



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1 OF 2016
WITH CIVIL APPLICATION NO. 17 OF 2016

NASREEN BEGUM SHARIF SHAH AND OTHERS
VERSUS
SHABBO BABLU SHAH AND OTHERS

Mr. S. R. Pande, Advocate for the appellants
Mr. Uday Malte, Advocate along with Mr. R. D. Borde, Advocate for
respondent No. 7

CORAM : R. M. JOSHI, J.
DATE : 16th JANUARY, 2024

P.C. :-

1. Heard.
2. This appeal is filed by the original respondent Nos. 4 to 7 who claim themselves to be legal representatives/legal heirs of deceased Sharif Shah Umar Shah who died in vehicular accident occurred on 05/12/2009.
3. The short question arises for determination in this appeal is as to whether the Tribunal has committed error in proceeding without say and written statement of appellant/respondent Nos. 4 to 7 and that case of respondent was not taken into consideration by Tribunal while doing apportionment for the compensation and their rights were not determined.
4. Respondent Nos. 1 to 4/original claimants though served in this

appeal failed to remain present, hence appeal to proceed ex-parte against them. Their absence indicate that they have no inclination to oppose the appeal. Insurer appeared in this appeal, however, insurer has no say as no relief is sought against it.

5. Learned counsel for the appellants submits that appellant/original respondent Nos. 4 to 7 had filed an application Exhibit 28 under Order 1 Rule 10 of the Code of Civil Procedure for impleading themselves as claimants. The said application filed on 30th March, 2011 was allowed by the Tribunal by order dated 7th July, 2011 directing them to be joined as appellants. Subsequently, application (Exhibit 41) came to be filed by the original claimants for recall of the said order. By order below Exhibit 41 the appellants herein were directed to be added as respondents. Tribunal thereafter passed order dated 3rd May, 2014 observing that respondent Nos. 4 to 7 have appeared vide Exhibit 27 but failed to file written statement/say. Hence, the claim petition was proceeded without say. According to him, Tribunal has committed error in not issuing notice to the respondents. According to him the appearance caused vide Exhibit 27 ought to have been treated to the limited extent of their application Exhibit 28 filed for joining these respondents as claimants in the original proceeding and since order passed below Exhibit 28 was recalled and the appellants were directed to be joined as respondents, it was incumbent on the part of the Tribunal to issue notice to the respondents, after

amendment to claim petition was carried out. According to him in absence of service of notice to the respondents after passing order below Exhibit 41, dated 3rd May, 2014, the order to proceed claim without say of the respondents cannot sustain. According to him, this has caused grave great prejudice to these respondents as they could not contest the proceeding.

6. Perusal of the record indicates that the original claim was filed by the mother and children of deceased said to have begotten from first wife whereas appellant No.1/original respondent No. 4 claim herself to be second wife of the deceased and 5 to 7 are children begotten from the said wedlock. The record further indicates that application (Exhibit 28) was filed to join themselves as claimants. Though the said application was allowed and these respondents were directed to be joined as claimants however subsequently, an order came to be passed below exhibit 41 whereby they were directed to be joined as respondents. This Court finds substance in the contention of the learned counsel for appellants/ original respondent Nos. 4 to 7 that once these persons were directed to be joined as respondents and amendment was carried out to that effect in the original claim petition, the notice ought to have been issued to these respondents, unless it was waived. There is nothing on record to show that such notice was waived by them. Certainly, this has led to causing of injustice and irreparable loss to appellant/original

respondents.

7. In view of above, the impugned judgment and award is quashed and set aside to the extent of the apportionment directed by clause 3 of the operative part of the order. Rest of the award since not being challenged has attained finality. Hence following order:-

ORDER

(i) The judgment and award dated 15/09/2015 passed in MACP No. 02/2010 to the extent of the apportionment granted by the Tribunal vide clause No.3 of the operative part is hereby set aside.

(ii) The claim petition is relegated back to the Tribunal to decide the right of claimants as well as respondent Nos. 4 to 7 in the receiving compensation amount awarded.

(iii) Since the petition is of year 2010 the aforesaid to be decided at the earliest and in any case before six (06) months from the date of receipt of the writ or intimation of this proceeding the Tribunal.

(iv) Tribunal to ensure that claimants remain present before deciding the said issue.

(v) No separate notice is required to be issued to the respondents.

(vi) The appellants herein and respondent insurer are directed to appear before Tribunal on 5th February, 2024.

9. Pending application, if any, stands disposed of.

(R. M. JOSHI, J.)

ssp