

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

FIRST APPEAL NO.841 of 2005

The State of Maharashtra
Through, the Suptd. of Police,
Osmanabad.

**...APPELLANT
(Ori.Respondent No.3)**

VERSUS

1. Surekha w/o Hanumant Deshmukh,
Age 35 yrs. Occp. Household
R/o. at present Osmanabad.
2. Sarika D/o. Hanumant Deshmukh
Age 18 yrs. occp. Education,
r/o as above.
3. Mahesh Hanumant Deshmukh,
Age 15 yrs. occp. and r/o as above
M/U/G of claimant no.1.
4. Digambar Gyanba Deshmukh,
Age 60 yrs. occp. nil, r/o as above.
5. Anusaya w/o Digambar Deshmukh,
Age 35 yrs. Occp. Household,
R/o. as above,
Dist. Osmanabad.

**...Petitioners
(Ori.Claimants No.1 to 5)**

6. Mr.K.Mani s/o Karuppannan
Age Major, Occp. Business,
r/o 146-A, South Nalliyam Palayan
Velur, P.O.P., Velur, Tq. Dist. Namakkal
Tamil Nadu State.

7. The Oriental Insurance Co. Ltd.
Namakkal (Tamil Nadu), through the
Div. Manager, The Oriental Insurance Co.
Ltd. 442, West Mangalwar Peth,
Solapur.

...RESPONDENTS
(Ori.defendants No.1 and 2)

...

WITH

FIRST APPEAL NO.842 OF 2005

The State of Maharashtra
Through, the Suptd. of Police,
Osmanabad.

...APPELLANT
(Ori.Respondent No.3)

VERSUS

1. Janabai w/o Prabhakar Galande,
Age 45 yrs. Occp. Household,
r/o Sukta Bhoom Dist. Osmanabad.
2. Jaiprakash Prabhakar Galande,
Age 19 yrs., occp. Education,
r/o as above.
3. Vaishali d/o Prabhakar Galande,
Age 18 yrs. occp. and r/o as above.
4. Dattatrya Prabhakar Galande,
Age 22 yrs. occp. and r/o as above.
5. Anita w/o Mahadeo Kalsule,
Age 24 yrs. occp. Household
r/o Mankeshwar Tq. Paranda
Dist. Osmanabad.

...Petitioners
(Ori.Claimants No.1 to 5)

6. Mr.K.Mani s/o Karuppannan
Age Major, Occp. Business,
r/o 146-A, South Nalliyam Palayan
Velur, P.O.P., Velur, Tq. Dist. Namakkal
Tamil Nadu State.
7. The Oriental Insurance Co. Ltd.
Namakkal (Tamil Nadu), through the
Div. Manager, The Oriental Insurance Co.
Ltd. 442, West Mangalwar Peth,
Solapur.

...RESPONDENTS

(Ori.defendants No.1 and 2)

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Mr.R.B.Bagul, AGP for appellant State in both the appeals.

Mr. Mukul Kulkarni, Advocate, for respondent Nos. 1 to 5 in both the appeals.

Respondent no.6 served.

Ms.Shreyu Mounas, Adv., h/f Shri V.N.Upadhye, Adv., for respondent no.7 in both the appeals.

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CORAM: P.R.BORA, J.

DATE : March 29th, 2016

JUDGMENT:

1. Since both the aforesaid appeals are arising out of a common judgment and award passed by the Motor Accident Claims Tribunal at Osmanabad in MACP Nos.212/1999 and 232/1999, both the appeals are decided by this common judgment.

2. Respondent nos. 1 to 5 in First Appeal No.841/2005 had preferred MACP No.232/1999, claiming compensation on account of accidental death of one Hanmant Digamber Deshmukh whereas respondent nos. 1 to 5 in First Appeal No.842/2005 had filed another claim petition No.212/1999 on account of accidental death of one Prabhakar Dashrath Galande.

3. Deceased Hanmant Digamber Deshmukh and Prabhakar Dashrath Galande both were Police Constables and suffered death in an accident having involvement of a Police Van bearing No.MH/12/9071 and Truck bearing No.TN/28/D/7788. Learned Motor Accident Claims Tribunal held that the accident in question happened because of negligence on the part of the drivers of both the vehicles i.e. the Police Van and the truck and thus, directed compensation to be paid by the owner and insurer of both the aforesaid vehicles in equal proportion.

4. In the present appeals, the appellant State has taken exception to the finding recorded by the Tribunal whereby it has held the Driver of the Police Van also responsible for occurrence of the accident in question and the consequent direction to pay half of the compensation awarded. Shri R.B.Bagul, learned A.G.P. appearing for the appellant State, submitted that despite there being any evidence on record, showing any negligence on the part of the Driver of the Police Van, the Tribunal has held the Driver of the Police Van also guilty for occurrence of the alleged accident. Learned A.G.P. further submitted that the original claimants have not brought on record any evidence to show the negligence on the

part of the driver of the Police Van in occurrence of the alleged accident. Learned A.G.P. further submitted that neither the FIR has been duly proved by the original claimants nor the spot panchnama was proved by them. In such circumstances, according to the learned A.G.P., the Tribunal has erred in relying on the contents of the FIR and the spot panchnama and has wrongly held that the Driver of the Police Van was negligent in plying the vehicle involved in the accident in question at the time when the alleged accident happened. The learned A.G.P., therefore, prayed for setting aside the judgment and award to the extent it fastens liability on the present appellant to pay 50 per cent of the total compensation awarded to respondent nos. 1 to 5 in both the present appeals.

5. Shri Mukul Kulkarni, learned Counsel appearing for respondent nos. 1 to 5 in both the appeals, supported the reasons recorded by the Tribunal in recording a finding that in occurrence of the alleged accident, the rashness and negligence on the part of the Driver of the Police Van is also responsible in equal proportion along with the driver of the offending truck.

6. I have carefully perused the common judgment and award impugned in the present appeals. In paragraph No.16 of the judgment, the learned Tribunal has made the following observations:

"16. The recitals in the spot panchnama show that tar road was about 30 feet wide and there was turn near the place of the accident. The two vehicles were running in opposite directions. The road was sufficiently side (wide) to enable safe overtaking of crossing of two vehicles. The recitals in the spot panchnama also indicate that both the vehicles were almost on middle of

the tar road. None of the vehicles was by the side of the road or on Kacha road. There was almost head on collision between the two vehicles on a road which was about 30 feet wide. It is also seen that, there were tyre marks at some length at the place of the accident and that indicates that both the drivers had applied brakes soon before the head on collision. The presence of tyre marks of both the vehicles were running at more than moderate speed. None of the vehicles was stopped soon before the accident. None of the vehicles was taken to the side of the road to avoid head on collision. Even it is held that the truck was not proceeding by proper side, the driver of the police van could have avoided the accident either by stopping the vehicle on left side of the road or by taking the vehicle to extreme right side. However, that did not happen. Thus the circumstantial evidence on record shows that none of the drivers had taken reasonable care and caution in fact it appears that both the drivers were rash and negligent and they did not even care to stop the vehicles soon before the accident. "

7. On perusal of the aforesaid observations, it does not appear to me that the Tribunal has committed any error in holding the driver of the Police Van also responsible for occurrence of the alleged accident. The objection raised by the learned A.G.P. that the contents of the FIR and the spot panchnama were not proved by the original claimants by examining the relevant witnesses on the said point does not hold any water since it is settled law that no strict rule of Evidence Act or Code of Civil Procedure can be applied in conduct of the Motor Accident Claim Petitions. As has been observed by the learned Tribunal in para 16 of its judgment, reproduced here-in-above, both the vehicles were running at the relevant time at more than the moderate speed and were plying their respective vehicles without keeping any adequate margin from the middle line of the road. I further agree with the conclusion recorded by the learned Tribunal that the alleged

accident was head on collision between the Police Van and the offending truck. In the circumstances, merely because the driver of the offending truck only has been prosecuted in connection with the accident in question, cannot preclude the Tribunal from recording a finding on the basis of evidence brought before the Tribunal, holding the driver of the Police Van also responsible for occurrence of the alleged accident. I do not find that any incorrect conclusion has been recorded by the Tribunal warranting interference by this Court in the present appeals.

The appeals are devoid of any substance and deserve to be dismissed. Hence, the following order:

ORDER

- a) Both the First Appeals (Nos.841/2005 and 842/2005) stand dismissed with no order as to costs.
- b) Respondent nos. 1 to 5 in both the appeals i.e. the original claimants are permitted to withdraw the amount deposited in this Court by the appellant along with the interest accrued thereon.
- c) Civil Applications, if any, stand disposed of.

**(P . R . B O R A)
JUDGE**

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