

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL (ST) NO.25419 OF 2005

Union of India	}	Appellant
Thr. Ministry of Defence,	}	(Org. Opposite
New Delhi	}	Party)

V/s.

Mr.Pusalal Raichand Nayak	}	
Aged About-49 years,	}	
R/at C/o. J.B. Gawande, Ganeshprasad,	}	
C/4, Mhatre Road, Dahisar (W),	}	Respondent
Mumbai-400068	}	(Org. Applicant)

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Mr.Pranil Sonawane a/w Mr.Raj Chourasia, for the Applicant.
None, for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 18th JANUARY 2024

ORAL JUDGMENT :-

1. The issue involved in this Appeal is that accident caused due to negligence of the Claimant.

2. It is contention of the learned counsel for the Appellant that, at the time of the accident, the Claimant was under the influence of liquor and due to his negligence accident caused. But this fact is not considered by the Tribunal. Hence

requested to allow the Appeal.

3. Though Respondent's are served, none present for the Respondent. Appeal is of the year 2005. Hence, I am deciding it on merit.

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

5. While dealing with the issue whether Claimant was under the influenced of liquor or not. The Tribunal has observed that, the Appellant did not lead any evidence to prove that, the Claimant was under the influence of liquor at the time of the accident.

6. It is contention of the learned counsel for the Appellant that, the Appellant has examined Dr.Gourer Shriram as defence witness to prove that, the Claimant was under the influence of liquor. This witness has stated that, he had examined the Claimant and he has stated that, as per history of the Claimant he had consumed liquor.

7. In my view, mere history given to the doctor can't be

a ground to consider that the Claimant was under influence of liquor. It has come on record, this witness has treated the Claimant but no blood samples was taken by this witness nor blood sample was sent for testing, to prove that, the Claimant was under the influence of liquor. No urine test report and blood report of the Claimant were produced before the Tribunal to prove that, the Claimant was under the influence of the alcohol. Hence, I do not see merit in the contention that, the Claimant was under the influence of liquor at the time of accident.

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

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The Respondent/Claimant is permitted to withdraw amount deposited by the Appellant-Insurance Company along with accrued interest.
- (iii) The statutory amount with interest be transferred to the Tribunal. The parties are at liberty to withdraw it as per Rules.
- (iv) The delay of 345 days for filing the Appeal is

condoned. Appeal be registered for statistical purpose.

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

(SHIVKUMAR DIGE, J.)