

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL ST NO. 30870 OF 2014
WITH
CIVIL APPLICATION NO. 4147 OF 2014
AND
CIVIL APPLICATION NO. 4148 OF 2014

National Insurance Co Ltd ...Appellant
Versus
Pandu Alias Pandurang Bhau Kekare & 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 Ketan joshi, for Respondent No. 5.

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

PC:-

1. For the reasons stated in civil application no. 4147 of 2014, the delay in filing the first appeal is condoned.
2. Civil application no. 4147 of 2014 is made absolute and disposed of.

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

4. Under challenge is an order dated 15th April 2014 of the MACT Nashik awarding Rs 3,45,000/- 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 Meerabai Pandu Kekare. She died on 22nd April 2006. The claim was filed by her husband. Meerabai was 35 years old at the time of the accident. She 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, Meerabai among them. Others were seriously injured.

5. 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.

6. 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.

7. 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.

8. Civil application no. 4148 of 2014 does not survive and is disposed of as infructuous.

9. 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 the 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)