

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

FIRST APPEAL NO. 739 OF 2008

APPELLANT: The New India Assurance Company Ltd.,
Through the Divisional Officer No.II,
Zhansi Rani Chowk, Wardha Road,
Nagpur.

...VERSUS...

RESPONDENTS: 1] Smt. Anita @ Vanita wd/o Amarnath
Yadav, aged 33 yrs, Occ. Housewife.
2] Suresh s/o Amarnath Yadav,
aged 8 years, Occ. Student
3] Ku. Dipali d/o Amarnath Yadav,
aged 4 years Occ. Nil,
4] Munna S/o Amarnath Yadav,
aged about 11 years, Occ. Nil

Nos. 2 to 4 minors, through their natural
guardian mother – petitioner no.1 Smt. Anita
@ Vanita wd/o Amarnath Yadav, R/o Sangarsh
Nagar, Nagpur.

5] Hemant Kumar s/o Velji Vora,
Gujarati Bada, Tumsar Road,
Tumsar, Dist. Bhandara.

Mr.Akhilesh Potnis, Advocate h/f Shri M.M.Sudame, Advocate for appellant
None for respondents

CORAM : AVINASH G. GHAROTE, J.
DATE : 21/11/2022.

[Oral Judgment]

1] Heard Mr. Potnis, learned counsel holding for Mr.M.M. Sudame, learned counsel for the appellant. None of Respondents.

2] The appeal challenges the award dated 27.3.2008 (pg.25) passed by the learned Member, Motor Accident Claims Tribunal, Nagpur, whereby the claim of Respondent Nos.1 to 4 on account of the demise of one Amarnath Yadav in the accident which happened on 24.6.1998 at Talodi to Nagbhid Road, has been allowed, granting compensation of ₹.4,16,000/- including 'no fault liability' with cost and interest at 7.5% per annum from the date of claim petition till its realization, within two months, to the petitioners.

3] The accident is not disputed by Mr. Potnis, learned counsel for the appellant. What is contended is that there was contributory negligence of the deceased who was driving a Trailer bearing Registration No. MP-23/D-4910 and discarding of the evidence of DW-1 Gulab Karu Bankar at Exh. 42 (pg 50).

4] It is not disputed that the accident had happened on 24.6.1998 on Talodi-Nagbhid Road at around 7 to 8 p.m. at Chindimal Jungle area. Though it is contended, relying upon the evidence of DW-1, that the truck bearing Registration No. MTG-8957 was stopped at the left side of the road, that is the evidence by the driver of the truck, by whose dash the accident had taken place, which had resulted in the demise of Amarnath Yadav and therefore, has to be taken in consideration with a pinch of salt. That apart, DW-1 in his evidence makes a statement that damage was caused to his truck in the accident and so also he had received an injury to his right leg, however, there is absolutely nothing on record to substantiate the said contention. When such a plea is raised of damage to the truck and so also injury to the right leg of the driver, these are things which are necessary to be proved by leading documentary evidence, however, there is nothing on record except the bald statement of DW-1 in respect thereof. Neither any injury report of DW-1, nor any bill of repairs to the truck was ever placed on record, considering which it is apparent that the testimony of DW-1 has rightly not been relied upon by the learned Tribunal. No other plea has been raised, nor any material has been brought to my notice

to enable me to interfere in the impugned award, considering which
I do not see any merit in the appeal. The same is therefore dismissed.
No costs.

JUDGE

Rvjalit