

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

901 FIRST APPEAL NO. 742 OF 2016
WITH CA/1995/2016 IN FA/742/2016

DILIP CHANDRAKANT JAWARE AND ANOTHER
VERSUS
VIMAL SURESHCHAND AGRAVAL AND OTHERS

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Advocate for Appellants: Mr. Patil Ujwal Subhash With
Mr. M. U. Patil

Advocate for Respondents :Mr. A. I. Deshmukh

CORAM : V. K. JADHAV, J.

DATE : 8th March, 2016

PER COURT :

1. Heard finally with consent of the parties at admissions stage.

2. The respondents/original claimants filed Motor Accident Claim Petition No. 25/2013 before the Motor Accident Claim Tribunal, Jalgaon claiming compensation on account death of Sureshchandra Shivprasad Agrawal, who died in motor vehicle accident. The present respondents are the legal representatives of deceased Sureshchandra. The respondents/original claimants have also filed Application at Exh.6 in the claim petition for grant of fixed compensation under the 'no fault liability'. Learned Member of the Motor Accident Claim Tribunal, Jalgaon, by impugned order dated 03.10.2013, allowed application Exh.6 and thereby directed the present

appellants to pay an amount of Rs.50,000/- to the respondents/original claimants within a period of one month from the date of order. Hence this first appeal.

3. Learned counsel for the appellants/original respondents submits that the accident had taken place on 04.07.2011, however, Sureshchandra died on 25.07.2012. The learned counsel submits that there is no evidence to show that Sureshchandra died because of the injury sustained by him in the said accident. The learned counsel submits that without considering the same, the learned Member of the Motor Accident Claim Tribunal, has passed the award under 'no fault liability' and thereby granted fixed compensation of Rs.50,000/- to the respondents/original claimants.

4. The learned counsel for the respondents/original claimants submits that while Sureshchandra was proceeding towards his Hotel at about 6.30 p.m. on the said day, the motorcycle owned by appellant No.1 came from his back side and gave dash to him. In consequence of which, Sureshchandra had sustained severe injuries and he was admitted in the Hospital. The learned counsel submits that on the basis of complaint lodged, Crime No.200/2011 came to be registered against the present appellant No.2

who was riding the motorcycle at the time of accident. The said crime came to be registered with Bazar Peth Police Station, Bhusawal for the offences punishable under sections 279, 337 of the Indian Penal Code and section 184 of the Motor Vehicles Act, 1988. The learned counsel further submits that the injuries sustained by the deceased Sureshchandra were severe in nature and thus he remained under treatment continuously. The learned counsel submits that in Para 9 of the claim petition, names of 11 Doctors are mentioned, who have treated deceased Sureshchendra. However, on 25.05.2012, while treatment was going on, Sureshchandra succumbed to the injuries.

5. The learned Member of the Motor Accident Claim Tribunal, Jalgaon, by the impugned order, has allowed application Exh.6 and thereby directed the present appellants to pay fixed compensation of Rs.50,000/- to the respondents /original claimants. The Tribunal has referred copy of the complaint, spot panchanama, inquest panchanama and postmortem report and observed that there is *prima facie* evidence to show that death of Sureschandra is resulted from an accident arisen out of use of motor vehicle. It appears that on 25.05.2012,

Surechandra died while treatment was going on.

6. So far as involvement of the motorcycle bearing Registration No. MH-19 AW 5437 in the said accident is concerned, the same is not disputed. It is thus clear that the accident has taken place out of use of the said vehicle and on the basis of the complaint lodged with the police station, crime was registered against the rider of the motorcycle i.e. appellant No.2. There is no dispute that the said vehicle is owned by appellant No.1.

7. Under this circumstance, I do not find any fault with the impugned order passed by the learned Member of the Motor Accident Claim Tribunal, Jalgaon.

8. Needless to say that the observations made by the learned Member of the Motor Accident Claim Tribunal, Jalgaon and this Court are *prima facie* in nature and the same will not cause prejudice in any manner in the main claim.

9. In view of this, the first appeal is hereby dismissed. In the circumstance, there shall be no order as to costs.

10. An amount of Rs.50,000/- which is deposited by the appellants before this Court shall be paid to the respondents/original claimants in the manner as directed by the learned Member of the Motor Accident Claim Tribunal, Jalgaon by the impugned order dated 03.10.2013. Civil application is accordingly disposed of.

(V. K. JADHAV, J.)

JPC