

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

FIRST APPEAL NO. 1057 OF 2003

01 Gangadhar s/o Pandurang Pawar,
age: 53 years, Occ: Agri. & Business,
R/o Palshi, Post Palsi,
Tq. & District Aurangabad.

02 Smt. Kantabai w/o Gangadhar Pawar,
age: 48 years, Occ: Household,
R/o As above.

03 Kalavati w/o Appasaheb Pawar,
age: 26 years, Occ: & R/o as above.

04 Nilesh s/o Appasaheb Pawar,
age: 4 & ½ years, Occ: Nil,
R/o As above.
U/g of appellant no.3.

05 Akash s/o Appasaheb Pawar,
age: 3 years, U/g of appellant
no.3.

Appellants

Versus

01 Pandurang s/o Sandu Palaskar,
age: 28 years, Occ: Driver,
R/o Palsi, Tq. & District
Aurangabad.

02 Kalyan s/o Asaram Choudhari,
age: 33 years, Occ: Business,
R/o as above.

03 Raosaheb s/o Laxman Tangade
(Jangade), age: major, Occ:
Business, R/o Kankshil,

Tq. Khultabad, District
Aurangabad.

04 National Insurance Co. Ltd.,
Divisional Karyalaya,
Hazari Chambers,
Station Road, Aurangabad.

Respondents

Mr. M. K. Deshpande, advocate for the Appellants.

Mr. S. S. Patil, advocate for Respondents No.3

Respondents No.1 & 2 served.

Mr. V. N. Upadhye, advocate for Respondent No.4.

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 17th July, 2023.

JUDGMENT :

1 The appellants, who are original claimants, have challenged the judgment and award dated 01.03.2002, passed by the learned Motor Accident Claims Tribunal, Aurangabad (hereinafter referred to as “the learned Tribunal”), whereby the Claim Petition filed by the appellants, being MACP No.69 of 1999, has been dismissed on the ground that the appellants-claimants have failed to prove that the accident had taken place due to rash and negligent driving of present Respondent No.1, who drove the alleged offending Jeep No.MH-20-E-9874.

2 Heard rival submissions and also perused the entire documentary evidence on record along with the impugned judgment.

3 It is not disputed that on 31.10.1998 at about 07.30 p.m., Appasaheb i.e. son of present appellant no.1 died in the accident on Kurduwadi to Shetphal road near Laul village while travelling in Jeep No. MH-20-E-9874.

4 According to the learned Counsel for the appellants, the aforesaid Jeep was being driven in rash and negligent manner by Respondent No.1-Pandurang and, therefore, the accident had taken place.

5 However, on going through the impugned judgment, it appears that the learned Tribunal, though awarded an amount of Rs.50,000/- under Section 140 of the Motor Vehicles Act under the principle of no fault liability to the present appellants, but after conducting the trial, found

that the appellants could not establish negligence of Jeep driver in the accident and, therefore, dismissed the Claim Petition.

6 Though it is claimed by the appellants that the Jeep driver was negligent, but on perusal of the First Information Report at Exhibit-27, lodged by the police personnel, it is clearly evident that the said police personnel had conducted inquiry and found that one unknown truck had, in fact, given dash to the aforesaid Jeep causing death of Appasaheb. The appellants, themselves, have brought on record the aforesaid First Information Report, spot *panchanama* and inquest *panchanama*, which indicated guilt of the driver of the aforesaid unknown truck. Though the appellant no.1 examined himself and made an allegation that Respondent No.1-Jeep driver was at fault at the time of accident, but it is extremely important to note that he had not seen the accident. Moreover, the appellants have not examined anyone from the co-passengers of the said Jeep at the time of accident to prove the fact that Respondent No.1-

Jeep driver was, in fact, responsible for occurrence of the accident.

7 Thus, the appellants have not produced any satisfactory evidence on record as regards the negligence of Respondent No.1-Jeep driver in the accident. This being the Claim Petition under Section 166 of the Motor Vehicles Act, the appellants must prove negligence of driver of the alleged offending Jeep for getting compensation.

8 Therefore, considering the entire evidence on record, it is clearly evident that the appellants have miserably failed to establish negligence of Respondent No.1, being the driver of the Jeep No.MH-20-E-9874, in the accident. It appears that the learned Tribunal, by observing all these facts in proper manner, has rightly dismissed the Claim Petition of the appellants.

9 As such, I find no reason for interference in the impugned judgment and award.

10 Accordingly, the appeal stands dismissed. No
costs.

(SANDIPKUMAR C. MORE)
JUDGE

adb