

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

FIRST APPEAL NO. 553 OF 2019

Digamber s/o Vithobaji Bandebuche and anr.

VS.

Mr.Hemant s/o Shashikant Doshi and anr.

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

Court's or Judge's

Smt. Rohini Mankap h/f. Shri. P. S. Mirache, Advocate for appellants.

Shri. R. M. Bhangde, Advocate for respondent No.1.

Smt. Nandini Thete, h/f. Shri. Shashikant Borkar, Advocate for respondent No.2.

CORAM : Manish Pitale J

DATED : 16.09.2019

Heard counsel for the parties.

2. By this appeal, the appellants (original claimants) have challenged the order dated 07.12.2016 passed by the Motor Accident Claim Tribunal - 4 Nagpur, whereby an application moved by them under Section 140 of the Motor Vehicles Act 1988 has been rejected.

3. It is the case of the appellants that rejection of their application was not sustainable, because there were documents to show that accident in the present case had taken place on 24.01.2015, in which the victim was injured and that therefore their application ought not to have

been rejected.

4. Present appeal is opposed on behalf of respondent and it is pointed out that the appellants had failed to prove any documents in support of their claim that the death of the victim had taken place as a result of injuries suffered in the accident that had allegedly taken place on 24.01.2015.

5. The only point that arises for consideration in the present case is, as to whether the Tribunal was justified in rejecting the application filed on behalf of appellants under Section 140 of the aforesaid Act. A perusal of the entire order shows that the Tribunal took into consideration the fact that the accident in the present case took place on 24.01.2015, after which the victim was admitted to Arogyam Hospital, Nagpur. The record as noted by the Tribunal shows that the victim was discharged from the said hospital on 26.01.2015. There is no dispute about the fact that the victim died on 03.03.2015, which was about 40 days after the accident. In this case no postmortem report was placed on record on behalf of appellants. The only document pertaining to the death of the victim on 04.03.2015 was a certificate issued by the Municipal Corporation, Nagpur showing the cause of death as Rabies which resulted in

Cardiac Arrest and Dysphagia suffered by the victim. The said document issued by the Government Hospital, in no manner even prima facie connects death of the victim to the accident said to have been taken place on 24.01.2015. In such a situation it appears that the Tribunal committed no error in rejecting application filed on behalf of the appellants under Section 140 of the aforesaid Act. The Tribunal has also correctly distinguished the judgment of the Calcutta High Court in the case of **Chhalana Dam & Ors. vs. New India Assurance Company Ltd. & Ors. [reported in I(2010) ACC 739(DB)]** relied upon by the appellants and therefore, this Court finds no error is attributable to the Tribunal in the present case.

6. In view of the above, the appeal is dismissed.

JUDGE