

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

FIRST APPEAL NO.1164/2010

National Insurance Company,
Through its divisional Manager,
Division Office, 1st floor,
Samra Complex, Jai-Sthamba Chouk,
Taluka & District, Amravati.

.....APPELLANT

...V E R S U S...

1. Smt. Shama Khatun Wd/o Rahamatkha
Aged 43 years Occu. Household Work.
2. Ku. Salma Khatun D/o Rahamatkha,
Aged 24 years Occ. Education.
3. Shri. Akatarkha S/o Rahamatkha,
Aged about 20 years Occ. Education.
4. Ku. Samina Khatun D/o Rahamatkha,
Aged about 18 years Occu. Education.
5. Ku. Nasrin Khatun D/o Rahamatkha,
Aged about 18 years Occ. Education.
6. Salmankha S/o Rahamatkha,
Aged about 16 years Occu. Education.
7. Ku. Nuarat Khatun D/o Rahamtkha,
Aged about 13 years Occ. Education.
8. Samadkha S/o Rahamatkha,
Aged about 9 years Occ. Education
R No. 5 to 8 minors through
Guardian mother R No.1

All R/o Wadali Satwai, P.O. Jalgaon,
Nahata, Tq. Akot, Dist. Akola

Appeal
dismissed
against
respondent nos.
9 & 10 vide
Order dated
10.09.2013

9. Abdul Rafik S/o Abdul Rasid
Aged about 31 years, Occu. Driver
R/o Shivaji Nager, Beghar Colony,
Nagpur, Tah. & Dist. Nagpur.
10. M/s Jiuvani Road Lines, Nagpur
Through its Partner, Garoba Maidan,
Gangabaighat Road, Nagpur.

...RESPONDENTS

Mr. G. N. Khanzode, Advocate for appellant.

CORAM:- V. M. DESHPANDE, J.
DATED :- 24.11.2021

ORAL JUDGMENT

1. This appeal challenges the judgment and award dated 07.12.2005 in Claim Petition No.387/2000 passed by learned Member, Motor Accident Claims Tribunal, Akola. By the impugned award, the claim petition filed by the present respondent nos.1 to 8 was partly allowed and the appellant-insurance company and respondent nos.9 and 10 were jointly and severally directed to pay an amount of Rs.3,21,500/- by way of compensation in respect of death of Rahematkha to the original claimant along with interest at the rate of 6% p.a.

2. This appeal was admitted in the year 2010 itself. Notices were issued to the original claimants. It appears, may be

because of poverty, in spite of service, nobody filed Vakalatnama on behalf of original claimants. Appeal in respect of respondent nos.9 and 10, driver and owner of the vehicle was dismissed in view of the order passed by learned Registrar (Judicial).

3. Heard Mr. Khanzode, learned counsel for the appellant. Also perused the record and proceedings.

4. Accident took place on 20.08.1999 between 8.30 p.m. to 9.00 p.m. when Rahematkha was returning to village Wadali from Akot on his bicycle. That time, truck bearing No.MH-31/ W-5310 gave dash from backside, resulting into death of Rahamatkha on the spot itself.

5. Claimants, who are widow, sons and daughters of deceased Rahematkha filed proceeding before M.A.C.T. Akola vide M.A.C.P.No.387/2000. Driver and owner remained absent hence matter was proceeded ex parte against them. Appellant, who was respondent no.3, filed written statement Exh.-16 and took a plea that deceased was negligent while riding vehicle.

6. The claimants, in order to prove the case, examined widow Shama Khan at Exh.-28 and one Ibadullakha Khan Abdullakha at Exh.-29. Nobody entered into witness box on behalf of insurance company. After appreciation of evidence, impugned award was passed.

7. The only point that was canvassed before me by learned counsel for appellant is that the truck bearing registration No. MH-31/W-5310 was not involved in the accident inasmuch as according to him the offence was registered against the unknown vehicle. He, therefore, submitted that the appeal be allowed.

8. Paragraph 14-B of the claim petition reads as under:

“14(B) The truck No.MH-34/W-5310 was being driven by its driver N.A. No.1 at the time of accident under the instructions, employment and order of the owner of the vehicle the N.A.No.2. The said Truck No. MH-31/W-5310 was insured with the Insurance Company N.A.No.3 under Insurance Policy/cover note No. 07250 for the period from 14.2.1999 to 13.2.2000 and the Insurance policy of the said vehicle was valid and in force on the date of accident, covering the risk of damages and losses caused to the applicants arising but of the said accident. The N.A. No.2 the owner of the said

vehicle is vicariously liable for payment of the amount of compensation to the applicants. So also the N.A. Nos. 1 to 3 are jointly and severally liable to pay the amount of compensation to the applicant.”

In written statement, following are pleadings in respect of paragraph 14-B, which read thus:

“3. As regards the contents of para no. 14-B of the petition, the same are denied in toto. The claimants should prove the same according to law.”

9. The FIR was lodged by Salamkha Ulfatkha, which is available on record at Exh.-30. The first informant is not the eye witness. Therefore, obviously there is no reference of truck number. During claim petition proceedings, Ibadullakha Ahmadullakha was examined as petitioner’s witness. He was an eye witness. He stated on oath that during investigation, the truck number was revealed to the investigating officer.

Nothing could be brought on record during his cross-examination to disbelieve this witness. The learned Member of the Tribunal has relied on his evidence.

10. In paragraph 14-B of the claim petition, the claimants have specifically given the cover note number. Obviously, the

original policy could not be in the custody of the claimant. It was for the insurance company to bring the said on record. The said was rightly appreciated in that direction by learned Court below.

11. From the spot of occurrence, it is clear that deceased was a milkman as in the panchanama, it is shown that milk and cans were scattered. In my view, the learned Judge of the tribunal has rightly presumed the notional income of the deceased as Rs.3,000/- per month and looking to the age 48 years, has rightly applied multiplier of 13 and after deductions, has granted compensation of Rs.3,21,500/-.

12. Perusal of the judgment, in my view, does not allow this Court to interfere with the grant of compensation in favour of the widow, sons and daughters of the deceased. Resultantly, I pass the following order.

ORDER

- (i) The appeal is dismissed.
- (ii) The interim stay granted by this Court in the year 2010 stands vacated.
- (iii) The Motor Accident Claims Tribunal, Akola is directed to give notices to the claimants for withdrawal of the

amount deposited by the appellant-Insurance Company along with interest accrued thereon, as stated by the Insurance Company before this Court while obtaining the interim stay.

JUDGE

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