

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

FIRST APPEAL NO. 1370 OF 2012

United India Assurance Co. Ltd. .. Appellant

Versus

Parvatibai Govardhan Ghule and others .. Respondents

Shri Swapnil S. Rathi, Advocate for the Appellant.
Shri Sanjay Wakure, Advocate for Respondent Nos. 2 to 5.
Shri V. S. Undre, Advocate for the Respondent No. 6.

CORAM : S. V. GANGAPURWALA, J.

DATE : 19TH OCTOBER, 2015.

PER COURT :

. The present respondents/claimants had filed application for compensation U/Sec. 166 of the Motor Vehicles Act (for short "M. V. Act") seeking compensation on account of the death of Govardhan. The said claim petition is partly allowed. Aggrieved thereby the Insurance Company has file the present appeal.

2. Mr. Rathi, the learned counsel for the appellant submits that, in fact the death of deceased Govardhan was on account of he being hit by a bullock. Even the A. S. I. who had conducted the panchanama had made enquiry and had specifically submitted in the said panchanama that he died because of the dash by the bullock. According to the learned counsel the said

statement was made by the A. S. I. upon enquiry from the relatives specifically. Subsequently after 14 days of the death of deceased F. I. R. is lodged stating that, accident had taken place with the pick van. The learned counsel submits that, the driver of the said van, the owner of the van and the claimants are in collusion with each other and have filed proceedings. The very first statement made to the A. S. I. will carry importance and will have high evidential value. The said statement is not considered in its correct perspective. The learned counsel further submits that, the inquest panchanama Exh. 44 also states the fact that, cause of death of deceased was because he was hit by the bullock and under medical treatment died. Even the investigator of the present appellant Mr. Danve had made investigation and filed report that the deceased died due to dash by the bullock. According to the learned counsel P. W. No. 2 Mahadeo Jadhavar who claims to be an eye witness is got up witness. His evidence is not reliable.

3. Mr. Wakure, the learned counsel for the claimants submits that, the Tribunal has considered oral and documentary evidence on record. Even F. I. R. is filed against the driver of the said vehicle. He was charge sheeted. The charge sheet was filed after recording statement of the eye witness and other witnesses. Even P. W. No. 2 Mahadeo Jadhavar has deposed in the criminal case and reiterated the fact of accident. In the present case also the said eye witness has been examined. The driver of the

vehicle did not step into the witness box to deny the said fact. Even the Insurance Company did not examine the driver of the vehicle. As such adverse inference be drawn against the Insurance Company.

4. I have also heard Mr. Undre, the learned counsel for the respondent No. 6.

5. With the assistance of the learned counsel I have gone through the judgment and record and proceedings.

6. The present claim petition will have to be considered on the basis of evidence adduced before the Tribunal, documentary evidence as well as the oral evidence. No doubt in the inquest panchanama Exh. 44 which is conducted by the A. S. I., it is stated that, the deceased died as he was hit by the bullock.

7. However besides the said solitary panchanama, there is nothing on record to even remotely suggest that, the deceased was hit by the bullock. The eye witness Mahadeo has been examined before the Court. He was also examined before the criminal court and he has specifically stated the manner in which the accident has taken place and the vehicle with which the accident had taken place. The eye witness is an independent witness. There is nothing to disbelieve the said evidence. The driver of the vehicle who was also required to face the criminal

prosecution also has not stated that, the deceased was hit by the bullock. He has not stepped into the witness box in the present case. If he did not step into the witness box, the Insurance Company could have examined the said witness. Non examination of said driver of the vehicle would lead to an adverse inference against the original opponents. The Tribunal has considered the oral as well as documentary evidence on record in its entirety. After going through the said evidence a plausible conclusion has been drawn by the Tribunal. The case will have to be proved by preponderance of probability. Considering the said oral and documentary evidence on record, the Tribunal has arrived at plausible conclusion.

8. In the result the appeal is dismissed. No costs.

[S. V. GANGAPURWALA, J.]