

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

C.A.F. NO. 2493/2018 IN F.A. ST. NO. 9578/2018

(THE NATIONAL INSURANCE CO. LTD., BHANDARA ...VERSUS... SOMAJI FAKIRJI
MURKUTE & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri V.P. Maldhure, counsel for the applicant.

CORAM : NITIN W. SAMBRE, J.
DATE : NOVEMBER 26, 2018.

Though the respondents are served, none appears on their behalf. In view thereof, delay stands condoned as the appellant has shown *bona fides* by demonstrating the grounds in the application.

The civil application is allowed and disposed of.

F.A. ST. NO. 9578/2018.

Heard.

The learned counsel for the appellant submits that the award delivered by the Claims Tribunal which is impugned in the present appeal is unsustainable for the reason that the Tribunal has failed to appreciate the violation of the terms of the policy and that there is no material on record to infer the earning capacity of deceased Sakhubai, who was unmarried daughter of the claimant. So as to substantiate his contention, the learned counsel for the appellant would try to draw support from the material available on record, particularly the observations and the evidence. He would strenuously urge that merely for asking an amount of Rs.1,50,000/- towards compensation is awarded by the Tribunal. He would then urge that either the award impugned is liable to be set aside or the matter needs to be remanded back for recording the evidence afresh.

Though on the application for condonation of delay the respondents-claimants are served, none appears for them.

The incident in question took place on May 26, 2012 between 10.30 a.m. to 11.00 a.m. when the tractor-trolley bearing

registration No.MH-36-7521 crushed the said lady resulting into her death on the spot.

The appellant herein has not disputed the incident and the death of Sakhubai. From the contentions raised, two aspects need to be appreciated. One, whether there is any violation of the conditions of the policy and second whether the respondents-claimants have proved the earning and dependency.

The allegation by the present appellant is that the driver of vehicle was not holding a valid driving license. The driving license was produced by the vehicle owner which is at Exhibit 43 and Exhibit 44 is the insurance policy of the tractor-trolley in question. Spot panchanama at Exhibit 40 and post-mortem report at Exhibit 42 in categorical terms establish the death of Sakhubai in the accident in question. The driver of tractor-trolley who was examined at Exhibit 46 has deposed that he was holding a valid driving license and as such the Tribunal has rightly rejected the claim of the appellant about violation of the terms of the policy. So far as the evidence about the income of Sakhubai and dependency of the present respondent is concerned, in the claim petition the claimant has tried to establish his claim by stating that the amount of Rs.4,00,000/- be ordered to be paid as compensation.

The fact remains that the present respondent-claimant is the father of deceased Sakhubai and she was his unmarried daughter. It is established that because of rash and negligent driving by the tractor-trolley driver, the accident took place and in the said accident Sakhubai suffered fatal injuries resulting into her death on the spot. In my opinion, once there are sufficient pleadings to justify the claim and when it has been proved that Sakhubai died in the accident in question, the reasonable compensation of Rs.1,50,000/- against the claim of Rs.4,00,000/- particularly in the matter of death of an unmarried daughter is very much justified. That being so, in my opinion, no material illegality could be noticed in the impugned judgment. As such, the appeal fails and is dismissed with no order as to costs.

The amount of compensation deposited in this Court by the present appellant be forthwith remitted to the Motor Accident Claims Tribunal, Bhandara in M.A.C.T. Claim No.106 of 2012. The Claims Tribunal shall issue notices to the claimants intimating about the aforesaid deposit and their right to seek withdrawal of the said amount.

(NITIN W. SAMBRE, J.)

APTE.