

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

FIRST APPEAL NO.1967 OF 2011

1. Smt.Varsha wd/o Dnyaneshwar Sawant,
Age 26 years, Occup. Household,
R/o. Bori Sawant, Tq. Basmath,
Dist.Hingoli.
2. Munjaji s/o Bapurao Sawant,
Age 55 years, Occup. Labourer,
R/o. Bori Sawant, Tq. Basmath,
Dist.Hingoli.
3. Shantabai w/o Munjaji Sawant,
Age 50 years, Occup. Household,
R/o Bori Sawant, Tq. Basmath,
Dist. Hingoli.

...APPELLANTS
(Orig.Claimants)

VERSUS

1. Vitthal s/o Dagdoba Jadhav,
Age Major, Occup. Business,
R/o. Pota (Kh.) Tq.Aundha (N),
District Hingoli, Owner of
M & M Marshal Jeep bearing No.
MH-13/F-9475.
2. The Oriental Insurance Co.Ltd.
through its Branch Manager,
Daulat Building, Shivaji Chowk,
Parbhani, Tq. and Dist. Parbhani.
(Policy No.182003/31/2009/3337).

...RESPONDENTS

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Shri M.V.Ghatge, Advocate for appellants.
Shri S.M.Godsay, Advcate for respondent no.2.

CORAM: P.R.BORA, J.

DATE :May 3rd, 2016

ORAL JUDGMENT:

1. The appellants have filed the present appeal challenging the judgment and award passed by the Motor Accident Claims Tribunal at Basmathnagar in M.A.C.P.No.58/2009 decided on 2.5.2011. Learned Tribunal has dismissed the said petition vide the impugned order.

2. The aforesaid claim petition was filed by the appellants seeking compensation from the present respondents on account of death of one Dnyaneshwar Munjaji Sawant, alleging the same to have been caused as a result of injuries caused to deceased Dnyaneshwar in a vehicular accident happened on 31st of May, 2009, alleging the involvement of a Jeep bearing registration No.MH-13-F-9475 owned by respondent no.1 and insured with respondent no.2.

3. It was the contention of the appellants before the Tribunal that the alleged accident had happened because of rash and negligent driving by the driver of the offending Jeep allegedly involved in the accident. In the written statement filed by the respondents before the Tribunal, respondents denied the involvement of the Jeep in the alleged accident and also denied all other contentions raised in the petition.

4. In order to prove that the alleged accident did happen because of the negligent driving of the Jeep bearing registration No. No.MH-13-F-9475, the appellants had relied upon the Police papers allegedly pertaining to the accident in question and had also examined one witness, namely, Baliram Limbaji Sawant, posing him to be an eye witness of the alleged accident. The said evidence, however, did not find favour by the Tribunal and the learned Tribunal recorded a finding that the petitioners did not prove that the deceased Dnyaneshwar died as a result of injuries caused to him in an accident caused

because of rash driving of respondent no.1. Since the very involvement of the vehicle was not held to be established by the Tribunal, the Tribunal did not decide the other issues framed and dismissed the petition only on the count that the petitioners have failed to prove involvement of the vehicle alleged to be involved in the accident in question and, consequently, the negligence of the driver of respondent no.1 in causing the said accident. Aggrieved thereby, the original claimants are before this Court in appeal.

5. Heard Shri M.V.Ghatge, learned Counsel appearing for the appellants. Learned Counsel submitted that the Tribunal has failed in appreciating the evidence on record. Learned Counsel further submitted that by examining PW No.2, the appellants had sufficiently proved the involvement of the offending Jeep in the alleged accident and have also proved the negligence on the part of the driver of the said Jeep. Learned counsel further submitted that though the FIR in

the case is appearing to have been registered on 19.6.2009, the statement of the informant, namely, Manikrao Govindrao Sawant was recorded by the Police on 5th of June, 2009. Learned Counsel submitted that on 5.6.2009, Dnyaneshwar expired while under the treatment in the hospital and immediately thereafter, the statement of the informant was recorded by the Police. Learned Counsel submitted that in the statement recorded on 5.6.2009, informant has specifically stated that Dnyaneshwar was dashed by some unknown vehicle. Learned Counsel further submitted that during the course of the investigation by the Police, the involvement of the Jeep bearing registration No.MH-13-F-9475 was revealed and, accordingly, the offense was registered against Vithal Dagdoba Jadhav, who was driving the offending Jeep when the accident happened. Learned Counsel further submitted that Baliram Sawant was an eye witness of the alleged accident and, accordingly, has deposed the true facts before the Tribunal, however, for untenable reasons, the Tribunal has disbelieved the

evidence of the said witness. Learned Counsel prayed for setting aside the impugned judgment and award and remit back the matter to the Tribunal for deciding it on merits.

6. Shri Godsay, learned Counsel appearing for respondent no.2 Insurance Company, strongly resisted the contentions raised on behalf of the appellants. Learned Counsel submitted that the appellants had failed in bringing on record cogent and sufficient evidence proving the involvement of the offending Jeep in the alleged accident. Learned Counsel submitted that though the accident had happened on 31st May, 2009, the FIR in the matter came to be registered on 19.6.2009. Learned Counsel submitted that even in the FIR the contention was that the deceased was dashed by some unknown vehicle. Learned Counsel submitted that the evidence of PW No.2 has been rightly rejected by the Tribunal since he was not having any personal knowledge of the alleged accident and was proved to be a got up witness. Learned Counsel submitted that by giving

sound reasons, the Tribunal has dismissed the claim petition and no interference is required in the impugned judgment and award.

7. I have carefully considered the submissions advanced on behalf of the learned Counsel appearing for the appellants and the learned Counsel appearing for respondent no.2. I have also perused the impugned judgment and the evidence adduced before the trial Court. It is not in dispute that the FIR was registered on 19.6.2009 i.e. after the period of 20 days of the occurrence of the alleged accident. On careful perusal of the contents of the FIR, it is revealed that it discloses involvement of a truck in the alleged accident. The informant in the report lodged by him has prayed for initiation of prosecution against a truck driver meaning thereby that an unknown truck has given dash to deceased Dnyaneshwar whereas respondent no.1 is the owner of the Jeep. The FIR, thus, does not support the case of the appellants that the deceased was dashed by a jeep owned by respondent

no.1. Secondly, the Police papers do not disclose how the Jeep bearing registration No. MH-13-F-9475 came to be involved in the occurrence of the alleged accident. There is nothing on record to show as to who has provided the information that the Jeep bearing No. MH-13-F-9475 was involved in the accident and what was the other material to support the said information collected by the Police. Though Baliram Limbaji Sawant was stated to be an eye witness of the alleged accident, in his cross examination, he has candidly admitted that when the accident happened, he was at a distance of about 200 fts. and since it was a night time, he could not notice the number of the vehicle which gave dash to deceased Dnyaneshwar. Thus, his evidence also cannot be said to be of any help to the case put forth by the appellant. Thus, there was no evidence before the Tribunal, showing the involvement of the jeep bearing registration No.MH-13-F-9475 in occurrence of the alleged accident.

8. Considering the circumstances as above,

it does not appear to me that the Tribunal has committed any error in recording a finding that the appellants / claimants have failed in proving that the alleged accident happened due to rash and negligent driving on the part of the driver of respondent no.1. The Tribunal has appropriately discussed the evidence which was adduced before it and has recorded sound reasons while dismissing the claim petition. From the oral and documentary evidence placed on record, I am also of the opinion that the appellants claimants have failed in proving the involvement of Jeep bearing registration No. MH-13-F-9475 in occurrence of the alleged accident. There appears no merit in the appeal so filed. Hence, the following order:

ORDER

- a) Appeal is dismissed without any order as to the costs.

(P.R.BORA)
JUDGE

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