

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL (ST) NO. 14589 OF 2010
WITH
CIVIL APPLICATION NO. 2152 OF 2010
WITH
CIVIL APPLICATION NO. 2153 OF 2010

National Insurance Co Ltd	...Appellant
<i>Versus</i>	
Trambak Shrawan Khetale & Ors	...Respondents

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

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

PC:-

1. There is a delay of 27 days in filing the First Appeal. The delay is sufficiently explained in the civil application. It is condoned.

2. Civil Application No. 2152 of 2010 is made absolute and disposed of accordingly. No costs.

3. This appeal is directed against an order dated 15th December 2009 by the MACT, Nashik in a fatal accident case. On 22nd April 2006 the deceased, an 8th standard student, the child of the claimants, was in a Maruti Van No. MH 15-E-3056 with several other persons. They were returning from a marriage in village Dhondbar and travelling to Rongatewadi. At about 7.30 p.m. the van, driven by one Rajaram Rongate, crashed into a dumper No. MH-04-AL-3754 that was negligently and wrongfully parked on the wrong side of the road without any hazard or warning lights, or other parking indicators. The result of the accident was that several persons died, including the driver and the minor. Many others were injured.

4. The MACT, Nashik awarded an amount of Rs. 1,57,000/- against opponents nos. 2 and 3. These were, respectively, the owner and insurer of the dumper. The driver of the dumper was deleted as the opponent. The insurer and owner of the van were exonerated.

5. The principal ground in the appeal is that the driver of the dumber did not have a valid license. The appellant insurer did not lead any evidence. The grievance is that the MACT did not frame any issue on the validity of the driving license. However, no application was ever made by the insurer, and this could have been done at any time, to have that issue framed.

6. I find no reason to interfere with the order under appeal except to the limited extent of clarifying that the decree against opponents nos. 2 and 3 must be correctly read as a decree that is

joint and several against both. Other than this, the decree order calls for no interference.

7. The Appeal is dismissed.

8. The applicants will be entitled to withdraw the entire amount deposited with accrued interest. The amount of statutory deposit is also to be transferred to the MACT, Nashik and will also be invested in a fixed deposit with any nationalized bank till withdrawal. The claimants will be entitled to withdraw this amount as well with all accrued interest.

9. MACT, Nashik will permit the withdrawal acting on production of an authenticated copy of this order.

10. In view of this, the other civil application no. 2153 of 2010 seeking stay does not survive and is disposed of as infructuous.

(G. S. PATEL, J)