

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.610 OF 2001
WITH
CIVIL APPLICATION NO. 6236 OF 2001

1. The Executive Engineer,
Aurangabad Irrigation Division,
Aurangabad.
2. Anwar Baseer Kazi,
age.... yrs, Occ. Service-Driver,
R/o. C/o Executive Engineer, Irrigation Division,
Aurangabad. Appellants.

VERSUS.

Mukunda s/o Mahadu Ghusale,
age 42 yrs, occ. Service,
Zilla Parishad Guest House,
Khultabad, Tq. Khultabad,
Dist. Auragabad. Respondent.

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CORAM : V. K. JADHAV, J.
DATED : 11th JANUARY, 2017

ORAL JUDGMENT:-

1. Though fresh notice has been served on the appellants in pursuance to the order dated 11.1.2016, none appears for the appellants.
2. Being aggrieved by the judgment and award dated 8.8.2001 passed by the M.A.C.T. Aurangabad, in M.A.C.P. No. 495 of 1998, original respondents preferred this appeal.

3. Brief facts giving rise to the present appeal, are as follows:-

On 24.7.1998, at 4.30 p.m. when Sheetalabai, minor daughter of the claimant, alongwith her aunt, was proceeding towards her house, at that time on Khultabad road, near Sulibhanjan Chowk, the appellant No.2 was driving his jeep in rash and negligent manner and gave a dash to said Sheetalabai. In consequence of which, Sheetalabai sustained grievous injuries. She was shifted to GHATI hospital, where she succumbed to the injuries. The claimant being father, filed M.A.C.P. No. 495 of 1998, for grant of compensation under various heads. It has contended in the claim petition that, the appellant No.1 is owner of the Jeep and the said Jeep involved in the accident is of Irrigation department. The appellant No.2 was driving the said Jeep at the time of accident, who is an employee of the Irrigation department.

4. The appellant No.1 has strongly resisted the claim petition by filing written statement at Exh.17. It has contended that there is no negligence on the part of appellant No.2 driver. It has contended that the vehicle was standing on the road and suddenly deceased Sheetalabai came back from the said vehicle and fell down on the vehicle.

5. Learned Member of the Tribunal, by impugned judgment and order dated 8.8.2001, partly allowed the petition and directed the respondents, jointly and severally, to pay Rs.50,000/- by way of compensation to the claimant under Section 166 of the Motor Vehicles Act, with interest on the said amount, at the rate of 9% p.a.

6. The claim petition is mainly contested on the ground that the deceased Sheetalabai, all of a sudden, came behind the jeep in running condition and she herself had fallen on the jeep and sustained the injuries. The appellant No.2 driver was not at fault. It appears from the record that on 25.7.1998, on the basis of the complaint lodged by the claimant, crime came to be registered against the appellant No.2, who happened to be the driver of the jeep involved in the accident and serving in Irrigation department, at that time. A copy of complaint is also placed on record and the same is marked Exh.23. On the basis of the said complaint, crime No. I-131 of 1998 came to be registered against appellant No.2 driver. On perusal of spot panchnama Exh.24, it appears that spot is on the middle portion of the road and there are markings on the tar road in respect of brake applied. On perusal of inquest panchnama Exh.25, it appears that deceased Sheetalabai had sustained injuries on her head, forehead, chest, abdomen etc. The provisional cause of death

certificate is produced on record and the same is marked Exh.26, which shows that deceased Sheetalabai died on account of head injury.

7. In view of the above documents, the defence taken by the appellant No.1, appears to be not probable and deceased Sheetalabai was not likely to sustain head injury if, on her own, she dashed against the jeep, which was stationery at the time of accident. The learned Member of the Tribunal has, therefore, rightly come to the conclusion that the accident has taken place due to rash and negligent driving of appellant No.2 driver.

8. It appears that learned Member of the Tribunal, Aurangabad has awarded very meager amount as a compensation. There is no reason to interfere in it. There is no substance in the appeal and the appeal is liable to be dismissed and it is hereby accordingly dismissed with costs. Award be drawn up accordingly.

9. Pending civil application is disposed of accordingly.

(V. K. JADHAV, J.)

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