

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

FIRST APPEAL NO.2552 OF 2015

Sayyad Alisha Rajjak,
Age 7 years, Occu. Education,
Under Guardian of Father
Sayyad Rajjak Sayyad Mohammad,
Age 43 years, Occu: Medical Practitioner,
R/o Dhanora, Tal.Ashti,
Dist. Beed.

**...APPELLANT
(Ori.Claimant)**

VERSUS

1. Altaf Noormohammad Tamboli,
Age Major, Occup. Owner & Driver,
R/o Kada, Tal.Ashti,
Dist. Beed.
2. The New India Assurance Co.Ltd.,
Through its Branch Manager,
Branch Office at Jalna Road, Beed,
Dist. Beed.

**...RESPONDENTS
(Ori. Respondents)**

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Mr.Sushant B.Choudhari, Adv., for the appellant.
Mr.G.R.Syed, Adv., for respondent no.1.
Mr.Mohit Deshmukh, Adv., h/f Mr. Mr. Mohit
Deshmukh, Adv., h/f Mr. S.G.Chapalgaonkar, Adv.,
for respondent no.2.

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CORAM: P.R.BORA, J.

DATE : April 7th, 2016

ORAL JUDGMENT:

1. Heard. Admit. With the consent of learned Counsel for the parties, taken up for final hearing.

2. The original claimant, through her guardian father, has preferred the present appeal, taking exception to the judgment and award passed in MACP No.273/2013, decided on 24th August, 2015, by the Motor Accident Claims Tribunal, at Beed.

3. The aforesaid claim petition was filed by the appellant seeking compensation on account of the injury suffered by her in a vehicular accident having involvement of a tanker bearing Registration No.MH-16-AE-7786, owned by respondent no.1 herein, and insured with respondent no.2. The Tribunal has rejected the aforesaid claim petition on the ground that the claimant has failed to prove the involvement of the said tanker in the occurrence of the alleged accident.

4. Mr. Sushant B.Choudhari, Learned Counsel appearing for the appellant invited my attention to the observations made by the learned Tribunal in paragraph no.17

of the impugned judgment. The learned Tribunal has observed that the claimant failed to examine the eye witnesses named in the FIR, and also did not examine investigating officer. On such observation, the Tribunal has recorded a finding that the claimants have failed in proving involvement of the vehicle concerned in the alleged accident. Learned Counsel submitted that the owner of the Tanker has admitted the involvement of the tanker in occurrence of the alleged accident and, in such circumstances, the Tribunal ought not have rejected the claim so filed by the appellant on the ground that the claimant has failed in proving involvement of the tanker in the occurrence of the alleged accident. In the alternative, learned Counsel submitted that if merely for want of examining certain witnesses by the claimant, the Tribunal had reached the conclusion that the involvement of the vehicle has not been proved, the claimant needs to be given an opportunity to examine the said witnesses so as to prove the involvement of the concerned vehicle in the occurrence of the alleged accident and, therefore, he alternatively prayed for remanding the matter to the Tribunal by allowing the present appellants to examine the necessary witnesses before the Tribunal.

5. Learned Counsel Shri Syed for respondent no.1 submitted that respondent no.1 has filed his written statement before the Tribunal, and had accepted the involvement of the tanker owned by him in occurrence of the alleged accident. He has, therefore, prayed for passing of appropriate orders.

6. Shri Mohit Deshmukh, learned Counsel appearing for respondent no.2 Insurance Company, has opposed the submissions advanced on behalf of the appellant. Learned Counsel submitted that the Tribunal has recorded elaborate reasons before reaching to the conclusion that the involvement of the concerned tanker has not been proved in occurrence of the alleged accident. Learned Counsel submitted that the father of the claimant is a medical practitioner and, as such, it has to be presumed that he is aware of the procedure in case of medico-legal cases. Learned Counsel further submitted that it cannot be digested that a person having knowledge of the procedure to be followed in medico-legal cases will file FIR after 31 days. Learned Counsel further submitted that merely because the original respondent no.1 has admitted the involvement of the tanker owned by him in the occurrence of the alleged accident, no such conclusion can be drawn that the vehicle was involved because there is every possibility of his

collusion with the claimants. Learned Counsel submitted that this point was raised and urged before the Tribunal and it has been rightly considered by the Tribunal. Learned Counsel, in so far as alternative prayer made by the learned Counsel for the appellant, submitted that it was the primary duty cast on the claimant to prove the involvement of the vehicle concerned in the alleged accident in view of the fact that involvement was specifically disputed by the Insurance Company in the written statement filed by it. Learned Counsel further submitted that no reason has been stated by the claimants as to why they could not examine the necessary witnesses. It is further argued that whatever best evidence was possible, ought to have been adduced by the claimant at the earliest point of time. It is further argued that now, after the Tribunal has recorded an adverse finding, the claimant cannot be permitted to fill up the lacuna. Learned Counsel has, therefore, prayed for not accepting the alternative request also.

7. I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. The impugned judgment reveals that the learned Tribunal, on the ground that the claimant did not examine the eye witnesses, namely, Bharat Eknath, Kisan Chavan and

Rajguru, who were stated to have seen the accident in question, and also the investigating officer, has recorded the conclusion, which is proved to be fatal for the case of the claimant. It appears to me that, under an impression that the owner of the tanker has admitted involvement of the said tanker in occurrence of the alleged accident by filing his written statement on record, the claimants did not find it necessary to examine the other witnesses. In such circumstances, and more particularly, having regard to the fact that Motor Vehicles Act is a social legislation, I feel that the claimant needs to be given an opportunity to adduce the necessary evidence before the Tribunal so as to prove the involvement of the vehicle concerned in occurrence of the alleged accident. It need not be stated that the contesting respondent will have every opportunity to cross examine the said witnesses and bring truth on record. It would also be permissible for the respondents to adduce any evidence from their side if so required.

8. For the reasons stated above, I pass the following order:

ORDER

1) The judgment and award passed in MACP No.273/2013, on 24/8/2015, by the Motor Accident Claims

Tribunal, at Beed, is quashed and set aside.

2) The matter is remanded back to the Tribunal with a direction that on an application made by the Claimant, the Tribunal shall allow the claimant to adduce the evidence of necessary and relevant witnesses. The Tribunal shall also permit the respondents to adduce the evidence in rebuttal, if any.

3) The parties are directed to appear before the Tribunal on 8th of June, 2016. The Tribunal shall expeditiously decide the claim petition preferably within a period of six months.

4) Record and proceedings be sent back to the Tribunal forthwith.

The appeal is allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

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AGP/2552-15fa