayat Samiti Pathardi as it was requisitioned by the Collector.

8) Respondent No. 5 - Panchayat Samiti filed written statement and it admitted that the vehicle was supplied to Panchayat Samiti by Collector for its use and it was being used for supplying water to villages. It is contended that the vehicle was supplied by one Co-operative Society of transporters on requisition.

9) The driver filed written statement and he contended

that he was driving the truck as per the instructions of the deceased. He contended that at the relevant time, deceased was under influence of liquor and he had not closed the door of cleaner's side properly and due to that, he fell from the truck and accident took place due to his fault.

10) Before the Tribunal, son of the deceased gave evidence, but he has no personal knowledge regarding the accident. Claimants placed reliance on copies of police papers. It is not disputed that aforesaid truck tanker was involved in the accident and Yadav died in the accident. One Pralhad Mhaske was present in the vehicle. He was examined. He has given evidence that Yadav fell from the truck and he came under the wheels of said truck. He has given evidence that the truck tanker was being driven with high speed and on the ascending portion of the road, accident took place. In his cross examination, it is suggested by the counsel of registered owner that the cleaner's side door of cabin had chain and it was removed by the deceased and due to that he fell from the truck. This suggestion is denied by the witness. His evidence shows that five persons were sitting in the cabin of the truck tanker.

11) Vishwanath, driver of the truck has given evidence

that Yadav, deceased had unchained the doors of cleaner's side and due to that he fell from the truck. He has blamed the deceased for the accident.

12) The driver has admitted in the cross examination that case was filed by police in respect of this accident and Pathardi Court convicted him in the said case.

13) The Tribunal has believed the driver of the truck even when there is direct evidence of one witness, who was admittedly present in the cabin of the truck and that evidence is against the driver. The Tribunal has virtually ignored the circumstance that police also blamed driver of the truck and Criminal Court convicted him in the case filed in respect of that accident. Such matters are required to be decided on preponderance of probability. This Court has no hesitation to observe that the Tribunal has committed error in holding that the claimants have not proved the negligence of the driver. Such finding cannot sustain in law.

14) There is no dispute about the death of Yadav in the accident and also on the loss of dependency ascertained by the Tribunal. The Tribunal has held that in normal circumstances, the

claimants would have been entitled to get compensation of Rs. 1.8 lakh. The learned counsel for claimants, appellants submitted that he has no grievance in respect of this finding. There is record to show that the aforesaid vehicle was requisitioned by District Collector and it was handed over to Panchayat Samiti for its use. Further, there is evidence of aforesaid nature against Panchayat Samiti. Though respondent No. 1 was registered owner, the vehicle was not under his control and the vehicle was taken under the control by State Government under the order made by the Collector. In view of these circumstances, this Court holds that the State Government, Panchayat Samiti and the driver need to be held jointly and severally responsible to pay the compensation. The interest at the rate of 9% p.a. can be given.

15) It appears that amount of Rs. 15,000/- is deposited by the Insurance Company under principle of no fault. This amount needs to be returned to the Insurance Company. The record shows that the claimants did not show interest in prosecuting the matter and ultimately, the matter was dismissed on 23.7.2013. It came to be restored on 18.11.2015. This Court holds that the claimants will not be entitled to get any interest in respect of this period i.e. 23.7.2013 to 18.11.2015. So, the

following order is made.

ORDER

(i) Appeal is allowed. The judgment and award of the Tribunal of dismissal of the claim petition as against the State Government is hereby set aside. The Claim petition as against the State Government, Panchayat Samiti and respondent No. 2, driver is allowed. They do jointly and severally pay the amount of Rs. 1,80,000/- (Rupees one lakh eighty thousand) on the principle of fault. The claimants are also entitled to get interest at the rate of 9% p.a. and this interest will be payable from the date of petition till 23.7.2013 and also from 18.11.2015 till the realisation of the entire amount. Award is to be prepared accordingly.

(ii) The amount of Rs. 15,000/- (Rupees fifteen thousand) with interest at the same rate is to be returned first to Insurance Company.

(iii) 80% amount to be paid to widow and remaining amount be equally distributed amongst the issues.

[T.V. NALAWADE, J.]

ssc/