



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

FIRST APPEAL NO. 99 OF 2020

APPELLANTS
(Original respondent No.1
on R.A.)

- : 1. Maharashtra State Electricity
Transmission Co. Ltd., through its
Superintendent Engineer, Circle
Office, Chandrapur, Near Machhi
Nala, Mul Road, First Floor of Dr.
Madurwar City Scan Center,
Chandrapur
2. Kashinath s/o Narayan Peshettiwar
Aged- major, Occ.- Nil,
R/o. 66, K.V.M.S.E.B. Colony, Mul
Road, Chandrapur, Tah. & Dist.
Chandrapur

(Original Resp. No.2 on
record)

//VERSUS//

RESPONDENTS
(Original claimants No.1 to
4)

- : 1. Smt. Malan wd/o Ramu Alam,
Aged 51 yrs., Occ.- Household
2. Sandip s/o Ramu Alam,
Aged 33, Occ. - Nil
3. Ku. Pratima d/o Ramu Alam,
Aged 30 yrs., Occ. - Nil
4. Pravin s/o Ramu Alam,
Aged 28 yrs, Occ.- Nil,
All R/o Check Borda, Tah. & Dist.
Chandrapur

Shri Sachin Zoting, Advocate for appellants.

Shri A.R. Rishi, Advocate for respondent Nos.1 to 4.

CORAM : G. A. SANAP, J.

DATED : 6th MARCH, 2024

ORAL JUDGMENT

Heard.

2. **ADMIT.** Heard finally with the consent of learned Advocates for the parties.

3. In this appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the appellants-original respondents, the challenge is to the judgment and award dated 10.07.2018, passed by the Motor Accident Claims Tribunal, Chandrapur, whereby the claim filed by the respondents- claimants for compensation has been partly allowed.

4. Background facts:-

The claim petition was arising out of an accident that occurred on 07.07.2013. The deceased Ramu was the husband of respondent No.1 and the father of respondent Nos.2 to 4. On 07.07.2013, at about 8.00 p.m., the deceased, along with his friends, was taking a post meal walk on the road. The respondents claimed that the truck bearing registration No.MH-31/DS-2941 owned by appellant No.1 came from behind in high speed and gave a dash to the deceased on Chandrapur to Mule road in front

of Bus Stand Ghanta Chawki, Chandrapur. Appellant No.2 was driving the said truck. The respondents claimed that the accident occurred due to the rash and negligent driving of the offending vehicle in high speed. The deceased succumbed to the injuries sustained in the accident. The First Information Report was lodged and crime bearing No.206/2013 was registered against appellant No.2. The respondents claimed compensation on account of death of Ramu in the vehicular accident.

5. Appellant No.1 filed the written statement and opposed the claim. Appellant No.2 was proceeded *ex-parte* on account of his failure to appear before the Tribunal.

6. The claimants examined four witnesses. Witness No.1 is respondent No.1. Manoj Talande (CW-2) is an independent eye witness to the incident, and the remaining two witnesses have been examined to prove the income of the deceased. Appellant No.1 has examined one witness, i.e., Appellant No.2- the driver of the offending vehicle. Learned Member of the Tribunal partly allowed the claim and held the respondents entitled to get the compensation of Rs.18,84,190/- (Rupees Eighteen Lacs Eighty Four Thousand One Hundred Ninety Only). Being aggrieved by this judgment

and award, the appellants are before this Court.

7. I have heard Mr. Sachin Zoting, learned Advocate for the appellants and Mr. A.R. Rishi, Advocate for the respondent Nos.1 to 4. Perused the record and proceedings.

8. In view of the facts and circumstances following points fall for my determination:-

- i) Whether the respondents have proved that the deceased died in a vehicular accident due to rash and negligent driving by appellant No.2?
- ii) Whether the compensation awarded by the Tribunal is just, proper and reasonable?

9. The claimants have not challenged the judgment and award. Learned Advocate for the appellants submitted that one motorcycle was involved in the accident, but the owner and insurer of the said motorcycle was not made a party in the accident claim. Learned Advocate submitted that as such, the claim was bad for nonjoinder of a necessary party. Learned Advocate submitted that so called eye witness CW-2 has narrated the facts on the basis of his imagination. Learned Advocate submitted that it has been

mentioned in the First Information Report that initially the offending vehicle gave dash to the motor cycle and the motor cycle in turn gave a dash to the deceased. Learned Advocate submitted that therefore, the owner of the motor cycle and the insurer of the motor cycle were necessary party. Learned Advocate further submitted that quantum of compensation arrived at by the Tribunal was not proper.

10. Learned Advocate for the respondents submitted that the learned Member of the Tribunal has made a threadbare analysis of the evidence and on doing so, has found the said evidence credible and acceptable. Learned Advocate submitted that perusal of the First Information Report would show that initially the truck gave a dash to the motorcycle parked on the side of the road and the motorcycle dashed the deceased, resulting into his death. It has also been stated in the First Information Report that, after the incident, the offending vehicle gave a dash to an electric pole on the spot. Learned Advocate submitted that the plea of non-joinder of a necessary party was not raised in the written statement filed by appellant No.1 and therefore, the same cannot be raised for the first time in the appeal. Learned Advocate submitted that appellant No.2 has been prosecuted for this offence and therefore, the

finding recorded by the learned Member that he was rash and negligent and solely responsible for the accident, is just and proper. Learned Advocate further submitted that the compensation has been decided on the basis of annual income of the deceased.

11. I have gone through the record and proceedings. Perusal of the judgment passed by the learned Member of the Tribunal would show that the learned Member of the Tribunal has made threadbare analysis of the evidence on record. Learned Member of the Tribunal has believed and accepted the evidence of CW-2 as an eye-witness to the incident. On re-appreciation of his evidence, I do not find any reason to discard and disbelieve the same. It is submitted that he belongs to the caste of the respondents and therefore, he has deposed falsely to support the claim filed by the respondents. It is undisputed that CW-2 is residing by the side of the spot of the incident. Therefore, it goes without saying that his presence on the spot was natural. His presence on the spot at the time of the accident, has not been in any manner, disputed in his cross-examination. The respondents have placed the police case papers on record. The learned Member of the Tribunal has held that the driver of the offending vehicle was solely responsible for the accident. In my view, on this count, the oral evidence has been

fully corroborated by the police case papers. The finding on this point, therefore, does not warrant interference.

12. The next important point argued by the learned Advocate for the appellants is the nonjoinder of the necessary party, namely the owner and the insurer of the motor cycle. In my view, this submission cannot be accepted for more than one reason. The plea of nonjoinder of necessary party has to be pleaded at the earliest possible opportunity and in any case, as per Order I Rule 13 of the Code of Civil Procedure, before settlement of the issues. In this case, such a plea was not taken in the written statement. The issue of the nonjoinder of necessary party is an issue of fact and therefore, it must be pleaded and necessary evidence must be adduced. Therefore, on this ground alone, the submission cannot be accepted. Besides, there is no evidence on record to show that the owner of the motorcycle was in any manner responsible for the accident. The motorcycle was parked on the road. Appellant No.2 for the first time in his evidence, has stated that the deceased was dashed by the motor cycle before the offending vehicle reached the spot of the incident. In my view, this contention has been negatived by the learned Member of the Tribunal. I do not see any reason to interfere with the same.

13. As far as compensation is concerned, the learned Member of the Tribunal, on the basis of the proved income of the deceased has applied the proper multiplier. Learned Member of the Tribunal has made appropriate deductions. The compensation awarded, in my view, is just and proper. As such, I record my findings on both points in the affirmative. As such, I conclude that there is no substance in the appeal.

14. The appeal is accordingly dismissed.

15. The First Appeal stands disposed of. No order as to costs. Pending applications, if any stand disposed of.

(G. A. SANAP, J.)