



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 885 OF 2014

The Municipal Corporation of Greater
Mumbai

.... Appellant

v/s.

1. Sayyad Khajamiya Sayyad Nabisab
2. Sayyad Rabiya Sayyad Khajamiya

.... Respondents

**WITH
INTERIM APPLICATION NO. 19803 OF 2022
IN
FIRST APPEAL NO. 885 OF 2014**

Sayyad Khajamiya Sayyad Nabisab
and anr.

... Applicants

In the matter between :-

The Municipal Corporation of Greater
Mumbai

.... Appellant

v/s.

1. Sayyad Khajamiya Sayyad Nabisab
2. Sayyad Rabiya Sayyad Khajamiya

.... Respondents

Ms. Shraddha Chheda i/b. M/s. Navdeep Vora and Associates
for the Appellant.

Ms. Kiran Yadav i/b. Mr. Avinash Gokhale for the original
complainant/Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 24th AUGUST, 2023.

P. C. :-

. The Appellant – Corporation has filed this Appeal under section
173 of Motor Vehicles Act challenging the judgment and award dated

28/02/2013 passed by the Member, MACT, Mumbai in Claim Application No.793/2006.

2. Heard learned counsel for the Appellant and learned counsel for Respondent Nos.1 and 2. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The Respondent Nos.1 and 2 had filed Claim Application No.793/2006 in view of death of Sayyad Farid Sayyad Khajamiya in a motor vehicular accident involving BEST Bus bearing No.MH-01-L-8539. The claimants had alleged that the accident was caused due to rash and negligent driving by the driver of the said vehicle. The Tribunal after considering the evidence on record, held that the accident was caused due to rash and negligent driving by the driver of the offending vehicle and that the deceased had expired as a result of the injuries sustained in the said accident.

4. Upon considering the age and income of the deceased, the Tribunal has awarded compensation of Rs.3,34,000/-. Learned counsel for the Appellant has restricted the challenge only to the findings recorded on the issue of negligence. She disputes the involvement of

the said vehicle in the accident.

5. The records reveal that the FIR was lodged against the driver of the BEST vehicle. Charge sheet was also filed against him for driving the vehicle in a rash and negligent manner. The aforesaid facts are sufficient to prove the involvement of the vehicle in the accident and causing death of Sayyad Farid Sayyad Khajamiya.

6. It may be mentioned that the standard of proof in claim petitions under section 166 of Motor Vehicles Act is to be decided on the touchstone of preponderance of probability and not on the basis of proof beyond reasonable doubt. Hence, the fact that the driver has been subsequently acquitted cannot *per se* be the ground to absolve the Insurance Company of its liability to indemnify the insured.

7. In view of the above, the Appeal has no merits and is accordingly dismissed. Compensation deposited by the Corporation, be paid to the Claimants with interest accrued thereon. Interim Application stands disposed of in view of dismissal of the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)