

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1184 OF 2012

National Insurance Co Ltd	...Appellant
<i>Versus</i>	
Sangeeta Ramesh Rongate & Ors	...Respondents

Mr R Mehta, *i/b KMC Legal Venture, for the Appellant.*
Ms Divya Parab, */b R.N. Gite for Respondents Nos. 1 to 4.*
Mr KN Kandekar, *for Respondent No. 5.*

CORAM: G.S. PATEL, J
DATED: 19th July 2017

PC:-

1. First appeal, **Admit**. By consent, taken up forthwith for hearing and final disposal on the basis of the compilation.

2. Under challenge is an order dated 15th December 2009 of the MACT Nashik awarding Rs 3,47,000/- to the claimants jointly and severally against opponent nos. 1 and 3. The case is of fatality in a motor vehicle accident. The deceased was one Ramesh Rongate. He died on 22nd April 2006. The claim is filed by his widow.

3. Ramesh was one of a number of persons who were on that day returning from village Dhondbar. They were in a Maruti van No.

MH-15-E-2056. As they reached Pandhurli village, there was a dumper No. MH-04-AL-3754 wrongfully and negligently parked on wrong side of the road with no warning lights, indicators or hazard lights. The driver of the van Rajaram Rongate did not and could not in the darkness see the dumper. The Maruti van went into the dumper. Several persons died, Ramesh among them. Others were seriously injured.

4. Opponent no. 1 was the driver of the dumper. Opponent no. 2 was the owner of the dumper. Opponent No. 3 was the insurer of the dumper. Opponents Nos. 4 and 5 were the owner and insurer of the van. They were exonerated.

5. The principal defence taken was that the dumper driver did not have a valid license. The insurer led no evidence of this. Mr Mehta states that no issue regarding the driving license was framed. However, it appears from the record that no application was ever made to the MACT to frame such an issue and this could have been done at any time. It would not, in my view, be appropriate to now frame the issue and remand the matter. Nothing prevented the appellant from leading that evidence or from seeking that such an issue be framed.

6. Other than this there is no cause made out for interference with the order under appeal. The appeal is without merit. It is dismissed. There will be no order as to costs.

7. The entire amount has been deposited with the MACT. The statutory deposit of Rs. 25,000/- with accrued interest will be transferred to the MACT Nashik. The full amount of award deposited and the statutory deposit amount with all accrued interest will be allowed to be withdrawn by the claimant. The MACT will permit withdrawal on production of an authenticated copy of this order.

(G. S. PATEL, J)