

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 344 OF 2011

1. Shrikant Annappa Shinde }
2. Bablu Shrikant Shinde }
Both R/at 13/316, Datar Mala, Ichalkaranji, }
Tal. Hatkanangale, District-Kolhapur } ...Appellant

Versus

1. Khiraling Basavannappa Shingshetty }
R/at Kadapure Tal, Ward No.10/1142, }
Datar Mala, Ichalkaranji, Taluka- }
Hatkanagale, District-Kolhapur. }
2. Sou.Suglabai Khiraling Shingshetty }
R/at As Above }
3. Santosh Khiraling Shingshetty }
R/at As Above }
4. Savitri Khiraling Shingshetty }
R/at As Above } ...Respondents

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Mr.Prashant Kulkarni, for the Appellant.
Mr.A.M. Kulkarni, for Respondent No.1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th JANUARY 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal are, age of the
deceased was not proved and the vehicle was hypothecated with

the bank, but bank did not insure it.

2. It is contention of the learned counsel for the Appellant that, age of the deceased was not proved before the Tribunal and the offending motorcycle was hypothecated with bank, so it was the duty of the bank to take the insurance of the said vehicle, but it was not taken, hence, the Appellant is not liable to pay compensation, but this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent that, the Tribunal has considered all the aspect while passing the order. No interference is required in it.

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

5. While dealing with the issue of age of deceased the Tribunal in paragraph No.16 has observed that, at the time of the accident deceased was 20 years old, but not evidence produced on record. Considering the evidence on record the Tribunal has considered age of deceased as 26 years. I do not find infirmity in

it.

6. It is contention of the learned counsel for the Appellant that, at the time of accident the offending motorcycle was hypothecated with Nutan Nagari Sahakari Bank Ltd., hence, it was obligation on the said bank to take the Insurance Policy. In my view, though the offending vehicle was hypothecated with the bank, no agreement was produced on record to show that, if there was Terms and Conditions about taking insurance policy of offending vehicle by the Nutan Nagari Sahakari Bank Ltd. Mere vehicle was hypothecated to the bank, cannot be a ground to shift liability of paying compensation on the said bank. It was obligatory on the owner of vehicle to take insurance policy of the vehicle. The accident caused due to negligence of the Appellant. Hence bank cannot be hold liable to pay the compensation mere hypothecation with it.

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

ORDER

(i) Appeal is dismissed. No order as to cost.

(ii) The Claimant's are permitted to withdraw

amount deposited by the Respondents along with accrued interest thereon.

(iii) The statutory amount along with accrued interest be transferred to the Tribunal. The parties are at liberty to withdraw it as per Rules.

(iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)