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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.374 OF 1999

Oriental Insurance Company Limited
 Branch Manager,
 Kisan Kranti Building,
 Market Yard, Ahmednagar
 District – Ahmednagar

APPELLANT

VERSUS

- | | |
|---|-------------------------|
| 1. Jayashree Dattatraya Pabalkar
Age-21 years, Occ-Nil
R/o Tisgaon, Taluka-Pathardi,
District – Ahmednagar
At present c/o B. S. Chaudhari,
At and Post – Khandbara, Taluka-Nawapur
District – Nandurbar | RESPONDENTS |
| 2. Smt. Saraswati Ramdas Pabalkar | <u>ABATED</u> |
| 3. Amar Dattatraya Pabalkar,
Age-2 years, Minor,
Through Natural Guardian,
Mother, respondent No.1
R/o as above | |
| 4. Mrs. Brice Cutinno,
Age-Major, Occ-Transport
R/o Debanire Apartment,
Almada Road, Near Station,
Divisional Office,
Thane 400 602 | <u>DISMISSED</u> |

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Mr. S. M. Godsay, Advocate for the appellant
 Mr. P. R. Dhaware, Advocate for respondents No.1 and 3
 Appeal abated against respondent No.2
 Appeal dismissed against respondent No.4

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[CORAM : M. T. JOSHI, J.]

DATE : 12th MARCH, 2015

ORAL JUDGMENT :

1. Heard both the sides.
2. Aggrieved by the award directing present appellant – insurer of the vehicle to pay compensation, in a petition under section 166 of the Motor Vehicles Act, present appeal is preferred.
3. Present respondents No.1 to 3 filed petition seeking compensation for the death of Dattatraya Pabalkar. Their case, in short, was that on 9th November, 1995, at about 3 pm deceased Dattatraya was riding on his motorcycle from Shevgaon to Tisgaon along with his friends. At about 3.30 pm when they passed one Amarapur village and came near Dhavalwadi junction, one Maruti Car bearing registration No. MH-04-A-6304 came from the opposite direction in high speed and gave dash to the motorcycle of the deceased. The deceased fell on the ground. He was initially taken to Primary Health Center at Pathardi and thereafter was removed to Civil Hospital at Ahmednagar. However, just by 6.00 pm on the same day, he succumbed to the injuries.

Their case is that due to the rash and negligent driving of said Maruti Car, the accident was caused and deceased has died, hence, compensation was claimed against owner – original respondent No.1 and present appellant – the insurer.

As regards quantum of compensation, they submitted that the deceased was 25 years old and was a civil contractor and was earning around Rs.5000/- per month. The claimants were his dependents. They had received a great shock and, as such, by giving details of all heads of compensation, ultimately composite compensation of Rs.5 lac was claimed.

4. Original respondent No.1 i.e. owner of the vehicle came with a case that said Maruti Car was not involved in the accident. The vehicle is in her name and being used by her husband, who serves in Bank of Baroda at Mumbai. On the day of the alleged accident, i.e. on 9th November, 1995, the car was very well at Mumbai itself for the routine job of dropping her husband at Andheri Station and then picking him up at 5.00 pm from Andheri station. There was no occasion to take the car, at any time, in Ahmednagar district. She pointed out further that in the FIR, lodged immediately after the accident, registration number of the said car was not mentioned, however, falsely said car is

involved.

5. Present appellant also pleaded on the same lines and, therefore, wanted that the petition be dismissed.

6. Before the learned Tribunal, oral evidence from both the sides, including that of the car owner was lead. Certified copy of the FIR and Panchanama of spot of occurrence collected from the concerned police station were also filed.

7. During the cross-examination of the claimants' witnesses, it has come on record that the deceased was son of a Police Sub Inspector. Learned Member came to the conclusion that in the immediately filed FIR, there is mention regarding colour of the Maruti car as of metallic blue. Learned Member also relied on the statement of the investigating officer – the police head constable, who was examined before him, that in his investigation it was transpired that present car was involved in the accident, though eye witnesses stated before him that the car was bearing registration number either as MH-06 – 304 or MH-0 – 6304. Taking into consideration these facts and more particularly relying on the colour of the car, the learned Judge observed that the said colour is very uncommon and as such, came to the conclusion that the car driver was rash and

negligent and hence compensation was granted at Rs.3,18,000/-. Hence, the present appeal.

8. Mr. Godsay, learned counsel for the appellant submits that immediate statements of the eyewitnesses as are recorded and the certified copy of the FIR at Exhibit-41 would show that the car was bearing registration number either as MH-0-6304 or MH-06-304 and it was not having MH-04 series. However, merely because the investigating officer in the witness box deposed that in his investigation it was transpired that it was the present car, the learned Member further reasoned that the colour of the car matches, which is very uncommon and therefore, wrongly came to the conclusion.

9. On the other hand, Mr. Dhaware, learned advocate for respondents No.1 and 3 submits that the evidence of the car owner is not believable, as it is shorn of details. Statement of the police head constable i.e. PW-3 Maruti Jadhav would show that he came to know that the vehicle involved in the accident was in fact car bearing registration No. MH-04-6304. Even at the time of seizure of the said vehicle, the front portion of the car was having found scratches and, therefore, learned Member was right in arriving at the conclusion.

10. On the basis of this material, following points arise for my determination.

POINTS

I. Whether the car owned by respondent No.4, bearing registration No. MH-04-A-6304 was involved in the accident?

II. Whether the accident has occurred due to the rash and negligent driving of said car?

III. Whether respondents No.1 and 3 are entitled for compensation from the present appellant?

11. My findings to the said points is in the negative. The appeal is, therefore, allowed, without any order as to costs, for the reasons to follow-

REASONS

12. Respondents No.1 to 3 had examined three witnesses, out of them PW-2 Balasaheb Asalkar is claimed to be an eyewitness to the accident and even in the certified copy of the FIR at Exhibit-41, he is cited as an eyewitness along with one another person namely Sanjay Garudkar.

Certified copy of the FIR would show that these eyewitnesses had given registration number of the vehicle as

detailed supra i.e. MH-06-304 or MH-0-6304 with addition that it was of a blue metallic colour. It would thus show that these eyewitnesses in their immediate statements before the police had talked about registration number of the car having series of MH-06 and not MH-04. These statements would show that they were unable to see correct number of the car.

13. Balasaheb Asalkar was examined as PW-2. He deposed that the Maruti Car did not halt after the accident and went ahead and he and another eyewitness made efforts to see the number of the said car. It was MH-0-6304. He further deposed that it was of blue metallic colour. The eyewitness was examined by claimants i.e. respondents No.1 to 3 themselves and this witness did not come with a case that the car involved in the accident was with a series of MH-04. He, however, further deposed that the car, which was seen by him on the date of accident was again seen by him in the police station on 31st January, 1996. He identified the car, as it was of the same colour i.e. metallic blueish colour. He found that the portion of the car was damaged.

14. PW-3, Police Head Constable Maruti Jadhav deposed regarding statements of the witnesses recorded by him, FIR filed

by him and thereafter made a statement that during the investigation, he came to know that the car involved in the accident was bearing registration number MH-04-6304 i.e. present car and, therefore, a letter was sent to Thane RTO and name of the owner of the car was collected and the car was seized. Panchanama was drawn at D. N. Nagar police station at Mumbai, whereunder certain damage to the front portion of the car was noticed.

15. As against this, husband of respondent No.4 – owner of the car deposed on the line of the pleadings that the car was always being used in Mumbai, including on the date of the accident and had no occasion to go beyond Mumbai and Thane area. As regards, the damage found to the car, he clarified that on 18th October, 1995, i.e. three weeks prior to the present alleged incident, said car met with a minor accident at Andheri. That time his son was driving the car. As regards said accident, even a complaint was immediately lodged on the very same day at Andheri-Oshiwara police station. Certified copy of the accident report registered to Andheri-Oshiwara police station was proved by him at Exhibit-71 and he further submitted that even claim with the insurer regarding damages was filed. His wife – respondent No.4, also deposed on the lines of her husband.

16. We have already noticed that the learned Member of the Tribunal held that the present car is involved in the accident on the basis of the statement of the investigating officer that during the investigation, he came to know about involvement of the present car and that it was having an uncommon metallic blue colour, as has been immediately noticed after the accident by the eyewitnesses and at the time of seizure, it was found that its front portion was damaged. Learned Member, however, lost sight of the fact that the immediately recorded statements of the eyewitnesses never disclose involvement of any car having registration number with series MH-04. They had certain confusion as to whether car was MH-0-6304 or MH-06-304. Further, whether metallic blue colour of a car is common or uncommon cannot be a ground for holding that the present car was involved in the accident. Certified copy of the report filed with the Andheri-Oshiwara police station by the husband of the owner of the car (Exhibit-71), three weeks prior to the present accident, would explain as to why front portion of the car was damaged, was not at all taken into consideration by the learned Member. In that view of the matter, when the eyewitnesses themselves did not state regarding involvement of the present car, merely on the basis of colour of the car and finding dent to

the said car, conclusion could not have been arrived at, as has been arrived at by the learned member. In the result, following order-

ORDER

I. Appeal is hereby allowed.

II. Petition filed by respondents No.1 to 3 as against present appellant is hereby dismissed without any order as to costs, throughout.

III. Amount, if any, deposited by the present appellant either in this Court or in the Tribunal, be refunded to it after a period of sixty days from the date of this judgment.

[M. T. JOSHI, J.]