IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2973 OF 2013

New India Assurance Company Ltd. .. Appellant

Versus

Laxman s/o. Dadarao Karpe & Others .. Respondents

Mr. S.G. Chapalgaonkar, Advocate for the appellant.
Mr. A.S. Lomte, Advocate for respondent Nos. 1 & 2.

CORAM : A.V. NIRGUDE,J.
DATED : 28.07.2015

P.C. :-

1. Heard learned Counsel for the parties.

2. This appeal challenges judgment and award passed on 19.08.2013 by learned Member of Motor Accident Claims Tribunal, Ambajogai in Motor Accident Claim Petition No.77 of 2011, thereby granting certain compensation to the original claimants/respondent Nos.1 & 2 against the present appellant and the owner of the vehicle respondent No.3, jointly and severally.

3. The facts of this case are rather peculiar and had given rise to unusual questions. One Krishna died in

motor accident on 4th March, 2011. The case of the claimants, who are parents of Krishna was that Krishna and his friend Datta had been to Chakarwadi for visiting a temple. They traveled by a passenger jeep at Dahiphal Phata. They noticed motor cycle belonging to Datta, parked near the road. They got down from the jeep to find out as to how Datta's motor cycle had reached the spot. While they were inspecting the Datta's motor-cycle, a while coloured Indigo car came from East side and collided on both Datta and Krishna, who were standing near the motor cycle. Even the motor cycle sustained impact and got damaged. As said above Krishna died in the accident due to head injury. Datta suffered injuries but survived. After three days of this accident, Datta lodged complaint to police. While making complaint, Datta mentioned that he could notice part of registration number of car as 951. He also described the colour and make of the car. During the investigation, apparently, the police reached up to the owner of Car No. MH 44 B

951, which also is an Indigo car of white colour. The Investigating Officer apparently reached to a conclusion that it was the driver of this car, who was responsible for causing Krishna's death etc. He lodged charge-sheet against him.

4. The appellant-insurance company is admittedly insurer of the owner of above mentioned car. When the motor accident claim was lodged before the tribunal, both the owner of the car as well as appellant insurance company took a stand that the car was not involved in the accident at all.

5. First question that arose for deciding before the Tribunal was 'whether respondent Nos.1 & 2/claimants could prove that it was the car mentioned above, was involved in the accident'. In order to prove this, police papers were produced before the Court. From the narration in the F.I.R., it is clear that it was a case of hit and run. The offending car did not stop after collision. The F.I.R. did not take their case further because it did not

mention complete number of the car. No eye-witness account was brought on record. Datta not only saw the accident but was himself a victim of the accident. The investigating officer could have been the next important witness but was not examined at all. He could have explained as to how and due to what circumstances he came to a conclusion that the car was involved in the accident and and a particular driver had committed offence. The driver of the car is the next person, who could have deposed about the accident. Naturally, he would not come forward to support the claim.

6. The most important aspect of this case is the alleged fact that the car collided with three objects at one time; two human beings and one motor cycle. All three of them sustained injury/damage due to such collision. It is, therefore, quite natural that the car involved in such accident would also sustain damage to its body work. Such damage would certainly be visible. When the police investigate this case, it was necessary

for them to record panchanama in respect of condition of the car which was presumably seized during the investigation. The police papers do not show any panchanama of the car. No witness came before the tribunal to depose that the car sustained damage and to what extent. The owner of the car righteously made statement in the written statement that his car was not involved in the accident. During the investigation his statement was recorded. The statement was produced before the tribunal as a piece of evidence and learned Member came to conclusion after perusal of this statement that the owner of the car admitted about his car's involvement in the accident. I perused this statement and found that the owner did not admit involvement of his car in the accident. He simply stated that on the day of accident his car was taken by his driver in the area where the accident took place. He did not say that he noticed any damage to the car etc. This statement, thus, was not at all sufficient to come to even prima facie conclusion

that the car was involved in the accident. This prima facie enquiry was necessary since the proceedings were of summary nature.

7. In all proceedings before the Motor Accident Claims Tribunal, some questions of fact are required to be decided in summary nature. This was a peculiar case where the offending car's presence at the time of accident was questioned. So, it was necessary for the learned Member to verify from the record and the evidence that came before him as to whether the car allegedly involved was really involved in the accident.

8. Learned Member could suggest that under section 168 of the Motor Vehicles Act, in a proceeding of summary nature, he was not required to examine evidence meticulously. But learned Member was still under obligation to come to a prima-facie conclusion. This aspect of the case was discussed in para 9 of his judgment. Learned Judge miserably failed to deal with this question diligently. It appears that he was eager

to decide the case in favour of the claimants. There are several other reasons for holding that the accident in question did not involve a “four wheeler”. The first circumstance is presence of the motor cycle belonging to Datta at a secluded place. No one came forward to tell the tribunal as to how and why this motor-cycle came there. No one came to vouch for Datta's story that he and Krishna were traveling by a jeep.

9. It is further intriguing that despite impact of a speedy car Krishna sustained only a head injury. He did not sustain injury to any other part of his body. All these circumstances would further deteriorate the claimant’s case and support the allegations of the appellants that this was a case of fraud. It is alleged in the written statement that Datta, claimants, police officers together created an impression of an accident, which had never occurred. It seems it has substance.

10. It was necessary for the learned Member to examine the case more carefully. This was expected from a

District Judge, who sits as a Member of the tribunal.

11. The appeal is allowed. The impugned judgment and award is set aside. Claim is dismissed with costs.

12. A copy of this judgment be sent to the District Judge – Mr. Anand K. Patil, [if he is still in service] along with copy of impugned judgment, which he delivered.

[A.V. NIRGUDE,J.]

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