

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

MISC. CIVIL APPLICATION NO.442 OF 2019 (REVIEW)
IN
FIRST APPEAL NO.92 OF 2009

Vanchala @ Vanchhala wd/o Gulabrao Tayade, Akot, Dist. Akola and anr.

-vs-

Ravi Telgote and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri C. A. Joshi, Advocate for applicants.

Shri V. B. Bhise, Advocate for respondent Nos.1 and 2.

CORAM : A. S. CHANDURKAR ,J.

DATE : November 18, 2022

P. C.

Civil Application Nos.633/2022 and 901/2022

The applicants are permitted to raise additional grounds in the review application.

Civil Application are disposed of accordingly.

Misc. Civil Application No. 442/2019

The non-applicant No.3 has been duly served with the present application. There was no appearance on behalf of said non-applicant on 21/10/2022. There is no appearance on its behalf even today.

The learned counsel for the applicants and non-applicant Nos.1 and 2 have been heard.

2. According to the learned counsel for the applicants having found that the Claim Tribunal was not justified in *suo motu* converting the proceedings from one under Section 166 of the Motor Vehicles Act, 1988 (for short, the said Act) to proceedings under Section 163A of the said Act, the evidence on record ought to have been examined by considering the claim petition as one under Section 166 of the said Act. Referring to the spot panchanama at Exhibit-33 it is submitted that the trolley on which the deceased was sitting was loaded with gitti and as a result of its tyre having punctured, the deceased suffered a fall resulting in fatal injuries. Despite such statements made in the spot panchanama, it was incorrectly pleaded in the claim petition that after unloading the trolley its tyre got punctured resulting in fatal injuries to the deceased. It is submitted that if the spot panchanama at Exhibit-33 is considered the same indicates that the death was caused while travelling in the loaded trolley especially as the deceased was a labour. It is further submitted that while hearing the appeal, request was made on behalf of the present applicants to treat the proceedings under Section 166 of the said Act for the reason that conversion in the proceedings under Section 163A of the said Act was found to be improper. This request was not

considered while deciding the appeal. On this count, it is submitted that the judgment dated 27/02/2019 in the First Appeal be recalled and the appeal be re-heard.

The aforesaid request is opposed by the learned counsel for non-applicant Nos.1 and 2 by submitting that the appeal has been decided after considering all the material on record. There was no error apparent on the face of record.

3. I have considered the submissions as urged and I have also gone through the evidence available on record. Perusal of spot panchanama at Exhibit-33 does not indicate that the trolley was loaded when the accident in question took place as a consequence of the rear tyre being punctured. It is seen that in the claim petition it has been pleaded that the accident occurred when the tractor-trolley was returning after unloading. The claimants were not witness to the accident in question. If the statements made in the spot panchanama are considered, it becomes clear that the tractor-trolley was found to be loaded with gitti when its rear tyre was punctured. If said aspect is considered, it would be open for the applicants to urge the aspect of negligence so as to sustain the application under Section 166 of the said Act coupled with the fact that an oral

prayer was made on behalf of the applicants for treating the proceedings as under Section 166 of the said Act which request was not considered in the judgment under review. Since the effect of Exhibit No.33 has not been considered in the light of its contents, there is an error apparent on the face of record. Thus an opportunity deserves to be granted to the applicants to re-argue the appeal on merits. Hence a case for exercising review jurisdiction is made out.

For aforesaid reasons the judgment dated 27/02/2019 in First Appeal No.92/2009 is recalled.

The Misc. Civil Application is allowed.

First Appeal No.92/2009 is restored for fresh adjudication on merits.

Misc. Civil Application is disposed of. No costs.

(A. S. Chandurkar, J.)

Asmita