

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 600 OF 2021

Reliance General Insurance Com. Ltd.)
 Its branch office at 570, Naigaum Cross Road,)
 Next to Royal Industrial Estate, Wadala(W), Mumbai)
 Insc Cert/Policy No.-425007582/05/75/04157457)
 Valid from 23/07/15 to 22/07/16) Appellant

Versus

1. Baban Dattatray Nimbalkar)
 Aged 40 years, Occupation-Labour)
 R/o. At post-Pimprad, Tal- Phaltan, Dist.Satara)
 2. Dnyaneshwar Balaso Shinde)
 Age 30 years, Occupation-Driver,)
 R/o. at Post- Pimprad, Tal-Phaltan, Dist.Satara)
 3. Amol Balaso Shinde)
 Age 35 years, Occup-Agri & Business)
 R/o at Post-Pimprad, Tal-Phaltan, Dist-Satara) Respondents

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Ms. Kalpana R. Trivedi, Advocate for the Appellant.
 Ms. Manisha A. Devkar a/w. Mr. Shankar Katkar, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th DECEMBER, 2023

JUDGMENT :

1. The issues involved in this appeal are the accident occurred due to negligence of the claimant. The place of accident and claimant cannot be considered as a third party.

2. It is the contention of learned counsel for the appellant that claimant cannot be considered as a third party as he was labour on the

offending tractor trolley. Learned counsel further submitted that the accident occurred when the claimant was trying to remove socket pin between the two trolleys without informing the driver of the said tractor. It shows there was negligence of the claimant himself but this fact is not considered by the Tribunal. Learned counsel further submitted that the accident occurred in the field of private persons so it cannot be termed as a public place but this fact is not considered by the Tribunal. Learned Counsel further submitted that the claimant cannot be considered as a third party as he was labour on the tractor trolley. She further submitted that the driver of the offending tractor was not holding effective and valid driving licence at the time of accident hence, requested to allow the appeal.

3. It is the contention of learned counsel for the respondent No.1 - claimant that the tractor had gone in the said field for unloading the molasses so it cannot be considered as a private place. Learned counsel further submitted that the appellant-Insurance Company has not examined witness to prove the negligence of claimant. Learned counsel further submitted that the defence regarding the issue that claimant was not a third party was not taken before the Tribunal. He further submitted that the order passed by the Tribunal is legal and valid and no interference is required in it and requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Satara (for short “**the Tribunal**”). It is claimant’s case that on 18.04.2013 at about 8:00 a.m. the claimant along with Vilas Bhagat, Santosh Bhagat and Balu Shirtode had gone to fill molasses in trolley attached to tractor bearing No. MH/11/U/6052 from Shriram Karkhana. Dnyaneshwar Shinde was driving the said tractor. After filling the molasses from Shriram Karkhana they proceeded to Jalindar Nale’s field in village Pimprad, Tal. Phaltan for unloading it. At about 12:30 p.m. claimant got down in Nale’s field for the purpose of removing socket between two trolleys at that time even before the claimant could tell opponent No.1 Dnyaneshwar took the tractor in reverse, as a result of which the claimant got smashed between the two trolleys. The claimant’s ribs got crushed and he fell down. Thereafter, Dnyaneshwar took the tractor forward after hearing screaming of the other people. The claimant was admitted in the hospital and due to the said accident he has suffered 40% disability.

5. It is the contention of learned counsel for the appellant that accident occurred due to negligence of claimant himself. To prove the negligence of claimant appellants have not examined any witness. From the documents produced on record it appears that accident occurred due to negligence of the driver of the tractor, without any evidence this Court

cannot consider the negligence of the claimant. If the appellant- Insurance Company takes defence that it was negligence of the claimant they should have examined witnesses to prove it but it was not done hence I do not see any merit in it.

6. In respect of issue that the claimant cannot be considered as a third party, it has come on record that the claimant had gone with the said tractor as a labourer and while unloading the molasses the accident occurred. So at the time of accident he was not traveling on the trolley, he was removing the socket between the two trolleys so he can be termed as a third party. It is the contention of learned counsel for appellant that accident happened in private field and private field cannot be considered as a public place. Section 2(34) of Motor Vehicles Act states about public place it reads as under:

“public place” means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.”

In the present case it has come on record that tractor had gone in the field of Shri. Nale for unloading molasses with the claimant and other persons. There was permission of that field owner to enter in that field so it cannot be considered as a private place. The Tribunal while dealing with this issue, has observed that no evidence is produced on record to show that it was not public place. I do not see any infirmity in it.

In my view, it has come on record that the driver of tractor Shri. Dnyaneshwar Shinde had gone in the field of Shri. Jalandar Nale to unload the molasses it shows that there was contract between Shri. Shinde and Shri. Nale and to fulfill the said contract, Shri. Shinde had gone in that field with claimant and other persons so they had gone in the said field with the permission of the field owner. Hence, it cannot termed as a private place.

7. In view of above, I pass the following Order:

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) Respondent No.1/claimant is permitted to withdraw the amount deposited by the appellant along with accrued interest thereon.
- (iii) The statutory amount along with accrued interest be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.

8. Pending applications, if any, stand disposed of.