

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1380 OF 2022

1. Mrs.Chitra Pandit Wagh }
2. Miss Gayatri Pandit Wagh }
3. Mast.Yashwardhan Pandit Wagh }
Appellant Nos.2 and 3 through N.G. }
and mother Respondent No.1, since }
being minor. }
4. Sou.Shantabai Sahebrao Wagh }
All Are R/at 106, Wagh Vasti, }
Adhegaon, Tal. Madha, }
District-Solapur }
}

...Appellants

Versus

1. The CEO, Zilla Parishad, }
Solapur, Zilla Parishad, Solapur-413001. }
2. The New India Assurance Co. Ltd. }
DO-II, Nehru Memorial Hall, }
Moledina Road, Camp, Pune-1. }

...Respondents

Mr.Amol Gatane, for the Appellants.
Mr.Anand Kulkarni, for Respondent No.1
Mr.Milind More, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 23 MARCH 2023

JUDGMENT :-

. The Claimants have preferred this Appeal against the
dismissal of the Claim Petition.

2. The learned counsel for the Appellant submits that on 10 July 2016 the deceased Pandit Wagh was traveling in the Indigo Car bearing No.MH-13-BQ-0053. It was driven by Dilip Annasaheb Bhosale. While coming back from Indapur, due to the negligence of the car driver the car toppled and deceased sustained injuries resulting into his death.

3. The learned counsel further submits that Respondent No.2-Insurer contested the matter by filing Written Statement and questioned the maintainability of the Claim Petition. It was their contention that the vehicle involved in the accident was owned by Respondent No.1, but was allotted to the deceased being the Sabhapati of Respondent No.1. Therefore, the deceased was owner of the vehicle. The Tribunal without considering the fact that deceased was not driving the car at the time of the accident, held that deceased can not step into the shoes of owner and he was driving the car, hence, not entitled for compensation and dismissed the Claim Petition.

4. The learned counsel further submits that the Tribunal has erred in holding that at the time of the accident deceased was driving the offending car, where as it has been found in the investigation that driver Shri.Dilip Bhosale was driving the said car. Hence, requested to allow the Appeal.

5. It is contention of the learned counsel for Respondent No.2-Insurance Company that the deceased was Sabhapati of one of portfolio of Zilla Parishad and the offending car was allotted to him as Office vehicle. At the time of the accident he was driving the said vehicle. He had stepped into the shoes of owner. Hence, the Tribunal has rightly held that he is not entitled for compensation. The order passed by the Tribunal is legal and valid.

6. The learned counsel for Respondent No.1 submits that at the time of the accident the vehicle was insured with Respondent No.2.

7. I have heard all learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Pune (for short 'The Tribunal').

8. While dismissing the Claim Petition in paragraph No.27 the Tribunal has observed that deceased Pandit was travelling in the offending vehicle in the capacity as owner. The deceased cannot be treated as third party to the accident. Hence, Claim Petition stands dismissed.

9. I am unable to understand the findings given by the Tribunal, the same Tribunal while passing order in MACP No.36

of 2017 which occurred out of the same accident. In paragraph No.30 of judgment, has been observed that Investigation Officer carried out further investigation and filed charge sheet against Dilip Bhosale, it means that Investigation Officer after due investigation concluded that the offending vehicle was driven by Dilip Bhosale.

10. The said judgment and order is passed on 22 July 2022 and the impugned judgment and order is passed on 1 August 2022. In the earlier judgment when the Tribunal has held that the offending vehicle was driven by Dilip Bhosale then in other matter the Tribunal should not have dismissed the Claim Petition filed by the Claimants stating that the offending vehicle was driven by deceased Pandit Wagh. Moreover, it is necessary to consider the issue of the quantum of compensation which requires evidence.

11. In view of above, I pass following order.

ORDER

(i) The Appeal is allowed.

(ii) The Judgment and order passed by the Motor Accident Claims Tribunal, Pune in MACP No.171 of 2017 is quashed and set aside. The matter is

remanded back to the Tribunal for fresh hearing for the purpose of quantification only.

(iii) The Tribunal shall decide matter on its own merits, as early as possible.

(iv) All pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)