

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1457 OF 2004

01 Smt. Yamini Vijaykumar Dube,
age: 36 years, Occ: Household,

02 Dolly Vijaykumar Dube,
age: 15 years, Occ: Education,

03 Rashmi Vijaykumar Dube,
age: 14 years, Occ: Education;

04 Sagar Vijaykumar Dube,
age: 11 years, Occ: Education;

Through L. N. Dube,
R/o Near Ram Mandir,
Pimprala, Taluka Jalgaon,
District Jalgaon.

Appellants

Versus

01 Arifkan Ajijkhan,
age: 49 years, Occ: Driver;

02 Haji Ayyubkha Armankhan,
age: 45 years, Occ: Business
(owner);

03 United India Insurance Co.,
Jalgaon.

04 Dr. Sanjay Subhash Lad

05 The Oriental Insurance Co.,
Jalgaon.

Respondents

Mr. A. G. Talhar, advocate for the appellants.

Respondents No.1 & 2 served.

Mr. A. B. Gatne, advocate for Respondent No.3.

Appeal dismissed as against Respondent No.4 vide Registrar's order dated 14.02.2006.

Mr. A. G. Kanade, advocate for Respondent No.5.

CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved On: 07th December, 2022.

Pronounced on : 17th January, 2023.

JUDGMENT:

1 The appellants – original claimants are before this Court for challenging the judgment dated 07.05.2004 in M. A. C. P. No. 91 of 1996, passed by the learned Motor Accident Claims Tribunal, Jalgaon (hereinafter referred to as “the learned Tribunal). Under the impugned judgment, the learned Tribunal has dismissed the claim of the appellants for getting compensation of Rs. 5,00,000/- on account of death of one Vijaykumar Laxminarayan Dube. Present appellant no.1 is his wife whereas, appellants no. 2 to 4 are his children.

2 It is stated in the Claim Petition that on 31.07.1995, Vijaykumar and Respondent No.4 – Dr. Sanjay

Lad were coming to Pimprala from Paldhi on a scooter bearing Registration No. MH-19-D-3933 after having meal. At that time, one blue coloured motor vehicle bearing Registration No. MH-19-4788 of TATA Make, looking like a DCM Toyota, gave dash to the said scooter from back side. In the said accident, Vijaykumar sustained severe injuries and died on the spot. The rider of aforesaid scooter Dr. Sanjay Lad filed complaint against the said Matador type vehicle in Paldhi Police Out-Post and accordingly Crime No. 86/1995 was registered in Dharangaon Police Station. However, the concerned Investigating Officer filed report under Section 169 of the Code of Criminal Procedure mentioning that there was no substantial evidence available against present Respondent No.1 i.e. driver of the said Matador, as per Exhibit-90.

3 Respondents No.1 and 2, who are driver and owner of the offending Matador, denied involvement of aforesaid vehicle in the accident by filing their respective written statements at Exhibits-29 and 30. It has been claimed by Respondent No.1 that there was no sufficient evidence against

him, being the driver of the motor vehicle which gave dash to the scooter. Likewise, Respondent No.2-owner had also claimed that he was not at all owner of the motor vehicle which gave dash to the scooter on which deceased was a pillion rider. Respondent No.3-Insurer also, under its written statement, denied the fact that the aforesaid vehicle bearing Registration No.MH-19-4788 was insured with it on the date of the accident. It is claimed that in fact the motor vehicle bearing Registration No. MH-19-4388 owned by Respondent No.2 was insured with it.

4 Respondent No.4 Dr. Sanjay Lad, vide his written statement Exhibit-59, stated that he was not at all responsible for the accident and the aforesaid Matador had in fact given dash to the scooter and, therefore, he had immediately registered complaint in Paldhi Police Out-Post. Respondent No.5 i.e. Insurance Company of the scooter, involved in the accident, denied its liability of paying compensation on the ground that deceased was pillion rider and, therefore, not covered under the insurance policy.

5 The learned Tribunal, by considering all these facts, arrived at a conclusion that the Matador like motor vehicle bearing Registration No. MH-19-4788 was not at all involved in the accident and Respondent No.4 was also not at fault and, therefore, dismissed the Claim Petition of the appellants.

6 Heard rival submissions and also perused the impugned judgment along with the record and proceedings of original Claim Petition No. 91 of 1996 with the assistance of learned Counsel for the respective parties.

7 Learned Counsel for the appellants submits that the learned Tribunal has rejected the claim mainly due to lack of evidence in respect of involvement of Matador type vehicle in the accident. He pointed out that Respondent No.4 had in fact lodged the First Information Report on the same day of the accident and accordingly crime was registered against present Respondent No.1, who was the driver of the

said Matador. He further pointed out that merely because there was report under Section 169 of the Code of Criminal Procedure against Respondent No.1, the learned Tribunal should not have opined about the non involvement of the offending vehicle. Further, according to him, Respondent No.4 had also stated about involvement of Respondent No.1, being the driver of the Matador in the accident. The learned Tribunal, therefore, should have allowed the Claim Petition. The learned Counsel for the appellants, in support of his contention, relied upon following two judgments:

(a) **National Insurance Co. Ltd. Vs. Suman and others**, reported in 2018 Legal Eagle (P & H) 483; and

(b) Judgment dated 04.03.2022, passed by the learned Single Judge of Madras High Court in CMA No. 2787 Of 2017, in the case of **Bajaj Allianz General Insurance Company Limited Vs. Munni & others**, (MANU/TN/1432/2022).

8 On the contrary, the respective Counsel for Respondents No.1 to 3 and 5 supported the impugned judgment and submitted that since involvement of the offending Matador, in the accident, was not established by the claimants, the learned Tribunal has rightly dismissed their Claim Petition.

9 It is significant to note that the learned Tribunal has dismissed the claim of the present appellants since they could not establish the fact that the vehicle gave dash to the scooter, on which the deceased was a pillion rider, was the Matador bearing Registration No MH-19-4788. In fact, the said observation of the learned Tribunal is mainly based upon the report under Section 169 of the Code of Criminal Procedure, which is at Exhibit-90, being an admitted document wherein the concerned Investigating Officer, who had investigated the crime against the said Matador and its driver i.e. Respondent No.1, has observed that despite conducting investigation, no substantial evidence was found against the Respondent No.1 and, therefore, he requested the

concerned Magistrate to release Respondent No.1. Thus, on this very ground, the learned Tribunal has dismissed the claim of the appellants.

10 The learned Counsel for the Insurance Company had also pointed out the discrepancies in the evidence of Respondent No.4- Dr. Lad who was riding the scooter at the relevant time. Respondent No.4 – Dr. Lad, in the First Information Report itself, has stated that it was a blue coloured DCM Toyota vehicle, but in fact, it was a TATA Matador.

11 It is significant to note that the learned Counsel for the appellants has relied upon the judgments, as mentioned above. The High Court of Punjab and Haryana, in its judgment in the case of **National Insurance Co. Ltd. Vs. Suman and others**, has observed that findings of criminal Court as to the guilt or acquittal of the driver are wholly irrelevant for the purpose of trial on merits of the Claim Petition before the Motor Accident Claims Tribunal. Thus,

learned Counsel for the appellants submits that the report at Exhibit-90 under Section 169 of the Code of Criminal Procedure has no bearing at all on the validity of the accident claim.

12 The learned Counsel for the appellants also relied on the judgment of Madras High Court in the case of **Bajaj Allianz General Insurance Company Limited Vs. Munni & others**, wherein there are similar circumstances as of this present appeal. In the said case, the learned Tribunal, despite there being report under Section 169 of the Code of Criminal Procedure against the driver of the offending vehicle, had granted compensation to the claimants therein by considering the evidence on record. The Madras High Court also supported and confirmed such decision of the Motor Accident Claims Tribunal, Salem and found that the learned Tribunal was right in granting compensation to the claimants.

13 Thus, so far as the issue of involvement of offending vehicle in the instant case i.e. TATA Matador

bearing Registration No. MH-19-4788 is concerned, it is necessary to scrutinise the evidence on record minutely.

14 The father of deceased, who is not the claimant, has deposed as C.W. 1, but his evidence is not material about the involvement of the offending Matador since he was not the eye witness. The evidence of C.W. 2 – Yamini i.e. appellant no.1 – wife of deceased is also not material because she had also not witnessed the accident. Respondents No.1 and 2, who are the driver and owner of the offending Matador, though filed written statements, did not enter into the witness box. As against this, the Insurance Company of the said Matador i.e. present Respondent No.3 also did not adduce any evidence. On the contrary, Respondent No.4- Dr. Sanjay Subhash Lad, against whom present appeal is dismissed, has examined himself. Admittedly, this witness had riding the scooter on which deceased was the pillion rider. Though the claimants have not discharged their primary burden in respect of involvement of the aforesaid TATA Matador in the accident, but the evidence of Dr. Sanjay Subhash Lad i.e.

Respondent No.4 is helpful to determine the crucial question in this matter, as to whether the TATA Matador was involved in the accident.

15 Respondent No.4- Dr. Sanjay Lad has deposed before the learned Tribunal that he had gone to one hotel near Paldhi Petrol Pump along with deceased Vijay at about 10.30 p.m. on 30.07.1995 and after having dinner, they were coming back and at about 12.10 in the midnight, the blue coloured Matador gave dash to his scooter bearing Registration No. MH-19-D-3933 from back side and in the said accident, Vijay died. He has also deposed that after the accident, he rushed to the Police Station and lodged complaint on the basis of which Crime No. 86/1995 was registered. In the cross-examination, this witness has made some statements about the identification of Respondent No.1, being the driver of the said Matador. According to same, this witness had already seen Respondent No.1 Arif Khan while taking dinner at the same place where they had their meal. He has stated that on the next day at about 5.00 p.m., he saw

Respondent No.1 in Danabazar and on the pretext of carrying some luggage to Bhusaval, he asked name of Respondent No.1 and thereafter told the same to police. He has also deposed that in the Police Station, he had identified Respondent No.1, being the driver of Matador bearing Registration No.MH-19-4788.

16 Thus, it appears that on the basis of information given by this witness- Dr. Sanjay Lad, it was traced out that the aforesaid Matador had given dash to the scooter, which resulted into death of Vijay. Thus, Respondent No.4 – Dr. Sanjay Lad is the only person by whom involvement of the said Matador is disclosed. It is to be noted here that in the FIR/complaint, this witness had stated that one DCM Toyota of blue colour had given dash but it is equally important to note that from the registration particulars of the said Matador bearing Registration No.MH-19-4788 at Exhibit-46, procured by this witness Dr. Lad, it was revealed that it was a TATA Matador and not DCM Toyota. However, though Respondent No.4 Dr. Lad had stated initially in the complaint that it was

DCM Toyota vehicle, but the accident had taken place in the midnight and, therefore, this witness might have mistakenly stated that it was DCM Toyota instead of TATA Matador and he could not have identified Maker Company's name of the said vehicle. Thus, merely on this ground, his evidence cannot be ruled out.

17 Admittedly, the report at Exhibit-90 filed by the concerned Investigating Officer before the concerned Magistrate mentions that there was no substantial evidence available against Respondent No.1 driver of the aforesaid Matador, but it is nowhere mentioned in the said report specifically that the said Matador was not involved in the accident. In fact, no registration number of the said motor vehicle was mentioned in the said report dated 14.11.1995. Non mentioning of registration number of the said Matador, in the report, appears highly suspicious because by that time, Respondent No.4 – Dr. Lad had already told registration number of the said Matador to the concerned Investigating Officer. Moreover, the Insurance Company has also not

examined the said Investigating Officer to seek explanation from him as to on what basis the said Investigating Officer came to such conclusion. On the contrary, registration certificate at Exhibit-46 clearly indicates name of Respondent No.2 being the owner of the aforesaid TATA Matador which was insured with Respondent No.3 – Insurance Company for the period from 24.02.1995 to 23.02.1996, covering the date of the accident. It is extremely important to note that the driver and owner of the said Matador, who are respondents no.1 and 2, have not led any evidence about the non involvement of the aforesaid Matador. Even Respondent No.3 – Insurance Company of the said Matador did not care to examine the owner and driver of the said Matador. Therefore, though there are certain discrepancies in the evidence of Respondent No.4 about involvement of aforesaid TATA Matador, but he remained firm on the fact that the said TATA Matador had in fact given dash to his scooter from back side.

18 It is a settled position that the finding of a criminal Court in respect of guilt or acquittal of driver of the offending

vehicle is wholly irrelevant for the purpose of trial of Claim Petition on merit before the Motor Accident Claims Tribunal. Moreover, The Madras High Court, in the judgment relied upon by the learned Counsel for the appellants in the case of **Bajaj Allianz General Insurance Company Limited Vs. Munni & others**, has also upheld the finding of the Motor Accident Claims Tribunal wherein the learned Tribunal, despite there being report on record under Section 169 of the Code of Criminal Procedure in respect of driver of the offending motor vehicle, granted compensation to the claimants therein. In paragraphs no. 27 and 28 of the said judgment, it has been held as follows:

“27 It must also be additionally stated that under Section 168 of the Motor Vehicles Act, 1988, power had been given to the Claims Tribunal, to hold an enquiry into the claim and then make an award determining the amount of compensation which appears to be just and specifying the person or persons, to whom compensation shall be made and also indicate the amount which shall be paid by the insurer or by the

owner or by the driver of the vehicle involved in the accident. Further, Section 169 of the Motor Vehicles Act 1988 gives the procedure and powers of the Claims Tribunal and clarifies the nature of enquiry to be conducted and had stated that summary procedure shall be followed. It had also been stated that the Tribunal shall have the powers of a Civil Court for taking evidence on oath and shall be deemed to be a Civil Court while adjudicating any claim for compensation and while recording evidence.

28 In the instant case, the Tribunal had therefore, with the powers vested in it made such enquiry and had determined that the offending vehicle was indeed the vehicle with Registration No. TN-33-AR-6494. I would concur with that particular finding of the Tribunal and hold that the Tribunal had also correctly adjudged the liability to be paid by the insurer, namely, the appellant herein. The appeal had been primarily preferred on that particular ground and that particular ground fails.”

19 Thus, considering the evidence on record, it appears that Respondent No.4 – Dr. Sanjay Lad, who was an eye witness to the accident, had immediately lodged report of the accident and also identified Respondent No.1, being the driver of the offending Matador immediately on the next day. To counter the testimony of Respondent No.4, Respondents No.1 and 2, who are the driver and owner of the said Matador, have failed to lead any evidence. Moreover, the Insurance Company of the said Matador i.e. Respondent No.3 also did not examine the concerned Investigating Officer who had submitted a cryptic report at Exhibit-90 under Section 169 of the Code of Criminal Procedure to the concerned Magistrate.

20 It is settled that in Motor Accident Claims there is no need of strict proof, as required in criminal matters and the petitions arising of the accident claims are to be decided on the basis of preponderance of probabilities. I am, therefore, of the opinion that the learned Tribunal placed too much reliance on the report submitted by the concerned Investigating Officer in respect of Respondent No.1 driver of

the offending Matador under Section 169 of the Code of Criminal Procedure and directly jumped to the conclusion that the said Matador was not at all involved in the accident. Further, it is also important to note that though a duty is cast upon the Tribunal to give findings on all the issues, the learned Tribunal did not assess the amount of compensation.

21 Thus, after having come to the conclusion that the TATA Matador bearing Registration No. MH-19-4788 was involved in the accident, necessary and just compensation is to be determined on the basis of subsequent judgments such as, **Sarla Verma and others Vs. Delhi Transport Corporation and another**, (2009) 6 SCC 12, **National Insurance Company Limited V s. Pranay Sethi and others**, (2017) 16 SCC 680, and **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others**, (2018) 18 SCC 130, which are holding the field nowadays as they are applicable even to the accident cases, which had taken place, prior to its pronouncement and which are pending in the form of either Claim Petitions or appeals arising out of such Claim Petitions.

22 According to the appellants, age of deceased Vijaykumar, at the time of accident, was 31 years and he was Editor of Daily Newspaper “Batmidar” and was getting Rs.600/- per month as an honorarium. He was also owner of Newspaper “Police Sampark” for which he was getting honorarium of Rs.2000/- per month. He also used to publish stories, poems, etc. whereby he was earning Rs.100/- per month. Thus, the appellants have claimed that the deceased was earning Rs.2700/- per month. However, the age of deceased is mentioned in the post mortem report at Exhibit-45 as 33 years and, therefore, it can safely be inferred that at the time of accident, the deceased was in the age group of 31 to 35 years. As such, appropriate multiplier applicable to him, for calculating the just compensation as per the ratio laid down in Sarla Verma’s case is “16”. Though it is claimed by the appellants that the deceased was earning Rs.2700/- per month, but there is no supporting evidence on record in that respect. However, from the certain copies of newspapers, stories and poems produced on record, it can safely

be inferred that deceased was Press Reporter and writer. Therefore, in the absence of any documentary proof in respect of his exact income, his notional income can be considered as Rs.2000/- per month since the accident had taken place in the year 1995. As such, considering the number of claimants, being dependent upon the deceased, deduction to the extent of 1/3rd needs to be made from his monthly income on account of personal expenses. As such, after 1/3rd deduction, his monthly income comes to Rs.1333/-.

23 As per the observations of the Hon'ble Apex Court in the case of **Pranay Sethi** (*supra*), if we add 40% amount of monthly income, towards future prospects, his monthly income comes to Rs.1865/- and thus, annual income of the deceased comes to Rs.22,380/-. If the multiplier of "16", which is applicable to the age group of deceased, as mentioned above, is applied to the aforesaid annual income, the compensation amount comes to Rs.3,58,080/-. An amount of Rs.15,000/- each towards funeral expenses and loss of estate needs to be added as per the observations of the

Hon'ble Apex Court in the judgment cited *supra*. Further, as per the observations of the Hon'ble Apex Court in the recent judgment in the case of Magma General Insurance Company Limited (*supra*), an amount of Rs.40,000/- towards consortium in respect of each of the appellants needs to be added. Therefore, in the aforesaid amount of compensation Rs.3,58,080/-, an amount of Rs.30,000/- towards funeral expenses and loss of estate plus an amount of Rs. 1,60,000/- in respect of *spousal* and *filial* consortium is required to be added. On such addition, (i.e. Rs.3,58,000/- + Rs.30,000/- + Rs.1,60,000/-), the total amount of compensation comes to Rs.5,48,080/-, which appears to be just compensation for the appellants.

24 This court has already taken a view in its earlier judgments i.e. First Appeal No. 849 of 2011, decided on 18.10.2022 and First Appeal No. 926 of 2018, decided on 22.11.2022, that the compensation granted under non-pecuniary heads such as consortium, funeral expenses and loss of estate, shall not carry any interest. Therefore, the

compensation of Rs.1,90,000/- granted in this matter under the aforesaid heads shall not carry any interest. Since I am deciding the compensation amount today, the prevailing rate of interest @ 6% p.a. will be applicable. In view of the same, following order is passed.

O R D E R

- i) The appeal is hereby allowed and the judgment and award in M.A.C.P. No. 91 of 1996, passed by the learned Tribunal is hereby set aside.
- ii) Respondents No. 1 to 3 shall jointly and severally pay the compensation of Rs.3,58,080/- to the appellants - claimants along with interest @ 6% p.a. from the date of motor accident claim petition till its realization within three months from the date of this judgment.
- iii) The respondents No. 1 to 3 shall also jointly and severally pay the amount of Rs.1,90,000/- (without any interest) to appellants-claimants in addition to the

aforesaid amount of compensation within the same period.

- iv) The appellants-claimants shall pay the deficit court fees, if any, within the period of two weeks, after it is computed by the office.
- v) Award be prepared accordingly.
- vi) Pending civil applications, if any, stand disposed of accordingly.
- viii) The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

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