

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.547 OF 2014
WITH
CIVIL APPLICATION NO.1928 OF 2017**

National Insurance Co Ltd	...Appellant
<i>Versus</i>	
Bhiwaji Bahiru Rongate & Ors	...Respondents

Mr R Mehta, *with Mr N Mehta, i/b KMC Legal Venture, for the Appellant.*
Ms Divya Parab, *i/b RN Gite, for Respondent No.1.*
Mr KN Kandekar, *for Respondent No.5.*

CORAM: G.S. PATEL, J
DATED: 18th July 2017

PC:-

1. The Appeal is directed against an award dated 16th December 2009 in a fatal accident case.
2. The amount awarded was Rs.1,45,000/- inclusive of No Fault Liability with interest at 9% p.a.
3. The claimant was one of several passengers in a Maruti van No.MH-15 E-3056. The party was returning from a wedding from

village Dhondbar to Rongatewadi on 22nd April 2006. At about 7.30 p.m. the van collided with a stationary dumper that was negligently and wrongly parked on the wrong side of the road without any warning lights, hazard lights or indicators. Several persons died, including the driver, Rajaram Rongate, and the claimant. Many others were injured.

4. The van's owner and insurer were exonerated. The dumper driver was deleted as a party opponent. The award was against the dumper's owner, and the dumper's insurer. The insurer is in appeal today. The award must, in my view, be read fairly as one jointly and severally against both.

5. The principal ground of the appeal is that the dumper's driver did not hold a valid licence. There is no evidence of this. The insurer led no evidence in this behalf. Regarding the grievance that an issue was not framed regarding the invalidity of the license, that is not something that I am prepared to accept at this stage, because no attempt seems to have been made by the Appellant to have that issue framed, something that could have been done at any time. Nothing prevented the insurer, which was contesting the proceedings, from making such an application to the Tribunal. It is well settled that issues can be framed at any time.

6. I see no reason to interfere with the award. There is no merit in the appeal. The appeal is dismissed.

7. The Claimants have filed a Civil Application No.1928 of 2017 for withdrawal. In view of disposal of the Appeal, the Civil Application does not survive and is disposed of accordingly.

8. The Claimant will be entitled to withdraw the entire amount deposited with accrued interest. The amount of statutory deposit will be transferred to the MACT, Nashik, if not already done. The statutory deposit of Rs.25,000/- will be invested until its withdrawal. The MACT will permit the withdrawal of all amounts including the statutory deposit with accrued interest acting on production of an authenticated copy of this order. No costs.

(G. S. PATEL, J.)