

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

FIRST APPEAL NO.1319/2008

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| <p>1. Omprakash S/o. Nathmalji Rathi,
Aged about 45 years,
Occupation : Agriculture,
R/o. Chichpur (Dhamangaon),
Tehsil : Dhamangaon,
District : Amravati.</p> | <p>...APPELLANT.
(Original Respondent
No.1) on R.A.</p> |
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---VERSUS---

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| <p>1. Meharunnisa W/o. Muzaffar Khan,
Aged about 49 years,
Occupation : Labour,
R/o. Gawalipura, Amravati,
Tehsil & District : Amravati.</p> | <p>(Original Petitioner)
On R.A.</p> |
| <p>2. Rajesh S/o. Ramdas Yadav,
Aged about 32 years,
Occupation : Driver,
R/o. Opposite Police Station,
Dhamangaon, Tehsil :Dhamangaon,
District : Amravati.</p> | <p>(Original Respondent
No.2) On R.A.</p> |
| <p>3. Kishor S/o. Ganpat Mundekar,
Aged about (not Known),
Occupation : Driver,
R/o. Anjan Singhi, Tehsil : Tiosa,
District: Amravati.</p> | <p>(Original Respondent
No.3) On R.A.</p> <p>...RESPONDENTS.</p> |

Ms. S. Dhone, Advocate for Appellant.
Mr. N. R. Saboo, Advocate for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 09.12.2021.

ORAL JUDGMENT :

1. Heard Mr. S. Dhone, learned Counsel for the appellant,
and Mr. N. R. Saboo, learned Counsel for respondent No.1 -
claimant.

2. This appeal is filed by the owner of Tempo Trax No.MP-09/K-1526 to question the impugned judgment and award dated 05.12.2006 holding him and his driver compositely liable along with the driver of the auto bearing No.MH-27/C/3039 for the accident that took place on 25.12.1999 in which the husband of the claimant Muzaffar, unfortunately, died.

3. Ms. S. Dhone, the learned Counsel for the appellant submits that there is no evidence, whatsoever, to establish any negligence on the part of the driver of the Tempo Trax and the finding of composite negligence is entirely perverse. She submits that the evidence on record makes out a case that the auto driver was solely responsible for the accident, and therefore, no liability ought to have been foisted upon the present appellant.

4. Mr. N. R. Saboo, learned Counsel for the claimant defends the impugned award of the Tribunal, but he points out that the compensation amount awarded is too meager and does not amount to just compensation.

5. From the evidence on record, there appears to be merit in the submission of Ms. S. Dhone, learned Counsel for the appellant that no case of negligence could have been attributed to the driver of the Tempo Trax. She is quite right in submitting that merely because the appellant or the driver of the Tempo Trax

failed to lodge an accident report, no negligence could have been attributed to them and they should be made liable for the accident and the compensation payable therefor.

6. If the impugned award is perused, then the entire reasoning of the Tribunal is that the owner and the driver of the Tempo Trax are to be held compositely liable along with the driver of the auto-rickshaw, simply because, they failed to lodge a police report about the accident. Otherwise, the Tribunal has accepted that the Tempo Trax was driven at a moderate speed and it is the auto that dashed against the Tempo Trax from behind. Thus, there is merit in the contention of Ms. S. Dhone, learned Counsel for the appellant that the finding on the aspect of composite negligence warrants interference.

7. Now, ordinarily, upon holding that the appellant or his driver were not responsible for the accident, the compensation amount deposited by the appellant, either before the Executing Court or this Court is required to be returned to the appellant. However, in this case, the adoption of such a course of action will not be quite equitable. Admittedly, whatever the dispute between the owner/driver of the Tempo Trax on one hand, and the auto driver on the other hand, at least the claimant is certainly neither responsible nor concerned with the same. Pending the resolution

of such dispute, at least, she cannot be denied the compensation, which has been determined by the Tribunal in her favor.

8. Secondly, at this stage, it will be extremely difficult for the claimants to pursue the execution against the auto driver, though such execution will have to be pursued insofar as the balance compensation, if any, is payable in terms of the impugned award. Therefore, in the interest of equity, it will be appropriate if the deposited compensation is now permitted to be withdrawn by the claimant i.e. respondent No.1 together with interest, that may have accrued thereon. However, the present appellant will be entitled to institute execution proceedings or join in the execution proceedings, already instituted by the claimants, and seek for recovery of this amount with interest from the auto driver who shall now be solely responsible for payment of this amount. This course of action, according to me, will to a certain extent balance the equities between the parties.

9. It is clarified that the present appellant will not have to pay any further amounts by way of interest or otherwise to the claimant. Only the amounts deposited by the present appellant, either before this Court or the Executing Court, can now be withdrawn by the claimant. The claimant as well as the appellant are at liberty to institute or pursue the execution proceedings, already instituted against the auto driver for recovery of the

balance amounts. It is once again clarified that even the appellant is permitted to urge in the pending execution proceedings that the Executing Court should recover the amounts now deposited by the appellant and pay to the claimant from the auto driver.

10. This appeal is partly allowed in the aforesaid terms. There shall be no order for costs.

11. Both the registry of this Court as well as the Executing Court to permit the claimant withdrawals in the aforesaid terms, preferably by transferring the deposited amounts together with interest, they may have accrued thereon, into the bank account of the claimants.

12. The impugned award is now modified and the entire compensation is now made payable by the auto driver i.e. respondent No.3 together with interest. The appeal is disposed of accordingly.

(M. S. SONAK, J.)

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