

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 53 OF 1999

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| 1 | Union of India | APPELLANTS |
| 2 | The Commandant, A.C. Centre & School,
Ahmednagar Camp, Ahmednagar | |

V E R S U S

- | | | |
|---|---|---|
| 1 | Sayed Nazema Rafiq, Aged 22 Years,
Occupation Household | RESPONDENTS |
| 2 | Sayed Humera Rafiq, Aged 5 Years, Minor,
Through her legal guardian mother
Respondent No. 1, Occupation Education | |
| 3 | Sayed Moinoddin Abdul Karim, Aged 60
Years, Occupation Nil | Appeal abated as
against Respondent
No.3 vide Court's Order
dated 01.07.2008 |
| 4 | Sayed Shahnoor Moinoddin, Aged 50 ears,
Occupation Household, | As per Court's Order
dated 31.07.2014 -
dismissed |
| | All Resident of Fakirwada, Aurangabad
Road, Ahmednagar, District Ahmednagar | |
| 5 | SWR Surjit Singh, Army No. 1080227, A.C.
Records, Inside Ahmednagar Fort,
Ahmednagar | |

Mr. D.G. Nagode, Advocate, holding for
Mr. Pradeep Deshmukh, Advocate for the Appellants
Mr. B.S. Shinde, Advocate, holding for
Mr. V.P. Latange, Advocate for Respondent Nos. 1 and 2

Appeal abated as against Respondent No. 3
Appeal dismissed as against Respondent No. 4
Respondent No. 5 served

CORAM : A.V. NIRGUDE, J.

DATE : 24th August, 2016

ORAL JUDGMENT :

1. This Appeal challenges Judgment and Award dated 1st July, 1998, passed by the learned Member of Motor Accident Claims Tribunal, Ahmednagar, in M.A.C. Application No. 98 of 1991.

2. The original respondent - Union of India has filed this appeal. Respondent Nos. 1 to 4 were the original claimants before the Tribunal. Respondent Nos. 1 and 2 were siblings of deceased Rafiq, whereas Respondent Nos. 3 and 4 are his parents. There is no dispute about the fact that Rafiq died in a vehicle accident on a public road near Ahmednagar. The respondents asserted that Rafiq died due to accident caused by the Army vehicle bearing No.86-D-62971M. On the other hand, the appellant opposed the application before the Tribunal. The Tribunal took-up a specific stand that the vehicle mentioned above was not at all concerned with the incident. The learned Member of the Tribunal held on facts that the vehicle in question was indeed involved in the accident. The learned counsel for the appellant asserted that this finding is incorrect. The learned counsel for the appellant pointed out that there was considerable delay in lodging of the complaint of the incident with police. He pointed out that there was about 48 hours delay in approaching the police. He therefore suggested that the lodging of the complaint itself would be a concoction. Secondly he pointed out that the appellant tried to

prove that the vehicle in question on the relevant day was not in use on public road as per the Army record. He also invited my attention to the Army record which was brought before the Court. However, I am not inclined to disturb the finding of the lower Court. The learned Member of the Tribunal discussed this issue between the parties quite elaborately in his Judgment. He observed that there were as many as three eye witnesses, who came before the Court and deposed that the above mentioned Army vehicle was involved in the incident. Except the delay in recording of the First Information Report, there is no other reason why the depositions of three eye witnesses should be discarded. The learned counsel for the appellant also contended that all the three eye witnesses did not actually seen the incident. They admittedly reached the spot only after the accident which already took place. This submission is devoid of merit. The witnesses stated that soon after the accident, they noticed that the vehicle in question stopped for a while and then left the spot apprehending mob reaction. All the three eye witnesses mentioned the registration number of the vehicle.

3. Learned counsel for the appellant then tried to suggest that the respondents' witnesses and record would not lie. He also pointed out that Military Officers are worthy of reliance. I am not really concerned with this submission. If the depositions of the respondents' witnesses are believed then the plea of alibi would fade into significance even without recording that the appellants' witnesses are not believable. The evidence can be appreciated in favour of the respondents - applicants. The appeal should therefore fail. Appeal stands dismissed.

4. The amount deposited in the Court alongwith interest etc. should be handed over to the respondents. If that is not sufficient to make the Award, the remaining amount shall be recovered as per the Award.

5. In view of disposal of the First Appeal, Civil Application No. 984 of 1999 stands disposed of.

(A.V. NIRGUDE, J.)