

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 FIRST APPEAL NO. 2323 OF 2024

Anil Sampatrao More And Another.

VERSUS

Nasrin Mainoddin Shaikh And Others.

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Advocate for Appellants : Mr. R. P. Bhumkar

Advocate for Respondents 1, 3-5 : Mr. R.B. Deshpande

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WITH

CIVIL APPLICATION NO. 8902 OF 2023 IN FA/2323/2024

CORAM : S. G. CHAPALGAONKAR, J.

Dated : April 02, 2025.

FINAL ORDER :-

1. The appellants/original respondents impugn the judgment and award dated 3.1.2023 passed by the Motor Accident Claims Tribunal, Latur in M.A.C.P. No.108 of 2016, thereby directing appellants to pay compensation of Rs.27,21,282/- alongwith interest @ 7.5% p.a. to the respondents/claimants. (Parties hereinafter are referred to as per their original status).

2. The respondents/claimants approached the Tribunal under section 166 of the Motor Vehicles Act raising claim for compensation towards accidental death of late Mainuddin Shaikh in motor-vehicular accident dated 5.2.2013.

According to the claimants, late Mainoddin was proceeding on his motorcycle from Ambajogai towards Latur. His motorcycle collided with the stationary tractor attached with trolleys loaded with sugarcane. The tractor with trolleys was parked in mid of the road without indicators. Late Mainoddin had no clue of such vehicles. In result, he suffered fatal injuries. He was 41 years of age and serving as a Junior Clerk with Irrigation Department, at Latur and earning Rs.14,751/- p.m. Respondent no.1 was driver of offending tractor, whereas respondent no.2 was its owner.

3. The claim was refuted by the respondents. They denied allegations as to negligence against tractor driver so also denied averments regarding age, income of the deceased and dependency of the claimants. They contend that late Mainoddin was intoxicated and drove his motorcycle in rash and negligent manner, leading to accident. Tribunal, after framing necessary issues and recording evidence of the parties concluded that accident occurred due to negligence on the part of the tractor driver and passed award in favour of the claimants.

4. Mr. Bhumkar, learned advocate appearing for the appellants vehemently submitted that tractor and trolley was stationary at the time of accident. Late Mainoddin while riding his motorcycle dashed to the Trolleys. This indicates that he was sole responsible for the accident. Postmortem report indicates that Mainoddin was intoxicated. In criminal proceeding, tractor driver has been acquitted observing negligence on the part of late Mainoddin. According to him, the tractor was attached with trolleys. Owner of the trolley was not made party to the claim petition. As such, it ought to have been rejected for non-joinder of the necessary party. The claimants failed to lead cogent and reliable evidence to prove negligence of tractor driver. Therefore, liability fixed against the owner and driver of the tractor is unjust and inconsistent with legal position.

5. Per contra, Mr. Deshpande, learned advocate appearing for the respondents/claimants supports the impugned judgment and award.

6. The claimants, in order to prove negligence of the tractor driver, relied upon copies of the FIR and spot panchnama. FIR shows that offence has been registered against

tractor driver. Tractor was parked, attached with two trolleys without indicators in the mid of the road at night time. Accident occurred in the night of 5.12.2013. The spot panchnama indicates that tractor bearing registration no.MH-24/D-2632 attached with two trolleys loaded with sugarcane seen parked in the mid of the road and motorcycle dashed on its rear side. Motorcycle was seen laying on the spot. Claimants have further examined ASI Mr. Hemant-CW3, who deposed that on receipt of information regarding the accident, he went to spot. He described scenario after accident depicting negligence of the tractor driver. He specifically states that offending vehicle was not having indicators and it was parked putting obstacles and indication in mid of road contrary to mandate of Rule 109 of Central on Motor Vehicles Rules. If an accident occurred in midnight due to hazardous parking of the tractor without blinking/lighting indicators and putting signs, it is difficult for any passer from the road to notice such vehicle.

7. In the present case, late Mainoddin while riding motorcycle could not have noticed presence of such vehicle and hit trolley from rear side. Unmindful and hazardous

parking in mid of the road can be termed as sole negligence of Tractor driver. Same being against mandate of Rule 109 of Central Motor Vehicles Rules, 1989, which reads thus :-

109.Every construction equipment vehicle, combine harvester and motor vehicle] other than] [* * *] motor cycles and three-wheeled invalid carriages shall be provided with one white or amber parking light on each side in the front. In addition to the front lights, two red parking lights one on each side in the rear shall be provided. The front and rear parking lights shall remain lit even when the vehicle is kept stationary on the road:

Provided that these rear lamps can be the same as the rear lamps referred to in rule 105, sub-rule (2):

[* * *]

Provided also that construction equipment vehicle which are installed with flood light lamps or spot lights at the front, rear or side of the vehicle for their off-highway or construction operations, shall have separate control for such lamps or light and these shall be permanently switched off when the vehicle is traveling on the road.”

Therefore, finding of negligence against tractor driver recorded by the Tribunal appears to be just and proper.

8. Mr. Bhumkar, learned counsel appearing for the appellants contends that postmortem report depicts liquid with alcoholic smell in stomach of the deceased. Hence, he must be prosecuted to be intoxicated. However, there is no report of Chemical Analysis to support that late Mainoddin was under the influence of alcohol. On the basis of contents of postmortem report, conclusion cannot be drawn that late

Mainoddin was under the influence of liquor or intoxication. At this stage, Reference can be given to Section 185 of the Motor Vehicles Act which reads thus :-

185. Driving by a drunken person or by a person under the influence of drugs.

Whoever, while driving, or attempting to drive, a motor vehicle,

[(a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or],

(b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.”

It is not the case here blood sample of deceased was extracted or viscera was preserved to find out presence of alcohol in the body of the deceased. No positive evidence is brought on record on behalf of the respondents to that effect. Therefore, submissions to that extent cannot be countenanced.

9. Mr. Bhumkar, learned counsel submits that Judicial Magistrate First Class has acquitted driver observing presence of alcohol in the stomach of late Mainoddin. It is trite that acquittal of driver in criminal case would not disentitle the claimants from raising claim for compensation against the owner and driver of the vehicle. In criminal proceeding, the prosecution has to prove its case beyond reasonable doubt; whereas in the proceeding of Motor Accident Claim Petition, rule of appreciation is preponderance of probability. The finding recorded in criminal proceeding can not form basis of defence to owner or driver of offending vehicle.

10. In the present case, claimants have established their case by leading oral as well as documentary evidence. Respondent nos.1 and 2 neither cross examined the claimants witnesses nor stepped into witness box to counter case of the claimants. In such situation, adverse inference can be drawn against them. In this background, no case is made out to interfere in the judgment and award passed by the Tribunal.

11. In the result, First Appeal stands **dismissed**. Pending civil application, also stands **disposed off**. Amount of

statutory deposit made by the appellant be released in favour of respondents/claimants.

(S. G. CHAPALGAONKAR, J.)

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