

IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NOS.97 AND 98 OF 2014.

FIRST APPEAL NO. 97 OF 2014.

Shri Gautam Gokuldas Madgaonkar,
s/o Gokuldas Madgaonkar,
age 26, Indian National,
R/o. H. No- 406/124,
Deulwada, Khandola, P.O. Marcela,
Ponda Taluka, Marcela – Goa.

.....Appellant.

Versus

1. Smt. Kunda Santosh Parab,
Widow of Late Santosh Babaji Parab,
Age 50 years, widow, service,
Indian National,
2. Shri Saish Santosh Parab,
S/o Late Santosh Babaji Parab,
Age 22 years, student,
Indian National,
3. Master Sanket Santosh Parab,
S/o Late Santosh Babaji Parab,
aged 18 years, student,
Indian National,
4. Shri Kaushik Santosh Parab,
S/o Late Santosh Babaji Parab,
Age 20 years, student,
Indian National,
5. Smt. Satyavati Babaji Parab,
Widow of Late Babaji Parab,
All residence of House no. 244/2,
Ganesh Nagar, Khandola,
P.O. Marcela, Ponda Taluka,
Khandola – Goa.
6. Shri Savio Deniz Lobo,
s/o Anacleto Lobo, age 37 years,

Indian National, R/o H. No.104,
Boca-De-Vaca, Panaji Goa.

7. Shri Gokuldas V. Madgaonkar,
r/o H.No.406/124,
Deulwada, Khandola, P.O. Marcela,
Ponda Taluka, Marcela – Goa.Respondents.

WITH
FIRST APPEAL NO. 98 OF 2014.

Shri Gokuldas V. Madgaonkar,
major in age, Indian National,
R/o H.No.406/124,
Deulwada, Khandola, P.O. Marcela,
Ponda Taluka, Marcela – Goa.Appellant.

Versus

1. Smt. Kunda Santosh Parab,
Widow of Late Santosh Babaji Parab,
Age 50 years, widow, service,
Indian National,
2. Shri Saish Santosh Parab,
S/o Late Santosh Babaji Parab,
Age 22 years, student,
Indian National,
3. Master Sanket Santosh Parab,
S/o Late Santosh Babaji Parab,
aged 18 years, student,
Indian National,
4. Shri Kaushik Santosh Parab,
S/o Late Santosh Babaji Parab,
Age 23, student,
Indian National,
5. Smt. Satyavati Babaji Parab,
Widow of Late Babaji Parab,
Age 74 years, of late Santosh Babaji
Parab.

All residence of House no. 244/2,
Ganesh Nagar, Khandola,
P.O. Marcela, Ponda Taluka,
Khandola – Goa.

6. Shri Savio Deniz Lobo,
s/o Anacleto Lobo, age 34 years,
Indian National, R/o H. No.104,
Boca-De-Vaca, Panaji Goa.
(driver of motorcycle bearing
registration No.GA-01-A-3026)
7. Shri Gautam Gokuldas V. Madgaonkar,
R/o. H. No- 406/124,
Deulwada, Khandola, P.O. Marcela,
Ponda Taluka, Marcela – Goa.
(Motorcycle rider bearing registration
GA-01-A-3026)

.....Respondents.

Mr. J. J. Mulgaonkar, Advocate for the appellant in both the
appeals.

Mr. M. Viegas, Advocate for the respondent no.6 in both the
appeals.

Coram:- K. L. WADANE, J.
Reserved on: 09th July, 2015.
Pronounced on:-16th July, 2015.

ORDER

The above appeals are preferred by the original
respondents nos. 1 and 3 respectively/appellants herein against
the order dated 30.9.2014 passed by the Presiding Officer, Motor
Accident Claims Tribunal, Panaji, sitting at Ponda(“Presiding
Officer” for short) on an application filed under Section 140 of
Motor Vehicles Act, 1988(“the Act” for short) at Exh. 39 in Claim

Petition No. 41/2011.

2. Parties shall hereinafter referred to as per their original status in the claim petition.

3. The brief facts of the case may be stated as follows:-

The respondent nos. 1 to 5/original claimants have filed Claim Petition under the provisions of Section 166 of the said Act in which they have also sought for interim relief i.e compensation under no fault liability in view of Section 140 of the said Act, which was allowed by the Presiding Officer and directed the respondent nos.1 and 3 to pay an amount of Rs.50,000/- to the claimants. Hence, original respondent nos.1 and 3 have filed above Appeals.

4. I have heard arguments of Mr. Mulgaonkar, learned counsel appearing for the appellants/original respondent nos.1 and 3 and Mr. M. Viegas, learned counsel appearing for the respondent no.6 herein/original respondent no. 2.

5. Mr. Mulgaonkar, learned counsel appearing for the respondent nos.1 and 3 has argued that the vehicle i.e

motorcycle involved in the accident was registered in the name of respondent no.2 at the time of accident and still it is in the name of the respondent no.2. He further submits that the Insurance is also in the name of the respondent no.2, therefore, respondent no.2 is registered owner of the vehicle as on the date of the accident. Hence, the respondent no.2 is alone responsible to pay the compensation.

6. As against this Mr. Viegas, learned Counsel appearing for the respondent no.2 has argued that the respondent no. 2 has already sold the vehicle to the respondent no. 3 and has signed the proforma nos. 29 and 30 as per Motor Vehicles Rules 55(1), therefore, it is for the respondent no.3 to get the vehicle transferred in his name and it is for the respondent no.3 to complete its formalities, therefore, the respondent no.2 is not at all liable to pay compensation and thus, the learned counsel has supported the order passed by the Presiding Officer.

7. I have gone through the relevant documents produced on record from which it is seen that the respondent no. 2 has signed the form nos. 29 and 30 as per Motor Vehicles Rules 55(1) and declared that the vehicle was sold to the respondent no.3.

But looking to the contents of the written statement filed by the respondent no. 2 in the Claim Petition, the respondent no.2 has contended in para 12 thus:-

“The respondent no. 2 categorically submits that the respondent no.1 is solely and exclusive liable to pay the compensation without any liability on the part of the respondent no.2. The respondent no.1 was in exclusive ownership and possession of the said motorcycle at the time of the accident and from the date of his purchase of the same.”

8. In the Written statement it has been specifically contended by the respondent no. 2 that he sold vehicle to the respondent no.1 but documents in this regard speaks otherwise.

9. Looking to the rival contentions of both sides, there is dispute regarding ownership of the vehicle involved in the accident as on the date of the accident, therefore, it was for the Presiding Officer to determine first who is the owner of the vehicle and then to fasten the liability of the payment of compensation. On perusal of the reasons recorded by the learned

Presiding Officer, there is no whisper on the aspect of the determination of the ownership.

10. In my opinion, if rival contentions are raised in respect of the ownership in the respect of the vehicle involved in the accident, then it is for the Presiding Officer to determine this controversy first and then fasten the liability on the owner of the vehicle. Therefore, Mr. Mulgonkar, learned counsel appearing for the appellants/ original respondent nos. 1 and 3 has rightly relied upon the observations in the case of *Pushpa alias Leela and others vs. Shakuntala and others reported in (2011) 2 SCC 240*.

11. Looking to the fact that the Presiding Officer has not recorded its finding on ownership, I am of the opinion that the matter needs to be remanded to the trial Court for deciding the application at Exh. 39 afresh.

12. In view of the observations made herein above, I pass the following:-

ORDER

- i. First Appeal Nos. 97 of 2014 and 98 of 2014 are allowed.

- ii. Order dated 30.9.2014 on application at Exh. 39 in Claim Petition No.41/2011 is hereby quashed and set aside.
- iii. Trial Court is directed to dispose of the application at Exh. 39 on its own merits in view of the observations made herein above. The Presiding Officer is directed to dispose of the application at Exh. 39 as expeditiously as possible.
- iv. Parties are directed to appear before the Presiding officer, MACT, Panaji, sitting at Ponda on 7.9.2015 at 10.00a.m.
- v. Appeals stand disposed of.

K.L. WADANE, J.

vn*