

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

FIRST APPEAL NO.3065 OF 2018

Abasaheb @ Rajabhau Nivarti Dhas

... **Versus** ...

Pushpanjali w/o Somnath Deshmane and others

...

Mr. S.Y. Patil, Advocate for the appellants

Mr. S.G. Chapalgaonkar, Advocate for the respondent Nos.1 to 3

Mr. K.N. Nagargoje, Advocate for the respondent Nos.4/1 to 4/5

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 18th JUNE, 2019

ORDER :

1 Present appeal has been filed by the original respondent No.2 challenging the Judgment and Award passed by learned Member, Motor Accident Claims Tribunal, Ambejogai, Dist. Beed in M.A.C.P. No.74/2009 dated 30.06.2018 for holding him responsible for the payment of compensation.

2 Taking into consideration the limited scope in the appeal the parties are heard. Learned Advocate Mr. S.Y. Patil appearing for the appellant

submitted that the claimants had come with a case that there was collusion between Tractor Trolly bearing No.MH 24/E-151 which was belonging to respondent No.1 and motorcycle bearing No.MH 44/E-2239 ridden by the deceased. Respondent No.1 has been held liable to pay the compensation on the ground that he is the registered owner of the Tractor Trolly, however, the learned Tribunal committed error in holding opponent No.2 liable to pay compensation, jointly and severally, with opponent No.1, on the ground that the opponent No.2 was the possessor of the Tractor and Trolly. The Criminal Court had acquitted opponent No.2 from the charges. Under such circumstances, there was nothing on record before the learned Tribunal to hold that the present appellant was in any way connected to the said accident.

3 Per contra, the learned Advocate Mr. S.G. Chapalgaonkar for respondent Nos.1 to 3 and learned Advocate Mr. Nagargoje appearing for respondent Nos.4/1 to 4/5 supported the reasons given by the learned Tribunal in holding opponent No.2 responsible, jointly and severally, with respondent No.1. Entire evidence on the point has been appreciated properly. The acquittal of the respondent No.2 cannot have any effect on this case, as the Tribunal was supposed to weigh the evidence adduced before it. The conduct of the respondent No.2 in not challenging his prosecution for a

considerable long time has also been taken note of.

4 It is to be noted that the claimants had come with a case that when the said Tractor Trolley was parked negligently by respondent No.2, the deceased met with the accident as the Trolley was not visible. The accident had taken place at 19.30 hours. The respondent No.2 has examined himself, so also the legal representatives of respondent No.1 examined one of them and also examined witness from sugar factory to prove the sale of Trolley to respondent No.2. When it was the transaction between the respondents inter se, definitely claimant cannot have direct evidence regarding the same and therefore, from whatever information that was available and gathered the claimants have supported the claim and claimed compensation from both the respondents. While assessing the evidence, the learned Tribunal has taken note of the fact that who was the registered owner on the date of the accident and it can be seen from the record that the RTO receipts showed respondent No.1 as the owner. Naturally, in view of the decision, that has been relied by the learned Tribunal in **Pushpa @ Leela vs. Shakuntala, 2011 AIR SCW 562**, the registered owner is liable to pay compensation to the victim/s.

5 Here, the question is, as to whether respondent No.2 could have

been held liable to pay compensation ? Respondent No.1 had come with a case that he had sold the Trolley to respondent No.2. Respondent No.1 contended that the respondent No.2 promised him that they both would execute agreement for transportation and get contract of sugarcane cutting and transportation to both of them. Therefore, respondent No.1 had given documents of Tractor and blank stamp paper of Rs.100/-. On this point the respondent No.2 has been cross-examined at length. What has been transpired is, that he admitted that he used to do the business of transportation of sugarcane, but then he stopped the said business after the accident. He admits that he was transporting the sugarcane with the help of Tractor and two Trolleys. Under such circumstance, it was for him to explain how he possessed the second Trolley, if he was not the owner thereof. In clear terms it appears that he has admitted that one Trolley was filled at the time the accident took place and another was kept standing. The second Trolley was then attached to the first Trolley. Thus, there was evidence before the learned Tribunal to hold that respondent No.2 was possessing the said Trolley because of which the accident took place.

6 The result in the criminal proceedings were not binding on the Tribunal. The Tribunal was supposed to weigh the evidence which has been brought before it. The learned Tribunal has rightly observed that the

respondent No.2 never objected or protested to his prosecution or took any action for his false prosecution. The criminal proceedings were initiated against him in the year 2008. What has been revealed from the evidence led by respondent No.1 is that the respondent No.2 had executed agreement with factory on 20.03.2008 and the said document has been produced at Exh.104. All these pieces of evidence definitely led to the conclusion that respondent No.2 was the possessor of the Tractor Trolley on the date of the accident. Under such circumstances, the Tribunal was justified in holding respondent No.2 liable to pay compensation, jointly and severally, with original respondent No.1. No fault can be found with the Judgment and Award passed by the learned Tribunal. There is no merit in the present appeal. Hence, the appeal is dismissed with costs.

(Smt. Vibha Kankanwadi, J.)

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