

**M.A.C.P. No. 56/2016,**

Smt. Swati & Ors. Vs. Dnyaneshwar & Ors.

**Order below Exh.5.**

(Dated : 10-01-2017)

Applicants, who are legal heirs of deceased Vijay Prakash Shelke, have claimed no fault liability amount.

2. According to applicants, on 08-01-2016 at about 08-45 p.m. the deceased was proceeding to Mehkar from Vivekanand Ashram, Vivekanand Nagar by motor cycle bearing registration No. MH-28-AL-5747. When he reached in Babhulkhed shiwar on Chikhli - Mehkar road, two Trailer bearing registration Nos. MH-28-E-8633 and MH-23-3053 were standing on road and the driver of said Trailer bearing registration No. MH-28-E-8633 and Tractor bearing registration No. MH-28-AJ-3520 stopped said Trailers rashly and negligently without having any indicators, reflectors or signals. Because of sharp head lights of the unknown vehicle, which was coming from opposite direction, the deceased being unable to understand and saw the said Trailers hit the Trailers. In the said accident, the deceased sustained serious injuries and died.

3. According to applicants, opponent Nos.1 & 5 are owners of said Trailers, opponent No.3 is owner of said Tractor, whereas opponent Nos.2 & 4 were the insurers of the Trailer and Tractor.

4. Opponent Nos.1, 3 & 5 filed their common written statement-cum-reply (Exh.27) and denied all the contentions of applicants.

5. Opponent No.2, S.B.I. General Insurance Company Ltd., filed its written statement-cum-reply (Exh.26) and also denied all the

contentions of applicants.

6. Opponent No.4, Iffco Tokio General Insurance Co. Ltd., filed its written statement-cum-reply (Exh.30) and also denied all the contentions of applicants.

7. Applicants have filed on record copy of F.I.R., Crime Details Form along with spot panchanama, inquest panchanama, post-mortem report, certificate of registration of MH-28-E-8633, proposal form for commercial motor vehicle insurance - package, extract of the driving licence of opponent No.1, registration particulars of Tractor bearing registration No. MH-28-AJ-3520, commercial vehicle certificate of insurance cum schedule, driving licence of deceased, Form Comp A.A., certificate of registration of deceased and experience certificate of deceased along with List - Exh.4.

8. Heard Mr. S.J. Deshmukh, learned counsel for applicants, Mr. A.H. Ambhore, learned counsel for opponent Nos.1, 3 & 5, Mr. Pratapsingh Parihar, learned counsel for opponent No.2 and Mr. B.B. Pande, learned counsel for opponent No.4. Learned counsel for opponent No.2 submitted that as the Trailer bearing registration No. MH-28-E-8633 was not insured with opponent No.2, it is not liable to pay compensation. Mr. B.B. Pande, learned counsel for opponent No.4, submitted that as there being no involvement of insured Tractor bearing registration No. MH-28-AJ-3520 in the said accident, opponent No.4 Iffco Tokio General Insurance Co. Ltd. is not liable to pay compensation.

9. Prima facie it appears from the true copy of F.I.R., Crime Details Form including spot panchanama that there was involvement

of Tractor and Trailers bearing registration Nos. MH-28-E-8633 and MH-23-3053 in the said accident. It further appears from the record that after completion of investigation a charge-sheet came to be filed under Sections 279, 283, 304A I.P.C. against opponent No.1 i.e. driver of Tractor bearing registration No. MH-28-AJ-3520, with which the above said Trailers were attached. However, it is significant to note from the spot panchanama that it was Trailer bearing registration No. MH-23-3053 which was negligently parked on the road and as a result of which the motor cycle of the deceased hit to the said Trailer leading to the accident in question consequent death of a deceased. In such circumstances, the owner of Tractor, its insurer namely opponent No.4 Insurance Company and the owner of Trailer bearing registration No. MH-23-3053 are responsible and cannot avoid their liability to pay compensation under Section 140 of the Motor Vehicles Act.

**10.** It appears from the post-mortem report that the probable cause of death of deceased was cardio-respiratory arrest due to haemorrhagic shock due to massive internal & external bleeding as a result of polytrauma. It appears that the said Tractor is owned by opponent No.3 and was insured with opponent No.4 at the time of accident. It further appears from Comp. A.A. that opponent No.5 is the owner of another Trailer bearing registration No. MH-23-3053. In such circumstances, there is no reason to deny interim compensation to the legal heirs of deceased. Therefore, no fault liability amount needs to be granted in favour of applicants. Hence the following order.

**Order**

Application stands partly allowed.

Opponent Nos.1, 3 & 4, being driver, owner and insurer of the

Tractor, jointly and severally do pay half of the 'No Fault Liability' amount i.e. Rs.25,000/- (Rs. Twenty five thousands only) within one month from the date of this order, failing which, the amount will carry interest @ Rs.8 % per annum from the date of default till full realization of the amount.

Opponent No.5, being owner of Trailer bearing registration No. MH-23-3053, do pay remaining half of the 'No Fault Liability' amount i.e. Rs.25,000/- (Rs. Twenty five thousands only) within one month from the date of this order, failing which, the amount will carry interest @ Rs.8 % per annum from the date of default till full realization of the amount.

On deposit of amount, Tribunal shall disburse amount of Rs.30,000/- (Rs. Thirty thousand) to applicant No.1 Smt. Swati, and, Rs.10,000/- (Rs. Ten thousand) each to applicant No.3 Prakash and applicant No.4 Mrs. Aruna, by issuing separate account payee cheques in their names.

Application as against opponent No.2, S.B.I. General Insurance Company Ltd., stands rejected.

Dated : 10-01-2017.

Sd/-  
( **Virendra G. Bisht** )  
Member,  
M.A.C.T., Buldana.

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**Certificate**

“I affirm that, the contents of this PDF file order are same word for word as per original order.”

Name of Steno :- D.V. Gaiki,

Name of Court :- Member, Motor Accident Claims Tribunal, Buldana.

Date of order :- 10-01-2017.

Order uploaded on :- 11-01-2017.

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