

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3401 OF 2015
WITH
CIVIL APPLICATION NO. 8834 OF 2016

ASHAMATI RAMA PANZADE AND OTHERS
VERSUS
JAMEL AHAMAD NIYAZ AHAMAD AND ANOTHER

...
Advocate for Appellants : Mr. Shahaji B. Ghatol Patil
Advocate for Respondents : Mr. Avinash Deshpande
.....

CORAM : V. K. JADHAV, J.
DATED : 16th JANUARY, 2017

PER COURT:-

1. Being aggrieved by the judgment and award passed by the M.A.C.T. Parbhani dated 07.06.2014 in M.A.C.T. No. 384 of 2010, the original claimants preferred this appeal.
2. It is not disputed that the deceased Rama died in vehicular accident occurred on 13.11.2009 wherein a jeep registration No. MH-22-7817 and a tempo bearing registration No. MH-22-0411 are involved.
3. Learned counsel for the appellants-original claimants submits that two vehicles are admittedly involved in the accident and the learned Member of the Tribunal has recorded finding that the vehicle tempo bearing registration No. MH-22-0411 was driven in rash and

negligent manner and the driver and owner of the said vehicle are responsible to pay compensation to the claimants to the extent of 20%. Learned counsel submits that the evidence led by the parties fully established that the accident was the result of composite negligence on the part of drivers of both the vehicles. If the composite negligence is established, then drivers and owners of both the vehicles are responsible jointly and severally to pay the compensation. Learned Member of the Tribunal has erroneously fixed the liability on the offending vehicle to the extent of 20%. There is no question of considering the contribution made by vehicle involved in the accident, as it is the case of composite negligence and therefore, the owners of both the vehicles are liable to pay the compensation jointly and severally, as worked out by the Tribunal. Learned counsel submits that out of the same accident, one injured Abdul Rajjak Abdul Sattar had preferred M.A.C.P. No. 480 of 2011 and thereafter first appeal No. 1437 of 2014 before this court. This Court by order dated 26.11.2014 has recorded a finding of composite negligence in respect of both the vehicles involved in the accident and accordingly held that the respondents are jointly and severally liable to pay the compensation to the appellants claimants.

4. Learned counsel for the respondent insurer submits that owner and driver of another vehicle bearing registration No. MH-22-7817

are not impleaded as party to the claim petition No. 384 of 2010 and the appellants claimants have preferred claim against the owner of tempo bearing registration No. MH-22-0411 and its insurer. The learned Member of the Tribunal found that driver of the tempo had contributed negligence to the extent of 20% and accordingly held the tempo responsible to pay the compensation to the extent of 20% only. Learned counsel submits that no interference is required and there is no merits in the appeal.

5. I have also heard learned counsel appearing for the respondent owner.

6. In first appeal No. 1437 of 2014, by relying upon the judgment of Supreme Court in the case of ***T.O. Anthony vs. Karvaranan reported in 2008 AIR SCW 2045***, this Court held that there is collusion between the jeep and tempo and it is the case of composite negligence.

7. On perusal of oral evidence and documents, such as police papers, it appears that on 13.11.2009, deceased Rama was going towards Mantha in a jeep bearing registration No. MH-22-7817. On way, one tempo bearing registration No. MH-22-0411 had overtaken the said jeep in speed. After going ahead, the said tempo, without

giving any signal or indication, suddenly applied brakes, thus the accident had occurred. Learned Member of the Tribunal has considered the contents of F.I.R. Exh.22 and observed that the jeep driver was driving the jeep in high speed and gave dash to the tempo. Learned Member of the Tribunal has also observed that the driver of the tempo has also driven his vehicle in rash and negligent manner and the said vehicle was also in high speed. It has specifically observed that the tempo was coming in reverse direction and it was the duty of the jeep driver to take proper care. In the given set of facts, this Court has taken a view in first appeal No. 1437 of 2014 that it is the case of composite negligence and both the vehicles involved in the accident and owners thereof are liable to pay the compensation jointly and severally.

8. In the instant case, the owner and driver of the jeep and its insurer are not impleaded as party to the claim petition. In the light of the observations made by this Court in first appeal No. 1437 of 2014, I have left with no other alternative but to remand the matter to the M.A.C.T. Parbhani with liberty to the appellants to implead the owner, driver and insurer of the vehicle bearing registration No. MH-22-7817 as party to the claim petition and the learned Member of the Tribunal to decide the claim petition afresh after giving opportunity to both the parties to lead evidence, if desire. Learned counsel for the appellant

claimants submits that the Tribunal has also not considered the income of the deceased and thus, failed to award just and reasonable compensation.

9. In view of above discussion, I proceed to pass following order:-

O R D E R

- I. The appeal is hereby partly allowed.
- II. The judgment and award passed by learned Member, M.A.C.T. Parbhani dated 07.06.2014 in M.A.C.P. No. 384 of 2010 is hereby quashed and set aside and matter is remanded to M.A.C.T. Parbhani with following directions:-
 - a) Re-admit the M.A.C.P. No. 384 of 2010 to its original number.
 - b) The evidence, if any, recorded during the trial shall be the evidence during the trial after remand.
 - c) The appellants original claimants are at liberty to implead the owner, driver and insurer of vehicle jeep bearing registration No. MH-22-0411 as party to the M.A.C.P. No. 384 of 2010. The owner, driver and insurer of the aforesaid vehicle, if contested the claim, the appellants claimants are

at liberty to adduce oral and documentary evidence in support of their contentions and so also the newly impleaded respondents.

- d) The learned Member of the Tribunal shall give an opportunity of hearing afresh to the parties and dispose of the claim on merits in accordance with law.
 - e) The appellants claimants are permitted to re-agitate the point of quantum on the basis of evidence adduced prior to remand of the case. No further evidence on that point.
 - f) Needless to say that the issue of composite negligence is not kept open, as the same is concluded by this Court in first appeal No. 1437 of 2014.
 - g) The parties shall appear before the Tribunal on 13.02.2017. Record and proceedings be returned to the Tribunal forthwith.
10. Pending civil application is also disposed of.

(V. K. JADHAV, J.)

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