

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

CIVIL APPLICATION [CAF] NO.664 OF 2017

IN

FIRST APPEAL ST. NO.25412/2016

[Shriram General Insurance Company Limited .vs. Giridharkrishna s/o Gangaramji Khungar and others]

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

Court's or Judge's orders

Shri H.N. Verma, Advocate for Appellant,
Shri H.D. Dangre, Advocate for Respondent Nos.1 to 5.
.....

CORAM : N.W. SAMBRE, J.

DATED : DECEMBER 19, 2018.

Heard respective counsel. In view of no objection extended by original claimants-non-applicant nos.1 to 5, the application stands allowed. Delay of 37 days caused in preferring appeal stands condoned.

FIRST APPEAL ST. NO.25412/2016

By consent, appeal is taken up for final disposal. Heard respective counsel.

The facts necessary for deciding this appeal are as under :

On July 27, 2011 deceased Vikram was travelling in an Alto Car which dashed a stationary truck from its rear side resulting into his death. The claimants i.e. the respondents herein are his legal heirs who claimed compensation based on theory of negligence on the part of truck driver who had parked his truck almost on the centre of the road. The MACT, while entertaining Claim Petition No.1046/2011, vide impugned judgment dated July 26, 2016, granted claim. As such, this appeal.

Shri Verma, the learned counsel for appellant-insurance company made two submissions (i) that, the deceased who was riding an Alto Car dashed a stationary truck which was insured with the

appellant. The impact of accident which was caused by the driver of Alto Car was such that the car from the rear side of the truck reached to driver's cabin. Hence, there should have been finding of negligence on the part of the deceased driver and liability ought not have been fastened on the appellant and (ii) even if any liability is to be fastened on the appellant-insurance company, same should be in the proportion of 50%, hence unreasonable compensation is came to be awarded.

Per contra, Shri Dangre, the learned counsel for the respondents supported the judgment.

The claimants, in support of their claim, examined Claimant No.1 Giridhar Krishna (PW-1) at Exh.28 and Mukesh Agrawal, Chartered Accountant as PW-2 at Exh.58. They have relied upon the investigation papers of the offence in question, income tax returns, audit statements etc, whereas Legal Officer Gitesh Pandey was examined by the appellant at Exh.65.

In view of the respective pleadings, issues were framed at Exh.25, whereby the findings of negligence to the extent of 90% came to be recorded against the appellant with whom the truck in question was insured.

The points for consideration are dealt with in the light of the submission (i) and (ii) referred above.

The submissions of the learned counsel for the appellant are appreciated. It need be observed here that the deceased was travelling in an Alto Car was found entangled from the rear side of the truck up to the driver's cabin of the said truck. The incident has occurred in the dark and the truck in question was found to be parked at a distance of 4 ft. towards left from the centre of the road.

The spot panchanama Exh.31 depicts that the truck in question was parked in such negligent and callous manner that on the right side of the truck there was only 4 ft. space left from the centre whereas on the left side 19 ft. space was available.

Though the truck was claimed to have been forced to make stationary at said spot because of burst of rear tyre of the left side, however, the said truck driver was not estopped from taking mandatory precautionary measure of putting parking and indicator lights on. It was also his duty to place appropriate sign of diversion at a safer distance from the stationary vehicle i.e. truck in question. The truck driver has failed to perform his duty by not putting on indicators or brake lights or parking lights or a sign of caution or reflectors plate so as caution or warn the drivers. In the aforesaid background, the claim that the truck driver was not negligent cannot be accepted. The MACT has appreciated material placed before it and has rightly reached to a conclusion of recording negligence on the part of truck driver to the extent of 90%.

Apart from the above, the evidence of PW-1-Claimant No.1 Giridhar Krishna, PW-2 Mukesh Agrawal, Chartered Accountant, the Audit Report (Exh.29) and other documents demonstrate the quantum of income of deceased Vikram. Considering the same, the Tribunal has appropriately awarded the compensation in favour of the respondents. That being so, no fault could be noticed with the impugned judgment. The appeal as such fails and dismissed.

Civil Application Nos.665/2017 and 1328/2018

Since appeal itself is dismissed on merits, no orders are required. Applications stand disposed of.

Civil Application (CAO) Nos.1719/2018 & 1437/2017

For the reasons disclosed in the applications, applications are allowed. Delay stands condoned. First Appeal stood restored to file against respondent no.6.

Civil Application (CAO) No.2273/2018

Since appeal itself is dismissed on merits, the claimants are

entitled to withdraw the amount in terms of order dated July 26, 2016 which is impugned in the appeal.

JUDGE

Gulande