IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

First Appeal No. 953 of 2014

Bajaj Allianz General Insurance Co. Ltd.,
Through its Branch Manager,
2nd Floor, Rajendra Chamber,
Adalat Road, Aurangabad. .. Appellant
(Original respondent no.2)

versus

1. Ambika Bapu Wagaskar,
   Age : 26 years,
   Occupation : Household.

2. Pranjal Bapu Wagaskar,
   Age : 4 years,
   Occupation : Nil,
   Since Minor through Guardian
   Respondent No.1 Ambika.

3. Gokul Yeshwant Wagaskar,
   Age : 63 years,
   Occupation : Labour Work.

4. Tulsabai Gokul Wagaskar,
   Age : 54 years,
   Occupation : Household.

   All R/o. Bara Babhali,
   Taluka & District : Ahmednagar.

5. Sudhir Annasaheb Kokate,
   Age : Major,
   Occupation : Business,
   R/o. Chichondi Patil,
   Taluka & District : Ahmednagar.

.. Respondents
(Nos.1 to 4 - Original claimants
&
No.5 - Original respondent no.1)

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Mr. S.G. Chapalgaonkar, Advocate, for the appellant.

Respondent nos.1 and 2 served (Absent).

Mr. R.R. Karpe & Mr. S.S. Deshmukh, Advocates, for respondent nos.3 and 4.

Mr. N.B. Narwade, Advocate, for respondent no.5.

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CORAM : A.M. BADAR, J.

DATE : 2ND DECEMBER 2015

ORAL JUDGMENT :

1. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 **[For short, hereinafter referred to as "MV Act"]**, by aggrieved insurer of the tractor and trolley, challenging the judgment and award dated 3-12-2013, passed by the learned Chairman of the Motor Accident Claims Tribunal, Ahmednagar, in M.A.C.P. No. 560 of 2010.

2. Facts in brief are thus :-

(a) The accident occurred on 31st July 2010 on Kalyan - Vishakhapatanam Highway No. 222 within the military camp area, Bhingar, near Vijay Lines. Deceased Bapu Gokul Wagaskar was returning on his motorcycle from Ahmednagar towards his village Bara Babhali. When he crossed Bhingar village and when he was riding the motorcycle at moderate speed by following all traffic rules and regulations, a vehicular accident was caused as one tractor with trailer were parked on the tar road without having any reflectors or parking lamps, etc. It is case of claimants that no precautionary measures were taken in order to bring that tractor and trolley to the notice of passersby. Resultantly Bapu could not notice parked tractor and trailer on the tar road and accident occurred because of collusion of his motorcycle with stationery tractor - trailer. Because of injuries suffered in the accident Bapu died.

(b) According to claimants, Bapu was 25 years of age and earning Rs. 22,000/- per month by serving in Defence. With these averments, compensation of Rs. 30,00,000/- was claimed from the owner and insurer of the tractor and trailer. Before the Tribunal, respondent no.1 was the owner and respondent no.2 was the insurer of the said vehicle. This is an appeal at the instance of Insurance Company.

(c) The claim was opposed by the Insurance Company by filing written statement at Exhibit 21 contending that the accident occurred because of sole negligence of Bapu in riding the motorcycle. It was further contended that the owner of tractor cum trailer has committed breach of terms and conditions of contract of insurance. The driver thereof was not holding valid driving license. The Insurance Company denied all adverse averments made in the petition.

(d) Respondent no.1 - owner had also opposed the claim by filing written statement at Exhibit 20 and contended that deceased Bapu was driving the motorcycle in high and excessive speed and therefore he himself was responsible for accident. Owner further contended that if it is found that he is liable for payment of compensation, then Insurance Company be directed to pay compensation.

3. Upon hearing the parties, the learned Tribunal by the impugned judgment and award had directed respondents to pay compensation of Rs. 34,89,000/- to claimants on account of death of Bapu Wagaskar along with interest at the rate of 7.5 % per annum from the date of petition.

4. Heard Shri Chapalgaonkar, the learned Counsel appearing for appellant - Insurance Company as well as the learned Counsel appearing for respondent nos.3 and 4 / original claimants and the learned Counsel appearing for respondent no.5 - owner of the tractor and trailer. None for respondent nos.1 and 2 though served.

5. Shri Chapalgaonkar, the learned Counsel appearing for the appellant, vehemently argued that it was the rider of the motorcycle i.e. deceased Bapu who was negligent and therefore the accident happened because of his sole negligence. Shri Chapalgaonkar, the learned Counsel further drew my attention to the provisions of Sections 2(44) and 2(47)of the MV Act and contended that as the trailer was attached to the tractor, it becomes a transport vehicle and therefore in absence of the license to drive transport vehicle, the driver ought not to have driven the said tractor. He has placed reliance on judgment of this Court at Principal Seat delivered in **First Appeal No. 116 of 2011** ***(The Manager, Bajaj Allianz General Insurance Company Vs. mangala Shantaram Shevale & others)***, on 3rd October 2011, in order to demonstrate that when the tractor is attached with the trailer, it becomes a transport vehicle.

6. Shri Chapalgaonkar, the learned Counsel further argued that the driver of the tractor was not impleaded as party respondent to the proceedings before the Tribunal and as such the claim was bad on account of non-joinder of essential party. He has placed reliance on judgment of this Court in the case of ***New India Assurance Company Ltd., Aurangabad Vs. Suman Bhaskar Pawar & others***, reported in ***2010(2) Mh.L.J. 177***, to substantiate this contention.

7. Lastly according to Shri Chapalgaonkar, the learned Counsel appearing for the appellant, claimants failed to adduce evidence in order to demonstrate that the deceased was earning salary as claimed. In his submission, employer of the deceased was not examined to prove his income.

8. Per contra, the learned Counsel appearing for respondents / claimants justified the impugned judgment and award.

9. At the outset, it needs to mention here that accident in question is not at all disputed. The accident had happened because of use of tractor and trailer on one side and the motorcycle on the other side. It occurred on 31-7-2010 at about 8.30 p.m. This accident has resulted in registration of FIR which is at Exhibit 27. It is well settled that when Police papers are made part of claim petition then the Tribunal can certainly look into them in order to decide mode and manner in which the accident had happened. By now, it is well settled that witnesses to the road traffic accident are not under control of victims of the vehicular accident. As such principle of *res ipsa loquitur* comes into play. Thus, so

far as victims of the vehicular accident are concerned, while taking to the resort to the remedies under social welfare legislation, they are supposed to prove the accident. Once the accident is established, the burden in such cases shifts on the owner of the vehicle in order to demonstrate that the accident happened in some other mode and manner and it cannot be attributed to the rash and negligent act in use of such motor vehicle. In the case in hand, claimants have proved the accident which occurred in the rainy month of July at about 8.30 p.m. Considering the Police papers on record, the learned Tribunal has concluded that the accident happened because the tractor and the trailer was parked on the main tar road without any parking lights and without creating any obstacles in order to draw attention of passersby. No contra evidence was adduced either by the owner or the Insurance Company. In the wake of this evidence on record, no error can be found with the finding of the learned Tribunal that the accident happened because of rash and negligent act in parking the tractor along with trailer on the main tar road at night hours.

10. The next submission is in respect of absence of valid and effective driving license with the driver of the said tractor and trailer. Peculiar facts of this case shows that the tractor and trailer were stationery and those were parked on the tar road. Nobody was driving that tractor at the time of happening of the accident. As such the issue as to whether the driver of the tractor was holding valid driving license or not is of no use. Even in submission of the learned Counsel for the appellant, driver of the tractor was holding a license to drive motor vehicle of non-transport category. As such it cannot be said that appellant - Insurance Company has proved breach of terms and conditions of contract of insurance for

dislodging its liability to pay compensation.

11. No doubt, driver of the motor vehicle is proper and necessary party. But rules framed in this regard makes it clear that driver of the motor vehicle is not an essential party in the proceedings claiming compensation. In the case in hand, the tractor and trailer was in parked condition. As such absence of driver in the proceedings is of no consequence.

12. This now leads me to examine whether the learned Tribunal erred in assessing compensation on account of death of Bapu. True it is, that evidence of the employer of deceased Bapu was not recorded. However, claimants have examined claimant No.1 Ambika - widow. Documentary evidence in the nature of pay slip was placed on record and on the basis of this evidence, the learned Tribunal assessed monthly income of the at Rs. 16,000/-. Proceedings before the learned Tribunal are summary proceedings in which strict rules of evidence are not applicable. As such no fault can be found with the quantum of compensation assessed by the learned Tribunal by accepting salary of the deceased at Rs. 16,000/- per month.

13. In the result, the appeal is devoid of substance and the same is dismissed with no order as to costs.

(A.M. BADAR)
JUDGE

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