

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.1 OF 2019
A/W
FIRST APPEAL NO.792 OF 2019**

Sanjubai Navnath Gorge & Ors.	..	Applicants
In the matter between		
Bhirawnath Balbhim Regude	..	Appellant
Vs.		
Sanjubai Navnath Gorge & Ors.	..	Respondents

Mr.Dinesh W. Bhosale for the applicants/respondent nos.1 to 4.
Mr.S.S. Chaudhari for the appellant.

CORAM : R.D.DHANUKA, J.
DATE : 14th January 2020

P.C.:

. By this first appeal, the appellants (original respondents) have impugned the judgment and award dated 3rd November 2016 passed by the MACT, Pandharpur allowing the application filed by the respondents partly and directing the appellant and the original respondent no.5 to pay jointly and severally compensation amount of Rs.4,13,500/- inclusive of the amount under Section 140 of the Motor Vehicles Act, 1988 to the applicants with interest @7% p.a. from the date of institution of the petition till realization of the entire amount of compensation. By consent of the appellant and the respondents, first appeal is heard finally.

2. On 2nd May 2013, the victim Navnath Gorge who was the husband of the respondent no.1 and father of the respondent nos.2 to 4 had gone to village Kuroli for playing the music on the occasion of celebration of the marriage ceremony. While he was asleep, the tempo bearing No.MH-13/G-6874 which was parked near him, suddenly took reverse and crushed the said deceased under the back wheels of the said tempo. Due to such rash and negligence driving of the tempo, he sustained multiple serious injuries and expired during the course of treatment. The offending vehicle was not insured. The appellant is the owner of the said offending vehicle.

3. The respondent nos.1 to 4 examined various witnesses to prove their case. The appellant did not examine any witness. The Tribunal framed three issues. After considering the oral and documentary evidence, the Tribunal rendered a finding that the death of Navnath was caused on account of vehicular accident dated 2nd June 2013 arising out of use of offending vehicle. The said accident was caused due to rash and negligent driving of the said offending vehicle.

4. It is submitted by the learned counsel for the appellant that the said deceased was equally negligent and thus the Tribunal ought to have apportioned the said compensation on the point of contributory

negligence between the appellant and the said deceased. Learned counsel did not urge any other submission before this Court.

5. A perusal of the judgment and award indicates that the Tribunal has considered oral and documentary evidence led by the respondent nos.1 to 4 and have awarded compensation only in the sum of Rs.4,13,500/- by considering net income of the said deceased of Rs.4,500/- per month.

6. It was for the appellant to prove that the accident was caused due to rash and negligent driving of the offending vehicle by its driver which the appellant failed. The evidence led by the respondent nos.1 to 4 remained uncontroverted. I do not find any infirmity with the impugned judgment and award dated 3rd November 2016.

7. First appeal is devoid of merit and is accordingly dismissed. In view of dismissal of the first appeal, civil application for seeking withdrawal of the amount also does not survive and stands disposed of. No order as to costs.

8. The respondent nos.1 to 4 would be entitled to recover decretal amount out of the amount deposited by the appellant before the MACT. If there is any shortfall in recovery the amount, the appellant

shall deposit the same within two weeks from the date of computation of the said amount with the MACT. If there is any surplus amount deposited by the appellant, the same shall be refunded by the MACT to the original appellant. Parties as well as the MACT, Pandharpur to act on the authenticated copy of this order.

R.D.DHANUKA, J.