



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

18 FIRST APPEAL NO. 1972 OF 2017

TUKARAM GANGARAM MUSLE AND ORS

VERSUS

SAMATBHAI LALABHAI KHUNTI AND ORS

...
Advocate for Appellant : Mr. Shirsat Suhas R.

...
CORAM : SHAILESH P. BRAHME, J.

DATE : 17.10.2025

PER COURT :

Heard.

2. Final hearing notice were already issued to the respondents. They have not caused appearance despite service of notice.

3. Appeal is directed against order dated 15.02.2017 below Ex. 5 in M.A.C.P. No. 186/2012. The claim for 'no fault' made under Section 140 of the Motor Vehicles Act (M.V. Act) is rejected by the Tribunal.

4. The learned counsel for the appellant submits that a strong *prima facie* is made out from the police papers as well as medical papers showing death of Shashikala Tukaram Musle arising out of an accident, but still claim under Section 140 of the M.V. Act is rejected erroneously. The learned counsel submits that the deceased was continuously under medication and she was frequently admitted in the hospitals. The documents on record are not properly appreciated. It is submitted that the learned Member of the Motor Accident Claims Tribunal (Member MACT) failed to appreciate that appellants are poor agriculturists and could not have afforded to keep deceased Shashikala in the hospital as an indoor patient due to financial

restraints. It is submitted that approach of the learned Member of MACT is callous and technical.

5. I have gone through the record and proceedings. The respondents did not cause appearance despite service of notice.

6. Impugned judgment reveals that deceased Shashikala was being admitted and discharged frequently from the hospital and she was required to take followup for treatment. The learned Member of the MACT carried impression that she was leading routine life and her death on 02.06.2010 is not as a result of accident but as a natural course.

7. The accident took place on 18.11.2009 in which Ms. Nikita and Shashikala sustained serious injuries and they were admitted in the hospital. Nikita succumbed to the injuries, whereas Shashikala remained indoor patient for considerable period. She was operated on 19.11.2009 in a private hospital and she was indoor patient from 19.11.2009 to 14.12.2009. She was discharged and again readmitted. She was indoor patient till 22.12.2009. She was again readmitted on 02.01.2010 for some period and discharged. On 19.04.2010 again she was readmitted. She died on 02.06.2010, when she was at home. The medical papers of a private hospital are placed on record. She was under medication. The death certificate reveals that she died on 02.06.2010. The medical papers can be subjected to objective scrutiny during the course of further hearing before the Tribunal.

8. The record further reveals that F.I.R. was lodged on 18.11.2009 bearing Crime No. 128/2009 at Exh. 37 indicting the accident and injuries sustained to Shashikala and Nikita on the vital parts of the body. A charge-sheet was filed against driver of the vehicle. A report about motor vehicles accidents under Rule 253 (c) 254(iii), 254(8), 2551(iv) also shows that Shashikala sustained injuries. Police papers are indicative of the fact that the accident took place on 18.11.2009 and Nikita and Shashikala sustained

serious injuries.

9. What is disheartening in the case is that the learned Member of the MACT failed to appreciate that a healthy lady met with an accident and died albeit after gap of six months. There is absolutely no material on record to indicate that she recovered from the accident and was leading a normal life. The observations in paragraph nos 15 and 16 of the impugned order are based on conjectures and surmises. The circumstances indicate that there was no any other reason for a healthy lady to die on 02.06.2010. Only possible inference is that her death is as a result of injuries sustained in the vehicular accident.

10. Its a common knowledge that a patient cannot be kept in the hospital for a longer period considering financial constrains. The members of the family would be constrained to take hard decision to take back the patient. There is every reason to infer that the injuries were serious. She was frequently indoor patient and taking treatment. In all probabilities the members of the family or the applicants could not have afforded to keep her as an indoor patient for a longer period. I am unable to agree with the approach/view taken by the learned Member of the MACT. The appellants have established *prima facie* case as well as nexus of the death with the accident. It has already been observed that the offending vehicle has insured. In that view of the matter, rejection of application Exh. 5 by the impugned order is error of jurisdiction, which needs to be rectified.

11. (A) First Appeal is allowed.

(B) Impugned order dated 15.02.2017 below Exh. 5 passed by learned Member of the Motor Accident Claims Tribunal in M.A.C.P. No. 186/2012 is quashed and set aside.

(C) Application Exh. 5 stands allowed and the applicants are entitled to receive amount of Rs. 50,000/- from

Respondent/Insurance Company.

(E) Entitlement of the appellants to interest shall be decided during main proceedings.

(SHAILESH P. BRAHME, J.)

mkd/-