



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

FIRST APPEAL NO.1266 OF 2017

Appellant : : The National Insurance Co. Ltd.,
(On R.A. Ori. Resp. No.2) through its Divisional Manager,
D.O. No.IV, Durga Sadan, Balraj Marg, Dhantoli,
Nagpur : 440012.
– Versus –

Respondents : : 1. Smt. Asha wd/o Mahendra Bharadwaj,
(On R.A. Ori. Applicant Aged about 44 Yrs., Occ. Household.
No.1)
(On R.A. Ori. Applicant 2. Hindkumar Mahendra Bharadwaj,
No.2) Aged about 22 Yrs., Occ : Student.
(On R.A. Ori. Applicant 3. Shubham Mahendra Bharadwaj,
No.3) Aged about 20 Yrs., Occ : Student.
(On R.A. Ori. Applicant 4. Ku. Jyoti Mahendra Bharadwaj,
No.4) Aged about 18 Yrs., Occ : Student.
All above r/o Qtr. No.17, Western Coal Fields Ltd.
Colony at Saoner, Tah. Saoner, Dist. Nagpur.

(On R.A. Ori. Respondent 5. Mahendra Madhukar Lule,
No.1) Aged Major, Occ : Transport Business,
R/o Shop No.3, Ashirwad Complex,
Baidyanath Chowk, Nagpur 440 008.

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Mr. V.P. Maldhure, Advocate for the Appellant.
Mr. V.V. Asole, Advocate for Respondent Nos.1 to 4.
None for Respondent No.5.

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CORAM : **M.W. CHANDWANI, J.**
DATE : **23rd SEPTEMBER, 2024.**

ORAL JUDGMENT :

With the consent of learned Counsels for the parties, the appeal is taken up for final hearing.

02. **Admit.**

03. Correctness of the award dated 24/09/2016 passed by the Motor Accident Claims Tribunal-1, Nagpur (*hereinafter referred to as "Tribunal" for short*) in Claim Petition No.103/2012 is questioned in this appeal, whereby the Tribunal directed the appellant and respondent No.5 to pay jointly and severally, compensation of Rs.44,43,512/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization of the amount, on account of death of deceased Mahendra Dhuran Bharadwaj in a vehicular accident that occurred on 17/12/2011.

04. Deceased Mahendra was proceeding on his motorcycle towards Adasa from Dhapewada. At that time, a Travel Bus bearing registration No.MH-31-CB-7700 (*hereinafter referred to as "offending vehicle" for short*), which was insured with the appellant, was coming from the opposite direction in high speed and gave a dash to the motorcycle of deceased Mahendra, resulting into his death. Therefore, the dependents of the deceased filed a claim petition before the Tribunal and by the impugned award, the same came to be allowed. Feeling aggrieved with the impugned award, the present appeal came to be filed.

05. The main contention raised in the appeal is that the Tribunal has not considered contributory negligence on the part of the deceased. It is contended that the road was 15 feet wide and the offending bus got damaged from its right side. Therefore, according to the learned Counsel for the appellant, there is negligence on the part of the deceased, while driving his two wheeler. It is also one of the contentions that since the road was 15 feet wide, the two wheeler should have passed easily from the side of the offending vehicle, but the deceased drove his motorcycle negligently and dashed against the offending vehicle.

06. The sum and substance of the argument of the learned Counsel for the appellant is that there was negligence on the part of the deceased as well and therefore, the Tribunal ought to have held that the deceased also contributed to the negligence, which resulted into the accident.

07. *Per contra*, the learned Counsel for the respondents vehemently submitted that the appellant did not examine any witness, not even the driver of the offending vehicle to prove that there was negligence on the part of the deceased as well. According to him, the offence was registered against the driver of the offending vehicle holding him solely negligent for the occurrence of the accident. Therefore, the Tribunal has rightly held that the driver of the offending vehicle was negligent.

08. It is a matter of record that an offence against the driver of the offending vehicle has been registered by the police, since the police found the driver of the offending vehicle solely negligent as he was driving the vehicle in a rash and negligent manner. Though, the driver has been acquitted by the learned Judicial Magistrate First Class, Kalmeshwar, District Nagpur in the criminal case, but acquittal in the criminal trial does not necessarily suggest that the driver was not negligent while driving the vehicle. Let me state that the criminal cases are to be decided on the principle of proving the facts beyond reasonable doubt considering the well known principle that no innocent person should be punished. Whereas, inquiry in claim petitions is of summary nature.

09. The spot-panchnama shows that the accident occurred at the middle of the road. Further, the Tribunal in paragraph 17 of the award has specifically recorded the finding that there were trees and bushes by the side of the road and there was also a curve. Therefore, the bus driver ought to have given sufficient space to the motorcycle rider for passing. Thus, there is a *prima facie* finding in the police investigation that the driver of the offending vehicle was at fault. Though, a specific plea has been taken into consideration by the Tribunal about contributory negligence on the part of the deceased, but nobody has been examined by the appellant to prove that the deceased was driving the motorcycle in a rash and negligent manner.

10. Therefore, I do not find substance in the argument of the learned Counsel for the appellant that the Tribunal erroneously recorded the finding that the accident occurred due to sole negligence on the part of the driver of the offending vehicle. No interference is required in the award passed by the Tribunal. The appeal, being devoid of merits, is dismissed. The amount deposited by the appellant is allowed to be withdrawn by respondent Nos.1 to 4 in the manner and on the terms and conditions imposed in the impugned award. There shall be no order as to costs.

(M.W. CHANDWANI, J.)

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