

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

FIRST APPEAL NO. 192/2007

Prabhakar Natthuji Bhande,
Aged Adult, Occupation – Service,
R/o. Wadnergangai,
Tq. Daryapur, Dist. Amravati.
(Original Respondent On R.A.)

... APPELLANT

----VERSUS----

1. Sau. Neela w/o. Purushottam Itnare,
Aged 42 years, Occupation – Household.
2. Purushuttam s/o. Dashrath Itnare,
Aged 47 years, Occupation Service,
Both R/o. Police Officers' Quarter,
Near Railway Crossing, Main Road,
Murtizapur, Dist. Akola.
(Original Petitioners on R.A.)

... RESPONDENTS

Mr. Nitin Vyawahare, Advocate for the Appellant.

CORAM : M. S. SONAK, J.

DATE : 06.12.2021.

ORAL JUDGMENT :

1. Heard learned Counsel for the appellant.
2. The record indicates that by order dated 26.06.2009, the appellant secured interim relief from this Court subject to deposit of the awarded amount. However, the awarded amount was not deposited in this Court and ultimately, by order dated

04.12.2009, this Court made it clear, that the respondents will be free to proceed with the execution.

3. On 10.10.2012 paper book was dispensed with and the matter was added to the final hearing board. This was perhaps on the basis that a private paper book will be supplied by the appellant.

4. On 05.07.2013, this appeal was dismissed for non-prosecution. On 28.08.2018 in the application for restoration, the appellant agreed to deposit the balance amount of compensation. Again, interim relief was obtained on this basis but there was a delay in the deposit of this amount. By order dated 08.10.2021 delay of 1340 days in seeking restoration was condoned. The appeal was restored and the matter was ordered to be listed for final arguments in the week commencing from 25.10.2021, considering that the appeal was of the year 2007.

5. Mr. Nitin Vyawhare refers to the grounds in the appeal memo as also the order made by this Court on 26.06.2009 and submits that one of the significant issue that fall for consideration is whether there was contributory negligence on the part of the deceased. He also urged that the findings in the impugned award are erroneous. He submitted that the driver was earlier impleaded but later dropped without assigning any reasons. He submitted

that direct evidence was available but not led and therefore adverse inference was due.

6. Upon consideration of the above contentions and the perusal of the record the findings recorded by the tribunal cannot be styled as erroneous or perverse. The findings are borne out from the evidence on the record. The liability in such matters is joint and several. Therefore the dropping of the driver can hardly be regarded as a non-joinder of a necessary party to non-suit the claimants. If the respondents felt that any witnesses could have offered direct evidence, even they could have summoned them to depose in the matter. Therefore, there is no question of drawing an adverse inference.

7. The only issue that remains for determination is, whether the findings of absence of any contributory negligence are sustainable. From the evidence on record, there was indeed no eyewitness as such examined. But there is a record that the Trax vehicle which came from the opposite direction, dashed the motorcycle which was driven by Sanjivan, the 19 years old boy, due to whose demise, his parents had to file a claim petition. As a result of this accident, Sanjivan died. The evidence on record establishes that the side buffer and the mudguard of the Trax were damaged. The front portion of the motorcycle was also damaged. The motorcycle was on the left side of the road and the Trax had

crossed the center line and dashed against the motorcycle. The Tribunal has quite correctly observed that even if it is assumed that the vehicle was driven slowly, there was a breach of traffic rules and this, by itself constitutes negligence. The evidence on record does not indicate that the offending vehicle was driven slowly or not rashly.

8. From the post-mortem report and the nature of the injuries reflected therein, it is quite clear that the Trax in this case must have been driven in the rash and negligent manner, resulting in Sanjivan's death. The findings on the aspect of the absence of contributory negligence are therefore borne out from the evidence on record and there is no case made out to warrant interference. From the perusal of the record and proceedings including the oral and documentary evidence, there is no case made out to interfere with the impugned award. The appeal is therefore liable to be dismissed.

9. If, any further amount remains to be paid to the original claimants, then, the appellant, will have to pay the same within a month from today.

10. The appeal is disposed of in the aforesaid terms. There shall be no order for costs.

11. Pending applications, if any, do not survive and even the same are disposed of.

(M. S. SONAK, J.)

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