

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

FIRST APPEAL NO.274 OF 2000

1. Kalpanabai w/o Sardarsing Salunki,
(Girase), Age: 28 years, Occ: Household.
2. Mohorarsing s/o Sardarsing Solunki,
(Girase) Age: 9 years, Occ: Education.
3. Deepikabai d/o Sardarsing Solunki,
(Girase) Age: 16 years, Occ. Education.
4. Reshamabai w/o Mohansing Salunki,
Age: 77 years, Occ: Nil.
5. Mohansing s/o Anandsing Solunki
(Girase), Age 80 years.

Occ.: Nil R/o All residing of
Dongargaon, Taluka Shahada,
Dist. Nandurbar.

**...APPELLANTS
(Ori.Claimants)**

VERSUS

1. Santosh s/o Tulsiram Patil,
Age Major Occ: Business,
R/o. Nandurbar Plot No.37,
Saraswati Nagar, Wagheshwari,
Area, Nandurbar.

2. Anandsing s/o Gulabsing Girase,
Age 44 years, Occ: Driver,
r/o. Kashima Nagar, Behind
Vikas High School Shahada,
Dist. Nandurbar.
3. Oriental Insurance Co.Ltd.,
Dhule Division, Office
Dhule.

...RESPONDENTS

...
Mr. R.C.Patil, Advocate, for the appellants.
Mr. Mahesh Patil, Advocate for respondent no.1.
Mr. Chaitanya Deshpande, Adv., h/f Mr.C.R.Deshpande,
Advocate for respondent no.2.
Mr. Dhananjay Deshpande, Advocate, for respondent no.3.

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CORAM: P.R.BORA, J.

DATE :JUNE 9th, 2017

ORAL JUDGMENT:

1. The present appeal is filed against the judgment and award dated 16th February, 2000, passed by the Motor Accident Claims Tribunal, Dhule, in Claim Petition no.168 of 1994.

2. The present appellants had preferred the aforesaid Claim Petition claiming compensation on account of death of one Sardarsing Solanki. According to appellants, deceased Sardarsing Solanki died in a vehicular accident happened on 8.11.1993 having involvement of a Jeep bearing registration No.MH-18-6931 and because of rash and negligent driving of the driver of the said Jeep. The learned Tribunal, after having assessed the oral and documentary evidence brought before it, has dismissed the petition. The Tribunal has held that the claimants have failed in establishing that the deceased Sardarsing Solanki died because of dash given to him by the jeep bearing registration No. MH-18-6931. The Tribunal has also held that deceased Sardarsing died because of his own negligence. Aggrieved thereby, the appellants have preferred the present appeal.

3. Shri R.C. Patil, learned Counsel appearing for the appellants, strenuously urged that the learned Tribunal has failed in appreciating the evidence of PW No.2 Brijlal Ramdas Patil. Learned Counsel, taking me through the

evidence of the said witness, submitted that the oral testimony of the said witness fully establishes involvement of Jeep bearing No. MH-18-6931 in occurrence of the alleged accident and also further proves that the accident happened because of rash and negligent driving of the driver of the said Jeep. Learned Counsel submitted that the Tribunal has grossly erred in not believing the testimony of the said witness. Learned Counsel, therefore, prayed for setting aside the order passed by the Tribunal and, consequently, prayed for allowing the claim petition in toto. Learned Counsel Shri Mahesh Patil appearing for respondent no.1, and Shri Deshpande, learned Counsel appearing for respondent no.3, supported the impugned judgment. Both the learned Counsel submitted that a well reasoned order has been passed by the Tribunal and no interference is called for in the impugned order. Learned Counsel submitted that from the evidence on record it is writ large that Brijlal Ramdas Patil was a cooked up witness brought by the appellants to substantiate their false claims. Learned Counsel has submitted that the Tribunal has rightly observed that such a witness cannot be believed.

4. I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the impugned judgment and evidence on record as well as the other material placed on record.

5. Admittedly, the FIR does not disclose the involvement of the Jeep bearing registration No. MH-18-6931. The FIR further does not disclose that the alleged accident happened and deceased Sardarsing received injuries because of the rash and negligent driving of the aforesaid jeep. The contents of the FIR clearly reveal that deceased Sardarsing himself was driving his motor cycle in a zig-zag manner and because of his own negligence, he suffered accidental death. Perusal of the testimony of appellant no.1 Kalpanabai (PW 1) before the Tribunal reveals that the information as about the accident was given to her by PW No.2 Brijlal. If the said fact is to be accepted, said Brijlal then, must have reported the said

fact immediately to the Police also, however, the material on record reveals that no such information was ever given by the said Brijlal to the Police. In all the Police papers, particularly the spot panchnama and the inquest panchnama and other related documents, the story, as has been canvassed subsequently by the appellants, is not revealed. On careful perusal of evidence of Brijlal, I have no doubt that the evidence of such a witness was not believable and the Tribunal has rightly refused to rely upon the testimony of the said witness. If the evidence of the said witness Brijlal is kept aside, there remains no evidence to substantiate the claim of the present appellants. The appellants have utterly failed in proving their claim that deceased Sardarsing died because of negligence on the part of the driver of the offending jeep or because of the dash given by the said Jeep to his motor cycle.

6. After having considered the entire material on record, it does not appear to me that the Tribunal has

committed any error in dismissing the claim petition. The Appeal, being devoid of substance, deserves to be dismissed and is accordingly dismissed, however, without any order as to the costs.

(P.R.BORA)
JUDGE

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