



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

FIRST APPEAL NO. 357 OF 2010

Municipal Council, Chandrapur,
Through its Chief Officer, Chandrapur.

...APPELLANT

Versus

- 1] The New India Assurance Co. Ltd.
Through its Branch Manager,
Branch – Chandrapur, Kasturba Road,
Chandrapur, District – Chandrapur.
- 2] Smt. Mamta wd/o Laxman Jathade,
aged about 33 years, Occ. Household.
- 3] Ku. Shweta d/o Laxman Jathade,
aged about 14 years, Occ. Education.
- 4] Ku. Snehal d/o Laxman Jathade,
aged about 11 years, Occ. Education.
- 5] Aniket s/o Laxman Jathade,
aged about 5 years, Occ. Education.

Respondent nos. 3 to 5 through their
guardian adlitem, mother the respondent no.2.

All are R/o Pathanpura, Ward No.11,
Chandrapur, Tahsil and District – Chandrapur.

...RESPONDENTS

None for the appellant.

Shri A.M. Sudame, Counsel for respondent no.1.

CORAM : ANIL L. PANSARE, J.

ARGUMENTS WERE HEARD ON : APRIL 24, 2024

JUDGMENT IS PRONOUNCED ON : APRIL 30, 2024

JUDGMENT :

The appellant – Municipal Council, Chandrapur, has filed appeal under Section 173 of the Motor Vehicles Act, 1988 (for short “M.V. Act”), being aggrieved by the judgment and award passed by the Member, Motor Accident Claims Tribunal, Chandrapur in Motor Accident Claim Petition No. 188/2003.

2] Respondent no.1 is the Insurance Company and respondent nos. 2 to 5 were claimants before the trial Court. They filed claim petition under Section 166 of the M.V. Act. One Shri Laxman Jathade, ancestor of claimants, expired in an accident that occurred on 26/9/2003. He was serving as Coolie with the appellant – Council and was earning Rs.4,428/- per month. The deceased was travelling under the direction of the Collector to help flood affected persons in the ambulance owned by the Council. The driver lost control and gave dash against a tree. The deceased expired on the spot.

3] The Tribunal has, after going through the evidence, awarded compensation of Rs.5,00,000/- to be paid by the

Council – owner of the ambulance. The Insurance Company, however, was exonerated. The Tribunal found that the driver was driving the vehicle under the influence of liquor and, therefore, has not only committed offence under Section 185 of the M.V. Act but also committed breach of policy.

4] This finding has been challenged by the appellant – Council. The learned Counsel for the appellant is absent. The first ground, as could be seen from the appeal memo, is that there is no evidence as regards rash and negligent driving of the ambulance. Police papers, including chargesheet, however, speak otherwise. The Tribunal, therefore, has rightly held that there is sufficient evidence as regards rash and negligent driving of the offending vehicle.

5] The second ground put forth is that there was no material to show that driver of the vehicle was under the influence of alcohol. The Insurance Company has examined Medical Officer – Bandu Ramteke. He deposed that on 26/9/2003, he was attached to the Rural Hospital and that he

has examined Gulab Tiwade and issued medical certificate (Exh. 109) stating therein that the driver was under the influence of alcohol. The First Information Report (Exh. 43) also reveals that he had consumed liquor and that he was driving the vehicle in a high speed.

6] It appears, from the pleadings, that the driver has been acquitted of the charge. The Tribunal has not really referred to the judgment of acquittal, though, in the appeal memo, it has been pleaded that the judgment of acquittal was placed before the Tribunal. However, perusal of judgment of the Motor Accident Claims Tribunal, Chandrapur reveal that the doctor was not examined by the prosecution. The judgment of acquittal will, therefore, be of no help to the appellant. The Insurance Company has examined concerned doctor and proved that the driver was driving the vehicle while he was under the influence of alcohol. Thus, before the Tribunal, there was sufficient evidence on this point.

7] I do not, therefore, find any reason to interfere with

the findings rendered by the Tribunal exonerating the Insurance Company.

8] The appellant, therefore, failed to make out a case. There is no substance in the appeal. The same is accordingly dismissed.

JUDGE

Sumit