

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR

First Appeal No. 473 of 2016

Appellant : M/s Indian Bulk Transport, through its Proprietor, Plot
No. 9, Amin Villa, Chitnavis Layout, Byramji Town,
Nagpur

versus

Respondents: 1) Smt Sunita wd/o Ashok Auchat, aged about
37 years, Occ: Household,
2) Akshay s/o Ashok Auchat, aged 20 years
3) Jy Jurab d/o Ashok Auchat, aged 19 years,
4) Ku Rani d/o Ashok Auchat, aged abut 10 years
All residents of 42, C/o Dhakole, Shrikrishna Nagar,
Nagpur (respondent no. 4 being minor, through her
mother respondent no. 1 Smt Sunita)
5) Tukaram Pamaji Auchat ... Deleted
6) Smt Subhadrabai w/o Tukaram Auchat, aged about
70 years, Occ: Household, resident of 97, Shakti Mata
Nagar, Kharbi Road, Nagpur
7) The Divisional Manager, National Insurance Co.

Ltd., D.O. II, Paul complex, Ajni Square, Nagpur

Shri Asghat Hussain, Advocate for appellant

Shri V. R. Thote, Advocate for respondents no. 1 to 6

Ms M. N. Hiwase, Advocate for respondent no. 7

Coram : S. B. Shukre, J

Dated : 7th December 2016

Oral Judgment

1. This appeal has already been admitted by order dated 9th March 2016 and it is taken up today for final hearing by consent of parties.

2. By this appeal, that portion of the judgment and order dated 29th July 2013 rendered in Claim Petition No. 156 of 2009 by the Member, Motor Accident Claims Tribunal, Nagpur has been questioned which exonerates present respondent no. 7 National Insurance Company Limited from the liability to pay compensation to the claimants.

3. I have heard Shri Asghar Hussain, learned counsel for the appellant; Shri V. R. Thote, learned counsel for respondents no. 1 to 6 and Ms M. N. Hiwase, learned counsel for respondent no. 7.

4. On perusal of the impugned judgment and order, it can be

clearly seen that what the learned Member of the Tribunal intended to do, failed to carry it out accordingly at the end of the order. Intention of the learned Member can be seen from the findings recorded in paragraph 19 of the impugned judgment and order. Paragraph 19 of the impugned judgment and order reads thus :

“As 50% negligence is that of driver of the tanker, therefore, in proportionate to the same, the owner and the Insurance Company of the tanker are jointly and severally liable to compensate the petitioners. Truck is owned by respondent No. 1, this fact is clear from Form-AA and also from the contents of the written statement of respondent No. 2. Thus relying upon the version of the petitioner, coupled with the documentary evidence, I hold that the liability of respondents no. 1 & 2 to pay compensation proportionate to the negligence of tanker driver is joint and several. With this, I answer Issue No. 2 in affirmative.”

5. However, while passing the operative order, learned Member allowed the claim petition against respondent no. 1 (present appellant) only. She dismissed the claim petition as against present respondent no. 7-insurer of the vehicle involved in the accident.

6. Such dismissal obviously is result of inadvertent lapse and if it is not corrected by this Court, the operative portion of the impugned order will remain contrary to the findings recorded backed by reasons by

learned Member herself. Even otherwise, on perusal of the impugned judgment and order, I find that there is no reason for disallowing the claim petition against the insurer (respondent no. 7).

7. In the circumstances, this appeal deserves to be allowed and it is accordingly allowed. Clauses (1) and (3) of the impugned judgment and order are modified by directing that the claim is allowed against original respondent no. 1 as well as original respondent no. 2 i.e. present appellant and present respondent no. 7 jointly and severally with costs. The amount of compensation shall be paid within two months from the date of present order. Remaining portion of the impugned judgment and order are confirmed.

S. B. SHUKRE, J

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