

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 FIRST APPEAL NO.1907 OF 2019
WITH
CIVIL APPLICATION NO.7277 OF 2019
in FA/1907/2019

- 1 Bhagwat Rambhau Munde,
Age : major, Occ. Agri.,
R/o Hiwarda, Tq. Bhoom,
Dist. Osmanabad.
- 2 Natyaba Rambhau Munde,
Age : major, Occ. Driver,
R/o Hiwarda, Tq. Bhoom,
Dist. Osmanabad.

... Appellants.

... **Versus** ...

Tai d/o Apparao Kande,
Age 35 yrs., Occ. Nil.,
R/o Hiwarda, Tq. Bhoom,
Dist. Osmanabad

... Respondent.

...

Mr. S.P. Dhobale, Advocate for the appellants
Mr. N.S. Tekale, Advocate for the sole respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15th OCTOBER, 2019

JUDGMENT :

1 Present appeal, with consent of both the parties, has been taken for final hearing, at the stage of admission itself. Taking into consideration the contents of the impugned Judgment, it is not even necessary to call for the record.

2 Present appellants are the original respondents, who want to challenge the Judgment and Award passed in M.A.C.P. No.216/2014 by learned Member, Motor Accident Claims Tribunal, Bhoom, Dist. Osmanabad dated 15.01.2019, whereby the petition under Section 166 of the Motor Vehicles Act, 1988 filed by the present respondents came to be partly allowed against the present appellant.

3 The original claimant had come with a case that she is resident of village Hiwarda, Tq. Bhoom, Dist. Osmanabad. She was proceeding to village Chinchpur (D) in tractor No.MH 25/H-3948 with two trolleys attached to it on 02.01.2014. It is contended that the driver of the tractor was driving the said vehicle, in rash and negligent manner. When the said vehicle was near the land of one Subhash Dhage in Chinchpur (D) village, the trolley is got separated and turn turtled. As a result of which the claimant sustained injuries. The driver of the tractor was prosecuted by

police. It was contended by the claimant, that she was earning Rs.500/- per day by doing labour work. It is stated that she has sustained fracture to her left hand and she is unable to work. She claimed compensation of Rs.5,00,000/- and restricted it to Rs.3,00,000/- for the purpose of Court fees.

4 The respondent No.1, owner of the tractor and respondent No.2, driver of the tractor filed common written statement at Exh.14. They denied the contents of the petition. It was stated that the said tractor was carrying sugarcane for Bhairavnath Sugar Factory Limited, Sonari. It is stated that there was an agreement between the workers and the Sugar Factory for the transportation and therefore, it was contended that the Sugar Factory is a necessary party. The contention of the respondents, that the claimant on her own travelled in the said tractor and therefore, she is not entitled for compensation. According to the respondents, the trolley of the tractor got separated due to heavy load and then turn turtled. It appears that, further story was stated by the respondents, that the claimant had jumped from the trolley, as a result of which she sustained injuries.

5 Taking into consideration the pleadings, issues were framed. It appears that only the claimant led evidence and the respondents did not. After considering the evidence on record, the learned Tribunal has granted compensation of Rs.70,000/- to the claimant, together with interest @ 7.5%

per annum, from the date of the petition till actual realization of the entire amount. This is the Award under challenge in this appeal.

6 Heard learned Advocate Mr. S.P. Dhobale for the appellants and learned Advocate Mr. N.S. Tekale for the sole respondent.

7 The learned Advocate appearing for the appellants submitted that no negligence can be attributed to the respondent No.2 in the accident, as due to heavy load the trolley got separated and the claimant jumped from the trolley. Further, the claimant has not led any evidence by examining the medical officer to prove the injury and therefore, the learned Tribunal ought to have dismissed the petition.

8 Per contra, the learned Advocate appearing for the claimant supported the reasons given by the learned Tribunal and submitted that all the documents, which were produced by the claimant and those were exhibited, were considered by the Tribunal.

9 At the outset, it can be said, that though respondent Nos.1 and 2 had come with their own story of the manner, in which the accident took place, did not enter the witness box to prove that story. Even if that is considered, yet, it can be said that the accident would have occurred due to the sole negligence on the part of the respondent No.2. When the

respondents say that due to heavy load the trolley turn turtled, for the heavy load, definitely the respondents themselves were responsible, as they would have allowed that heavy load to be carried in the trolley. Further, when they say that claimant jumped from the trolley, for that purpose, they have not entered the witness box. They have not produced any agreement between them and the Sugar Factory, and therefore, it cannot be said that the petition was bad for non joinder of the Sugar Factory. It appears that they had taken a defence that claimant, on her own, travelled from the said tractor. Again, at the costs of repetition, it can be said, that respondent No.2, especially has not entered the witness box and if at the beginning itself he would have realized that claimant was not the authorized passenger travelling from his trolley, he would have stop the tractor, could have asked the claimant to get down and then he could have proceeded further. For that purpose also, it is his own negligence he allowed the claimant to travel. Under such circumstance, there is absolutely no point in the defences, those were raised.

10 As regards the injury sustained by the claimant is concerned, she has produced on record the First Information Report, Spot Panchnama and medical papers showing discharge card, treatment papers etc.. No doubt, she has not examined the medical officer or medical practitioner, with whom she has taken the treatment, but it is to be noted that no amount has been

awarded towards permanent disability. The amount, that has been awarded is towards No Fault Liability, pains and sufferings, travelling/convenience and special died. Therefore, whatever amount has been granted by the learned Tribunal was justified, correct and just compensation. It requires no interference.

11 There is no merit in the present appeal. Hence, following order.

ORDER

1 The appeal is dismissed.

2 Pending Civil Application stands disposed of accordingly.

3 Statutory amount deposited by the appellants be given to claimant, by transferring it to the concerned Motor Accident Claims Tribunal.

(Smt. Vibha Kankanwadi, J.)

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