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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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FIRST APPEAL NO.605 OF 2020

The New India Assurance Company Limited ... Appellant
V/s.

1. Smt. Vijaya Vidhyadhar Pathak,
2. Shri. Chetan Vidhyadhar Pathak,
3. Shri. Dnyanoba Digambar Shevale,
4. Shri. Dwipin Dilip Lodha. ... Respondents

Mr. Shrikant M. Dange for Appellant.

Ms. Riddhi R. Gurav a/w Ms. Rashmi D. More i/by Mr. Sandeep D. Shinde for Respondent Nos.1 and 2.

CORAM : SHIVKUMAR DIGE, J.

DATED : 8 MARCH, 2023

JUDGMENT:

1. Issue involved in this Appeal is negligence of deceased at the time of accident.

2. It is contention of learned counsel for the Appellant that deceased was traveling on motorcycle/scooter and he was going from Dhule to Songir and offending trailer was going in same direction. When both vehicles were going in same direction, an accident occurred. It was the sole negligence of the deceased who dashed against the trailer. Learned counsel further submits that the deceased himself gave dash to the trailer. Had the dash been given by the driver of offending trailer, damage would have been caused to the scooter but

no damage is caused to the scooter, this shows that accident was occurred due to sole negligence of deceased, but it was not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for Respondent Nos.1 and 2/Claimants that FIR was lodged against the driver of the offending trailer. It has come on record that the said accident had occurred while driver of offending trailer was over taking the motorcycle/scooter of the deceased. The driver of offending trailer was not examined as a witness by the Appellant to prove the negligence of the deceased. Hence, requested to dismiss the Appeal.

4. I have heard both the learned counsels. Perused judgment and order passed by the Motor Accidents Claim Tribunal, Nashik (for short "Tribunal"). Admittedly, the FIR in respect of the said accident was registered against the driver of offending trailer. While dealing with the issue of negligence, the Tribunal has observed that in First Information Report at Exhibit-57, it has been specifically alleged that at the time of accident, offending trailer had come from opposite direction and gave dash to the motorcycle/scooter of the deceased. In spot panchanama at Exhibit-28, it has been mentioned that the place of accident is near Old Mumbai Agra Road. From the contents of spot panchanama, it appears that offending trailer was found standing in the center of the road and it was proceeding towards Sondgir side and left side of it was found damaged. The motorcycle/scooter of the deceased was found damaged. From the contents of FIR and spot panchanama, the Tribunal has considered that the accident occurred due to sole negligence of the driver of offending trailer.

5. In my view, there is no eye witness to the incident of accident. The only eye witness of the said accident was driver of the trailer. To prove the negligence of the deceased, appellant has not examined the driver of offending trailer who could have told about the negligence of the deceased. From FIR and spot panchanama, it appears that there was sole negligence of driver of offending trailer. Hence, I do not find merit in the contention of learned counsel for the Appellant. The accident had occurred due to sole negligence of the deceased. In view of above, I pass following order:-

- (i) Appeal is dismissed. No order as to costs.
- (ii) The claimants are permitted to withdraw deposited amount alongwith accrued interest thereon.
- (iii) Statutory amount be transmitted to the Tribunal. The parties are at liberty to withdraw it as per rule.

(SHIVKUMAR DIGE, J.)