

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**FIRST APPEAL NO. 623 OF 2001
WITH CA/6402/2001 IN FA/623/2001**

**VANDANA KISHOR CHAUDHARI AND ORS
VERSUS
UTTAM DAGADU CHAUDHARI AND ORS**

...
Advocate for Appellants : Mr. V J Dixit
Advocate for Respondents : Mr. S. I. Kulkarni

...
CORAM : S. V. GANGAPURWALA, J.

DATE : 1st September, 2015

PER COURT :

1. Mr. Dixit, the learned counsel submits that the appellants had filed the claim petition under the provisions of the Motor Vehicles Act seeking compensation on account of death of deceased Kishore who was a pillion rider on the motorcycle.

2. Learned counsel submits that the tribunal did not properly appreciate the evidence on record. The deceased Kishore was pillion rider on the motorcycle. The evidence to that effect has been led. However, the tribunal has failed to appreciate the said evidence in its correct perspective. The vehicle was owned by respondent no.1. His son was driving the said vehicle. As the vehicle was driven by son of respondent no.1 and deceased being pillion rider, the present appellants would be entitled to the compensation amount. According to learned counsel, even spot panchanama has not been properly considered.

3. Mr. Kulkarni, the learned counsel for the Insurance company submits that even if it is assumed that it is a hit and run case, the case of the claimants

cannot be considered. There is no proof on record that the deceased was pillion rider on the motorcycle. The tribunal has rightly passed the order and even directed recovery of the amount under no fault liability.

4. Learned counsel for the appellants submits that the person who last saw the deceased Kishore and Ramesh had stated that the deceased Ramesh was driving the vehicle. Mr. Kulkarni, learned counsel submits that in the claim petition filed on account of death of deceased Ramesh it was specially pleaded that deceased Kishore was driving the vehicle. The said claim petition was subsequently dismissed in default.

5. I have considered the submissions and also I have considered spot panchanama and the oral evidence.

6. In the evidence, it is not clear as to who was driving the vehicle. Whether deceased Kishore was driving the vehicle or not is not borne out even from the complaint, spot panchanama or any other document. It is stated that some unidentified vehicle had hit the motorcycle and in that case it would be a hit and run case. In that event also, the maximum compensation would be Rs.25,000/-. The tribunal has discussed the evidence in this regard. There is no evidence to show that deceased Kishore was a pillion rider at the time of accident.

7. Considering the evidence led by the parties, the tribunal has appreciated the same in a plausible manner. In the light of that no relief can be granted to the claimant in this regard.

8. As far as clause (iii) of the operative order is concerned, the same would

not be justifiable. The award under section 140 is an independent award. Considering the above, clause (iii) of the operative order i.e. recovery from the present claimants is quashed and set aside.

9. The appeal is accordingly disposed of. No costs.

(S. V. GANGAPURWALA, J.)

JPC