

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**908 FIRST APPEAL NO. 1276 OF 2021
WITH CA/7554/2020**

HDFC ERGO General Insurance ...**APPELLANT**
Company Ltd.

Through the Authorized Signatory/Manager,
Renuka Complex, Nageshwarwadi, Nirala Bazar,
Aurangabad, Tq. & Dist. Aurangabad

VERSUS

1. Chhaya Wd/o. Gorakh Chavan, ...**RESPONDENTS**
Age-29 years, Occu-Household,
2. Kundan S/o. Gorakh Chavan,
Age-11 years, Occu-Education,
3. Rohan S/o. Gorakha Chavan,
Age-09 years, Occu-Education,
4. Darshan S/o. Gorakh Chavan,
Age-06 years, Occu- Education,
5. Janabai Wd/o. Shankar Chavan,
Age-65 years, Occu- Nil,

(R. Nos. 2 to 4 being minor
U/g. Of their mother/R No. 1)

All R/o. At Post Khirdi, Tq. Khultabad,
Dist. Aurangabad

Mr. S. S. Dargad, Advocate h/f Mr. S. G.
Chapalgaonkar, Advocate for the appellant
Mr. P. M. Gaikwad, Advocate for the respondents.

CORAM : VINAY JOSHI, J.

DATE : 10-02-2022

JUDGMENT:

. Being aggrieved and dissatisfied by the impugned judgment and award dated 24-04-2019 passed by the MACT, Aurangabad in MACP No. 748 of 2018, this appeal is preferred by Insurance Company.

3. The facts in brief, are such that;

a] One Gorakh while riding on motorcycle was dashed by Tractor attached with trolley in which he sustained bodily injury of grave in nature to which he succumbed. The legal heirs of Gorakh have approached to the Tribunal for grant of compensation in terms of Section 166 of the Motor Vehicle Act. The parties led evidence before the tribunal. The Insurance company in its defence has specifically denied the involvement of tractor bearing Registration No. MH-20-EJ-0597 in the alleged accident. The tribunal after considering the evidence held the involvement of concerned insured tractor and accordingly by assessing the compensation has passed the award.

4. The appellant's learned counsel has pointed out that since inception involvement of vehicle has been denied. He took me through the FIR lodged by the pillion rider traveling with deceased stating the involvement of other tractor bearing Registration No.MH-20-AY-7961. According to him as the said tractor was not insured, therefore, insured tractor i.e. MH-20-EJ-0597 has been falsely implicated. He would submit that before the Tribunal the Insurance Company has endeavoured to examine the Investigating Officer as well as the officer from the RTO concerning the record of tractor bearing MH-20-AY-7961. However, the tribunal has declined.

5. At this stage the learned counsel appearing for the respondent Nos.1 to 5 i.e. original claimants has contended that the matter can be remanded since he also desirous to examine injured Pradnya who has lodged the report and Investigating Officer. It reveals from the record that in initial FIR the registration number of offending vehicle is of some other vehicles i.e. MH-20-AY-7961 while on the following days the statement has been changed with altered number i.e. MH-20-EJ-0597 which is

insured vehicle. The said dispute goes to the very root of the case, since it pertains to the liability of existing appellant-Insurance Company. Mr. Dargad, Advocate equally submitted that since in trial court evidence was not recorded the matter can be remanded to the trial court. It is made clear that this court has not expressed opinion on merits. The Tribunal shall decide the claim in accordance with law without being influenced by the observations made herein.

6. Having regard to the peculiar facts, following order is passed.

ORDER

i. The appeal stands allowed.

ii. The impugned judgment and award dated 24-04-2019 passed in MACP No. 748 of 2018 by MACT, Aurangabad is hereby quashed and set aside.

iii. The matter is remanded back to the tribunal with direction to permit the original claimants to examine injured

Pradnya and the Investigating Officer. So also, the trial court in its discretion permit the Insurance Company to either produce insurance information of vehicle bearing registration MH-20-AY-7961 or to examine the witness from the RTO office to that extent only.

iv. The amount which is deposited in this court be transmitted to the Tribunal which shall be subject to the outcome of the adjudication.

v. The tribunal shall not disburse the amount after adverse decision, if any, till the appeal period is over.

vi. R & P be sent back.

vii. The Tribunal shall endeavour to decide the claim within six month from its receipt.

viii. The appeal stands disposed of in above terms.

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ix. In view of disposal of the appeal,
pending civil applications, if any stand
disposed of.

[VINAY JOSHI, J.]

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