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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

FIRST APPEAL NO.634 OF 2021

1. Smt.Shital wd/o Prasad Sarodaya,
aged about 38 years, occupation household.

2. Ku.Padmaja d/o Prasad Sarodaya,
aged about 17 years, occupation education.

3. Ku.Shrawani d/o Prasad Sarodaya,
aged about 11 years, occupation education.

(Nos.2 and 3 are minor through their
natural guardian mother Appellant No.1).

All r/o c/o Sachin Fursule, near Guru
Mandir, Karanja Lad, taluka Karanja Lad,
district Washim. **Appellants.**

:: VERSUS ::

1. Vishal s/o Manikrao Lokhande,
aged about 34 years, occupation driver,
r/o ST colony, Sharda nagar,
ward No.6, Dhantoli, Wardha,
taluka and district Wardha.

2. Datta Meghe Institute of Science
Wardha, through its Director,
Sawangi Meghe, taluka and district Wardha.

3. SBI General Insurance Co.Ltd.,
through its Branch Manager,
"Natraj", 101, 201, 301 junction of
Western Express Highway and Andheri
Kurla Road, Andheri (East),
Mumbai - 400069.

4. Radha Riddhi Associates,
Through its Director,

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c/o SOS, Wana Dongari, Hingna Shiva
Sawanga, Nagpur – 440023. **Respondents.**

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Shri P.R.Agrawal, Counsel for Appellants.

Shri P.D.Meghe, Counsel for Respondent No.2 & 4.

Mrs.Mrunal Naik, Counsel for Respondent No.3.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 27/02/2023

PRONOUNCED ON : 28/04/2023

JUDGMENT

1. This appeal is arising out of judgment and award dated 17.7.2020 passed by learned Member of the Motor Accident Claims Tribunal (learned Member of the tribunal), Mangrulpir in MACP No.52/2014.

The appeal is preferred by the claimants for grant of compensation against the damages of vehicle.

2. Brief facts of the case are as under:

On 6.11.2013 , at about 6:30 am, Prasad Vinodrao Sarodaya (the deceased) was proceeding towards Wardha from Karanja in his own car bearing registration No.MH-32-C-4126. When his car reached near Shingnapur Phata, one school bus bearing registration No.MH-31-CB-8915, driven by respondent No.1 (the driver of the offending school bus), in a

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rash and a negligent manner dashed against the said car of the deceased. Due to the severe dash, the deceased sustained grievous injuries and succumbed to the injuries. The claimants are the wife and children of the deceased. Regarding the said accident, a crime was registered at Nandgaon Khandeshwar Police Station vide Crime No.121/2013. As per the contentions of the claimants, the offending school bus was owned by respondent No.2 the Institute and validly insured with the respondent No.3 insurance company. The respondent No.4 was the previous owner of the offending school bus. The claimants, therefore, claimed that the driver, the owner i.e. the Institute, the previous owner, and the insurance company all are jointly and severally liable to pay compensation. The claimants claimed compensation on the ground that damage was caused to the vehicle to the extent of Rs.10.00 lacs.

3. The respondent No.2 the Institute and the respondent No.4 the previous owner of the offending school bus resisted the claim by filing written statements. As per their defence, the offending school bus was insured with the insurance company vide cover note No.1088141 valid for

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10.7.2013 to 9.7.2014. Hence, the insurance company is liable to indemnify the owners. They denied the allegations of a rash and negligent driving.

4. The insurance company also resisted the claim on the ground that the offending school bus was not insured with the insurance company. The policy bearing No.1088141 for the period 10.7.2013 to 9.7.2014 was cancelled on the request of the previous owner itself on 10.7.2013 and premium was refunded to the previous owner. Hence, the insurance company is not liable to pay the compensation.

5. To substantiate the contentions, the claimant No.1 adduced her evidence and also examined one witness namely Nilesh Chitgopekar from the Rishabh Motors. As per her evidence, the car bearing No.MH-32-C-4126 was owned by her husband and heavily damaged in the alleged accident. It was referred to the Rishabh Motors for repairs. The Rishabh Motors issued the estimate of Rs.10,07,176/-. The said estimate was also produced on record which is at Exhibit-29. The claimants have also examined said Nilesh who testified that the said car was brought to his service centre for repairs

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and after inspection, temporary estimate of Rs.10,07,176/- was also prepared. Admittedly, said Nilesh has not stated the contents of the said estimate during his evidence. The said estimate Exhibit-29 is system generated and neither bears signature of either owner of the service centre or any authorized person to prove genuineness of the said estimate. Though the claimants have examined said Nilesh, the estimate does not bear his signature also. The estimate also does not bear either signature of the customer, service advisor or the person who inspected the said vehicle.

6. Thus, the evidence of the claimants as well as said Nilesh is not supported by the genuine documents.

7. The claimants also relied upon the photographs. However, the said photographs are not proved either by examining the said photographer or any other witness. To prove the damages, the claimants were under obligation to call the authorized valuer of the insurance company with whom the car was insured and get it assessed the valuation of the expenses. Thus, the evidence adduced by the claimants is not satisfactory to assess the claim of damages. The

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evidence further shows that the car was manufactured in the year 2010 and the accident took place in the year 2013. The damage was not ascertained from the approved surveyor. The spot panchanama nowhere shows the exact damage caused to the car. It is necessary to prove that the entire damage to the car was to the extent of Rs.10,07,176/- by adducing cogent and reliable evidence.

8. Except the oral evidence of the claimants, no other evidence is on record to prove that the damage caused to the vehicle was to the extent of Rs.10,07,176/- by adducing the evidence of the approved surveyor of the insurance company. The evidence of AW2 Nilesh nowhere discloses the contents of the said estimate. Moreover, the evidence shows that it was the temporary estimate issued by the service centre.

9. Thus, the exact evidence in respect of damage was not produced. In absence of any evidence, the claimants are not entitled to receive any compensation towards the damages. Learned Member of the tribunal has rightly considered that the evidence of the approved surveyor was required to assess the damages.

Judgment

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10. Thus, the appeal has no merits and is liable to be dismissed and the same is dismissed. No costs.

With this, the first appeal is **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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