

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

**FIRST APPEAL NO. 361 OF 2017
WITH CA/2117/2017**

Mr. Ramdas Sitaram Marag,
age 48 years, occ. Service,
R/o Milind Multi Purpose
High School,
Nagsenvan(Cantonment),
Aurangabad

...Appellant
[Orig.Resp.No.2]

VERSUS

- 1] Indubai Bhanudas Wahatule,
age 45 years, occ. Household,
R/o Dongergaon (Shiv),
At Post Shiropdi (Khurd),
Phulambri, Aurangabad,
- 2] Ganpat Bhanudas Wahatule,
age Major, occ. Business,
R/o Gharana, Nirala Bazar,
Samarthnagar, Aurangabad,
- 3] Balu Bhanudas Wahatule,
age Major, occ. Education,
R/o Dongergaon (Shiv),
At Post Shiropdi (Khurd),
Phulambri, Aurangabad,
- 4] Chotusing Sitaram Marag,
age Major, occ. Business,
R/o Dongergaon (Shiv),
At Post Shiropdi (Khurd),
Phulambri, Aurangabad,

...Respondents
[Resp. Nos. 1 to 3 Orig.
Applicants and Resp.No.4
Orig. Resp.no.2]

...

Advocate for Appellant : Mr. Amey Sabnis h/f Mrs.
Gour Rashmi P.

Advocate for Respondent nos. 1 to 3 : Mr. V.P.Kadam
Respondent no.4 served

....

CORAM : SUNIL K. KOTWAL, J.

DATE : SEPTEMBER 25, 2018

ORAL JUDGMENT :

This appeal is directed against the judgment and award, passed by the Motor Accident Claims Tribunal, Aurangabad, in Motor Accident Claim Petition No. 617 of 2012 awarding compensation of Rs.6,93,000/- against the owner and driver of motor cycle MH-20/R- 2862.

2. Learned counsel for the appellant submits that the appellant was original respondent no.2 and respondent no.4 Chotusing was the brother of appellant. He submits that though, claimants claim that the deceased died in motor cycle accident on 12.5.2012, in fact, it was an incident of assault on

the deceased. He has drawn my attention to the copies of police papers to show that the true occurrence of the incident was hidden by the claimants and family members of the deceased and posed that it was the case of motor vehicular accident.

3. Learned counsel for the appellant has also drawn my attention towards the complaint submitted by him to the Bar Council of Maharashtra, Goa against advocate Satish Moharkar, who was engaged by the appellant. Contention of the learned counsel for the appellant is that his advocate did not file written statement, which resulted into passing of ex parte award against him. He prays for remand of the matter.

4. Shri V.P.Kadam, learned counsel for respondent nos. 1 to 3 opposes the remand of the matter, on the ground that already sufficient opportunity was given to the appellant to file written statement. He submits that including

compensation awarded under 'no fault liability', no amount is deposited by the appellant either before the Tribunal or before this Court. His contention is that from the police papers, it reveals that it was the simple case of motor vehicular accident when the deceased was traveling by motor cycle as pillion rider along with original respondent no.1 Chotusing.

5. In the case at hand, on perusal of R. and P., it emerges that appellant appeared before the Tribunal on 3.4.2013 through advocate S.R. Moharkar. Thereafter, on number of dates, written statement was not filed by the appellant. At last, 'No WS' order was passed on 7.2.2014. Thereafter three applications were moved by advocate Moharkar to set aside the 'No WS' order. However, those applications were rejected by the Tribunal. Ultimately, the matter proceeded without say of original opponent no.2, who is appellant before this Court. At the stage of recording of evidence, witnesses were not cross-

examined, as the advocate for the appellant was absent. At last, award was passed on 9.11.2016. Appellant has also pointed out that advocate Moharkar died on 29.2.2016.

6. After going through the R. and P., it emerges that advocate Satish Moharkar neither intimated the appellant regarding filing of written statement, nor he intimated the Court that for lack of response of present appellant he wanted to withdraw his Vakalatnama. Thus, after going through the R. and P., it emerges that due to negligence on the part of advocate Satish Moharkar, the matter was proceeded ex parte against the present appellant, which resulted into passing of impugned order.

7. So also, after going through the copies of police papers placed on record along with Civil Application No. 2117 of 2017, it emerges that in the postmortem notes in column of general particulars as

per police inquest history, it was the case of assault on 13.5.2012. The dead body was brought to the hospital for postmortem on 16.5.2012. On that day, postmortem was conducted. Even cause of death is due to head injury. Police station diary No. 137/2012 indicates that on 13.5.2012 at about 4.30 p.m. near Ambika Dhaba adjacent to Deogiri Sugar Factory, one Sukmanbai Bamnawat and Chotu Siraram Marag assaulted one Bhanudas after providing him liquor, and therefore, Bhanudas was brought to the police station in unconscious condition. Thus, apparently, charge sheet and police papers filed with the claim petition indicate that police prepared the case as if it was motor vehicular accident. Something is suppressed by the claimants with the help of Police Department from the Tribunal.

8. Considering these all peculiar circumstances, I am fully satisfied that fair opportunity need to be given to the appellant to lead

oral and documentary evidence before the Tribunal for filing his written statement. On giving opportunity only, the truth will come on record before the Tribunal.

9. For the reasons stated above, I hold that the impugned award, passed by the Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No. 617 of 2012 deserves to be set aside. Accordingly, the appeal is allowed. The award passed by the Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No. 617 of 2012 is set aside. Motor Accident Claim Petition No. 617 of 2012 is remanded to the Motor Accident Claim Tribunal, Aurangabad, with direction to allow respondent no.2 in the said claim petition to file written statement, and thereafter to allow both the parties to lead additional evidence in support of their respective contentions. Learned Tribunal shall decide the claim petition within six months from the date of receipt

of R. and P. Both the parties are directed to remain present before the Motor Accident Claim Tribunal, Aurangabad on 30.10.2018. Office to send the R. and P. to the concerned Tribunal forthwith. Parties to bear their respective costs. In view of disposal of appeal, Civil Application stands disposed of.

[SUNIL K. KOTWAL, J.]

dbm