

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

FIRST APPEAL NO. 777 OF 2004

1. Malhari @ Mallappa s/o Harishchandra
Karyakante, Age-48 yrs, Occ. Labour,
2. Smt. Kalubai w/o Harishchandra Karyakante,
Age 44 Years, Occ. H.H.

Both R/o Sarola, Tq. & Dist. Latur.

....Appellants.
Org.Claimants

Versus

1. Balaji s/o Raosaheb Naikwade,
Age- Major, Occu. Driver (Service),
R/o. Shivaji Nagar, Nilanga
Tq. Nilanga, Dist. Latur.
- 2 Shri. Ramesh s/o Ramrao Thete,
Age Major, Occ. Business,
R/o Tagarkheda, Tq. Nilanga.
- 3 The New India Assurance Co.Ltd.
Latur.

....Respondents.

Mr. R.R. Deshmukh h/f. Mr. R.B. Deshmukh, advocate for
appellant.

CORAM : T.V. NALAWADE, J.
DATED : 8th February, 2016.

JUDGMENT :

1) The appeal is filed to challenge the judgment and
award of Claim Petition No. 77/2000, which was pending before
the Claims Tribunal, Latur. Heard the learned counsel for
appellants, claimants. The other side was duly served, but

nobody has turned up for other side.

2) The claim was filed by son and widow of the deceased. There is the contention that dash was given to the bicycle of the deceased by travel bus bearing No. MH-24/A-2920 and Harishchandra died in the accident. It appears that the owner and driver did not file written statement and the matter was heard virtually exparte against the respondents.

3) The Tribunal has dismissed the claim by observing that the involvement of the vehicle is not proved. It appears that some record like copy of statement of one Kamble is produced and copy of P.M. report is produced. Registration particulars of aforesaid vehicle are also produced. Copy of chargesheet and spot panchanama were not produced. No eye witness was examined. In view of these circumstances, the Tribunal has held that the involvement of the vehicle is not proved. The copy of statement of Kamble shows that when he visited the spot, bicycle was lying on the road and aforesaid bus was still there. In view of these circumstances, this Court holds that opportunity needs to be given to the claimant to prove the involvement of the vehicle by examining some witnesses. For that, matter needs to be remanded back to the Tribunal.

4) In the result, the appeal is allowed. The judgment and award of the Tribunal is hereby set aside. The matter is remanded back to the Tribunal for fresh trial. Opportunity needs to be given to both the sides for proving their respective cases. The claimant is to appear before the Tribunal on 4.3.2016. Record and proceeding be sent back to the Tribunal. The Tribunal is to take care and see that notice of the proceeding is given to the owner and Insurance Company before deciding the matter. The matter is to be decided within three months from the date of appearance of owner and Insurance Company.

[T.V. NALAWADE, J.]

ssc/