



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

FIRST APPEAL NO.1565 OF 2019

Appellant : : Mr. Mantayya Gopoyya Atla,
 (Ori. Opponent on R.A.) Age 32 Years, Occupation : Agriculturist,
 R/o Village Maddikunta, Tahsil Sironcha,
 Dist. Gadchiroli.

– Versus –

Respondents : : 1. Sapna Tirupati Dhanada,
 (Ori. Plaintiff on R.A.) Age 29 Years, Occupation – Housewife.
 2. Ravindra Tirupati Dhanada,
 Age 11 Years, Occupation – Not Known.
 Being Minor, through Natural Guardian Mother
 Sau. Sapna Tirupati Dhanada.
 3. Smaila Tirupati Dhanada,
 Age 9 Years, Occupation – Not Known.
 Being Minor, through Natural Guardian Mother
 Sau. Sapna Tirupati Dhanada.

All r/o Maddikunta, Tahsil Sironcha,
 Dist. Gadchiroli.

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Mr. R.P. Durge h/f Mr. R.R. Vyas, Advocate for the Appellant.
 Ms. Ragini Swami h/f Mr. R.M. Tahaliyani, Advocate for the Respondents.

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CORAM : **M.W. CHANDWANI, J.**
DATE : **24th JULY, 2024.**

ORAL JUDGMENT :

This appeal has been filed under Section 173 of the Motor
 Vehicles Act, 1988 (*hereinafter referred to as “the Act” for short*) against the

impugned judgment and award dated 17/07/2017 passed by the Motor Accident Claims Tribunal, Gadchiroli (*hereinafter referred to as “the Tribunal” for short*) in M.A.C.P. No.22/2014.

02] The respondents filed a claim before the Tribunal for compensation on account of death of deceased Tirupati Rajreddi Dhanada, the husband of respondent No.1, who died in a vehicular accident on 31/03/2013. It was claimed in the petition that on the fateful day, the appellant and deceased were proceeding on a motorcycle towards village Arada and due to negligent driving on the part of the appellant, who was the owner of the vehicle, the accident occurred. The deceased sustained injuries and died on the spot. Since the vehicle was not insured, the Tribunal directed the appellant, owner of the vehicle, to pay compensation of Rs.5,18,000/- to the respondents herein. Feeling aggrieved with the impugned judgment and award, the present appeal came to be filed.

03] Heard the learned Counsel for the appellant as well as the respondents.

04] Record reveals that due to that accident, offence under Sections 279, 337, 338 and 304-A of Indian Penal Code vide Crime No.15/2013 came to be registered against the deceased. The F.I.R. goes to show that deceased

himself was driving the vehicle and the appellant, the owner of the vehicle was the pillion rider. Even, the claim application itself goes to show that the accident occurred due to negligent driving of the deceased, who was driving the vehicle speedily, rashly and in a negligent manner.

05] The compensation under Section 166 of the Act is a tortious liability based on civil wrong. Therefore, the negligence has to be proved. The impugned award goes to show that the Tribunal was of the opinion that the appellant did not enter into the witness box to rebut the version of respondent No.1 that accident occurred due to rash and negligent driving of the appellant and, therefore, held that the appellant failed to discharge the burden of proof.

06] The initial burden to prove negligence firstly is on the claimant. The police papers including the F.I.R. prima facie shows that the deceased was driving the vehicle and the evidence given by respondent No.1 is contrary to the F.I.R. as well as her claim in the petition. In these set of facts, it cannot be said that respondent No.1, by deposing that the accident occurred due to rash and negligence driving of the appellant, has shifted the burden on the appellant. It is not the case that the vehicle was being driven by the appellant. Rather, the deceased was driving the motor-cycle. Therefore, the findings of the Tribunal do not stand and consequently, it can be said that

respondent No.1 failed to prove negligence of the appellant. In view of this fact, the appellant is not responsible for death of deceased- Tirupati and therefore, the liability cannot be fastened upon him. The Tribunal ought not to have directed the appellant to pay the compensation of Rs.5,18,000/- to the respondents.

07] In view of the above, the impugned award passed by the learned Tribunal vide judgment and award dated 17/07/2017 does not stand. Therefore, the appeal succeeds. The claim petition of the respondents is hereby dismissed. Needless to mention that respondent No.1 shall be entitled to the amount of Rs.50,000/- towards 'no fault liability' from the appellant.

08] In the aforesaid terms, the appeal is partly allowed. There shall be no order as to costs.

(M.W. CHANDWANI, J.)

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