

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

3 FIRST APPEAL NO. 387 OF 2017

SARLABAI NANA DHIWARE AND ANR
VERSUS
DILIP VIJESING DHIWARE AND ORS

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Mr. A.S. Savale, Advocate for the Appellants.
Mr. S.R. Bodade, Advocate, for respondent No.2.

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CORAM : K.L. WADANE, J.

DATE : 06th SEPTEMBER, 2017.

ORAL ORDER :-

1. With the consent of the parties, this appeal is taken up for final hearing.

2. Heard Mr. Savale, learned counsel appearing for the appellants and Mr. Bodade, learned counsel appearing for the respondent No. 2/Insurance Company.

3. During the course of arguments the learned counsel Mr. Savale submits that, very limited question is involved in the present appeal, as to whether

claimants have proved the cause of death of the deceased due to the injury sustained to him in the motor vehicle accident.

4. From the record it reveals that the appellant No. 1 is the wife and appellant No. 2 is the son of the deceased Nana. On 26.07.2008 deceased was proceeding by a truck, involved in the accident, in the capacity of a labour, which met with an accident. After the accident the injured was indoor patient for about two months and ultimately he succumbed to the injuries on 23.09.2008.

5. Mr. Bodade, learned counsel appearing for the respondent No. 2/insurance company submits that, a criminal proceedings initiated against the driver has been stopped under section 258 of the Code of Criminal Procedure.

6. Mr. Savale, learned counsel, further submits that, the doctor actually who treated the deceased has not been examined on behalf of the claimants. He

further submits that, the injured was admitted in two hospitals on different dates and according to Mr. Savale, learned counsel, the evidence of the doctor is necessary to prove the exact cause of death of the deceased. Therefore, he submits that, opportunity be given to lead the evidence before the learned Tribunal to establish the cause of death of the deceased.

7. The claim of the applicants is dismissed by the learned Tribunal only on the ground that the claimants have failed to establish the cause of death. Other claim put forth by the claimants is accepted by the Tribunal.

8. In view of the above, the impugned judgment and order passed by the learned Tribunal is set aside.

9. The matter is remanded back to the learned Tribunal for hearing and disposal in accordance with law.

10. The learned Tribunal shall give opportunity to

both sides to lead further evidence and shall dispose of the claim petition as early as possible, but in any event, within a period of six months from today.

11. First Appeal is disposed of.

(K.L. WADANE, J.)

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