

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 751 OF 2015
WITH
CIVIL APPLICATION NO. 905 OF 2015
AND
CIVIL APPLICATION NO. 2434 OF 2015

THE NEW INDIA ASSURANCE CO. LTD.
Shivkripa Commercial Center, Gokhale Road,
Naupada, Thane (West)

...Appellants

Versus

1. **SMT. JOGINDERKAUR
SATWINDERSINGH PADDA**
Age 32 years, Widow of the deceased
2. **MST. HARMANPREETSINGH
SATWINDERSINGH PADDA**
Aged 6 years, Minor son of deceased
3. **MST. SAMARPREETSINGH
SATWINDERSINGH PADDA**
Aged 1 years, Minor son of deceased
4. **MR. RESHAMSINGH SARDAR
CHANANSINGH PADDA**
Aged 68 years, Father of the deceased
5. **MRS. GURUNITKAUR
RESHAMSINGH PADDA**
Aged 61 years, Mother of the deceased

Applicant No. 2 and 3 being minors

through their Mother, Smt. Joginderkaur
Satwindersingh Padda, the Applicant No.
1 as Natural Guardian

All R/o. Room No. 303, Bldg., No. 34,
NRI Complex, Sea-Woods, Navi
Mumbai- Thane.

...Org. Applicants

6. MR. JAGDISH MAHADEV VAIDYA

At-Agrola Village, Sector No. 29, House
No. 9, Post Kokan Bhavan, CBD Belapur,
Navi Mumbai, District – THANE.

...Respondents
(Org. Applicants
& Opp. No. 1)

Mr. D.R. Mahadik, for the Appellant in FA/751/15 and Applicant in
CAF/905/15 & for the Respondents in CAF/2434/2015.

Mr. Rohan Darandale, for Respondents Nos. 1 to 5 in FA/751/15 &
in CAF/905/15 & for the Applicants in CAF/2434/15.

CORAM:

**A.S. OKA &
G.S. PATEL, JJ.**

RESERVED ON :

16th November 2015

PRONOUNCED ON:

1st December 2015

JUDGMENT: (Per G.S. Patel, J.)

1. This is an Appeal against the Judgment and Award dated 2nd
May 2014 of the Motor Accidents Claims Tribunal, Thane
("MACT") in MACT Application No. 352 of 2009.

2. Admit. Respondents waive service. By consent, called out and taken up forthwith for hearing and final disposal. Heard Learned Advocates for the parties.

3. The application pertains to a claim made in respect of an fatal accident that occurred on 3rd January 2009 at about 2.10 p.m. at Nerul, Navi Mumbai. The Original Applicants, Respondents Nos. 1 to 3 to the present Appeal, are the widow, two children and parents of the deceased, one Satwindersingh. According to the Claimants, on 3rd January 2009 at about 2.10 p.m., Satwindersingh was travelling on his motor cycle No. MH-06-AP-2764 in Nerul toward the L.P. Bus stand. The Claimants say that he was riding his motorcycle at a moderate speed. A Maruti WagonR No.MH-43-V-2421 driven by the 5th Respondent to the Appeal, one Jagdish Mahadev Vaidya (“**Vaidya**”), collided with the Satwindersingh’s motorcycle. The Claimants allege that Vaidya was driving at an excessive speed and that he was rash and negligent. The collision was so severe that Satwindersingh died on the spot. His body was taken from the accident spot to Dr. D.Y. Patil Hospital. There, he was declared dead.

4. The claim, in the amount of Rs. 5 crores, was for loss of dependency, loss to the estate, loss of consortium and loss of life expectancy. The Claimants averred that the deceased has a degree in Marine Engineering. He was involved as Director and a Partner in various marine-related companies. The claim was that he earned Rs. 16 lakhs per year at the time of his demise and that he was the only bread winner of his family. Due to his untimely death the

entire family was deprived of its sole source of income. At the time of his death, Satwindersingh was 39 years old.

5. Vaidya's motor car was insured with the New India Assurance Company Limited, ("**the Insurance Company**"), the present Appellant. Vaidya and the Insurance Company were the two respondents to the original claim.

6. Before the Tribunal, the Insurance Company filed a written statement and opposed the claim. In paragraph 2 of that written statement, the Insurance Company said that while it had no personal knowledge of the contents of the Claim application, the claims about the deceased's age, occupation and income were not admitted. It resisted the claim on the ground that the amount sought was excessive. It, however, admitted that the vehicle in question, namely, Vaidya's WagonR No. MH-43-V-2421 was validly insured with it for the relevant period.

7. Vaidya did not file a written statement.

8. On the pleadings before it, the Tribunal framed three issues, and answered them as follows:

<u>Sr. No.</u>	<u>Issues</u>	<u>Findings</u>
1.	Does Applicant prove that on 3rd January 2009 Mr. Satwindersingh Reshamsingh Padda died in an accident arising out of the negligent use of Car No. MH-43-V-2421?	In the affirmative.

2.	Whether the Applicant is entitled to the relief of compensation?	In the affirmative.
3.	What Order and Award?	Petition is partly allowed.

9. After considering the rival submissions, the Tribunal allowed the Claim petition in part. Vaidya and the Insurance Company were jointly and severally ordered to pay an amount of Rs.82,40,000/- to the Claimants (present Respondents Nos. 1 to 5), with interest at 7% per annum from the date of filing of the Petition. This amount was apportioned thus: Rs.15 lakhs to each of Respondents Nos. 2 and 3, both minors, to be held in deposit with a nationalised bank nominated by their mother, Respondent No.1, till they attained majority; Rs.30 lakhs to Respondent No.1, Satwindersingh's widow; and the remaining Rs.22,40,000 to Respondents Nos. 4 and 5, the parents of Satwindersingh. The No Fault Liability amount was to be deducted. In arriving at its decision, the Tribunal found that there was no evidence of contributory negligence on Satwindersingh's part; accepted that Vaidya was at fault; and held that admittedly, Vaidya owned his motor vehicle and that it was insured with the present appellant. The Tribunal also considered the documents on record to arrive at a finding that Satwindersingh had an income of Rs.6 lakhs. A deduction of one-fourth was taken for dependency, and given Satwindersingh's age of 39, the Tribunal used the multiplier of 16, and arrived at a figure of Rs.72 lakhs. To this were added Rs.25,000 for mental pain and anguish, Rs.10,000 for loss of consortium, Rs.5,000 toward funeral expenses and Rs.10 lakhs as loss of future income.

10. Mr. Mahadik, learned Advocate for the Appellant, canvassed two submissions before us. The first was that the amount awarded was excessive and unjustified, and not substantiated by the documents on record. There was, he submitted, no justification for the additional award of Rs.10 lakhs, especially since there was no evidence of the deceased being salaried. The second submission was that the material on record points to contributory negligence on Satwindersingh's part. We have considered both submissions with care. For the reasons that follow, we are unable to accept them.

11. Before the Tribunal, the 1st Claimant, Satsindersingh's widow Joginderkaur Singh filed her Affidavit in lieu of examination-in-chief. She deposed to the facts of the accident, although she did admit that she herself was not present at the time of the accident. She deposed to the fact that an FIR was filed. She supplied the relevant details of the deceased's directorship as also copies of his income-tax returns. Her cross-examination is brief. She denied the suggestion put to her that her late husband was negligent and that Vaidya was not responsible for the accident. The cross-examination indicates that apart from putting certain suggestions to her and which she denied, there was no other effective cross-examination.

12. The Plaintiffs also examined one Rajan Damani. He was Satwindersingh's Chartered Accountant. He deposed to the deceased's shares in various companies and stated that he had a salary of Rs. 6 lakhs at the time of his death. The deceased's total income from all sources was Rs. 9,61,281/-. Copies of the income-tax returns for the years 2006-2007, 2007-2008 and 2008-2009 were also produced. It is relevant at this point to note that the

accident took place on 3rd January 2009 that is during Financial Year from 1st April 2008 to 31st March 2009.

13. Before we turn to the relevant financial documents, it is necessary to note the evidence of Vaidya. He was examined in chief in Court. His cross-examination followed. It is true that in the impugned judgment, there is no significant discussion of Mr. Vaidya's evidence. Perhaps this is understandable, for that evidence leaves much to be desired. The evidence in chief is itself unclear and more than somewhat vague, and in many parts we are left to conjecture as to what actually happened. There are also inconsistencies and improbabilities in his cross-examination that are never explained.

14. Vaidya says in his examination-in-chief that he was proceeding at a very slow speed of 10 to 15 kms an hour at Nerul. There is no dispute about the time of the accident, the date or the place. He says that he turned on an signal indicator, but does not say which one. He does, however, say that the traffic on his right had stopped. This could mean that he was turning left at an at-grade four-way intersection, i.e., without actually crossing the intersection, but could also mean that he was turning right, to move in the opposite direction from the cars to his right. This has some bearing on the defence, because it is also not in dispute that the accident in question took place in such a way that it was the left side of Vaidya's car that collided with the motorcycle.

15. Conceptually, this yields two alternative scenarios: first, that Vaidya was turning *left* at the four-way intersection, to proceed in

the same direction as the cars on his right; or, second, that he was turning right to proceed in the opposite direction to the cars to his right. If it is the first scenario, then Vaidya would have had to be in the far left lane to make the left turn; and if it is second scenario, he would have had to be in the extreme right lane. In either scenario, it is difficult to appreciate how Satwindersingh's motorcycle could have collided with Vaidya's car on its left hand side.

16. Yet this is what Vaidya claims when he says that Satwindersingh's motorcycle came up from behind him and on his left. In either of the two scenarios mentioned above, this seems improbable. For instance, in the second scenario, turning right would necessarily mean that the cars to Vaidya's right *and* those to his left had stopped, and that Satwindersingh came from his left across the intersection and had run through a red stop light. There is no such evidence and we do not even know if there were in fact traffic signals at that junction or, if there were, whether these were operational. In the first scenario, Vaidya's testimony demands that we surmise that he was in the extreme left lane, turning left; that the traffic on his right had therefore halted; and that Satwindersingh came up from behind on his left as well. Again, this is just as improbable without evidence that lay squarely and firmly within Vaidya's knowledge.

17. Vaidya then claims that the result of this collision was so severe that the Wagon R actually completely spun around. Even before considering the cross-examination, there are several difficulties with this evidence in chief. Apart from the visualisation of the junction as described earlier, it is difficult to understand how

a collision with a motorcycle coming from behind could have spun a slow moving WagonR 180 degrees as Vaidya suggests. There is also no evidence that the motorcycle that Mr. Satwindersingh was riding was a particularly heavy machine with sufficient weight and mass to cause such an effect. Interestingly, Vaidya also says that he has or had photographs of the incident and he would produce them. He did not do so.

18. The cross-examination itself shows that Mr. Vaidya's memory is hazy and his evidence is not entirely reliable. He says, for instance, that he does not know in which direction he was moving. We presume that by this he only means that he does not know whether he was proceeding from east to west or north to south but it is an unfortunate answer and, read with the lack of clarity in his examination-in-chief, does not tell us whether he was turning left or turning right. This seems to us to cast an undeniable shadow over the credibility of his testimony.

19. That is not all. Mr. Vaidya also says that he does not know the width of the road. This is perhaps a critical matter. Had he said for instance that the road was particularly narrow, and specified the direction of his turn, matters might have been clearer. We also do not know if the road was a broad thoroughfare, for it seems to us that the entire question of his car spinning around could have only happened on a road of moderate to great width and not on a narrow street. He also do not know whether the so-called spinning around of the car happened in the middle of the intersection, at the side of it, before he took the turn or after he took the turn.

20. These gaps in the evidence are crucial. Of the persons in this trial who were present at the time of incident, only one person, viz., Vaidya, is available as an eye-witness to actually narrate with any accuracy what exactly transpired. Once we find that even that evidence is insufficient or not sufficiently cogent to warrant credibility, then there is no reason to find fault with the impugned judgment at least on this score. We must also bear in mind that Vaidya chose, for whatever reason, not to file a written statement. This is indeed strange for he was a party respondent and in response could have clearly set out in his pleadings his version of the events.

21. Mr. Mahadik's emphasis, therefore, on Vaidya's testimony is, in our view, without foundation. Vaidya's evidence that he was proceeding at 10-15 kmph is unconvincing. It is argued that correctly read the evidence shows that Vaidya had 'almost negotiated the turn'. This is the purest conjecture; Vaidya himself does not say so and he also does not say, as we have noted, in which direction he was turning, a matter only he could depose to, and one that makes all the difference. The submission that Vaidya's car was damaged from the rear also does not in and of itself establish negligence on Satwindersingh's part. As a matter of law, contributory negligence is a matter that must be both pleaded and proved. Vaidya, as we have noted, filed no written statement, though certainly he could have taken such a plea. More importantly, in its own written statement, the Insurance Company also did not take the plea of contributory negligence. It could have done so, for the basis of Mr. Mahadik's submission is simply that the rear of Vaidya's car was damaged and that this, *ipso facto*, establishes

contributory negligence. The fact of the rear of the car having been damaged was known from the time of the accident onward, and certainly could not have been unknown to the Insurance Company before it filed its written statement. Yet no such plea is to be found in its written statement.

22. In any case, it is well settled that the Tribunal is not bound by strict rules of evidence or pleading and that in matters such as this, and indeed generally, a Court must be guided by an assessment of the preponderance of probabilities. Mr. Vaidya's narrative seems to us entirely improbable. That he attempted to deflect blame is evident from his testimony when he says that he was told by others that the deceased was always riding his bike at a high speed. This evidence was quite correctly not considered by the Court at all. It violates the rule against hearsay evidence. It is no proof of rashness or negligence (or habitual rashness or negligence) on the part of Satwindersingh.

23. This leaves us with the question of an assessment of the deceased's income. The income-tax returns for the years 2006-2007, 2007-2008 and for the Assessment Year 2008-2009 (i.e. Financial Year from 1st April 2007 to 31st March 2008) were introduced in evidence. In the impugned judgment, the Tribunal has taken the deceased's income as Rs. 6,00,000/-. A question is raised before us by the learned counsel for the Appellants as to how the Tribunal could possibly have arrived at this figure. The answer lies in the last return for the Assessment Year 2008-2009. This shows a total salary of the deceased as Rs. 6,30,000/- with tax deductions approximately of Rs. 30,000/-, leaving an income of Rs.

6,00,000/-. This is the figure that has been accepted by the MACT. We are not impressed by the submission that the income for the previous years was lower or that it is an average that should be taken.

24. From the income Rs. 6,00,000/-, one-fourth amount has been deducted since the deceased was survived by his widow and two minors. This leads to a figure of Rs. 4,50,000/-. At the time of his death Mr. Satwindersingh was 39 years old and, therefore, following the decision of the Supreme Court in *Sarla Verma v Delhi Transport Corporation*,¹ a multiplier of 16 has been taken. In addition, the Tribunal granted Rs. 25,000/- for pain and suffering and Rs. 10,000/- for loss of consortium. These are reasonable. In addition, the Tribunal took an amount of Rs. 10,00,000/- for loss of future income given the returns. Thus, an amount of Rs. 82,40,000/- was awarded.

25. Before us reliance was placed by the learned counsel for the Appellants on the decision of the Supreme Court in *Surenderkumar Arora v Dr. Manoj Bisla*.² In that decision, an important distinction is drawn between a claim made under Section 166 of the Motor Vehicles Act and one made under Section 163-A. The present case also arises from an application under Section 166 of the Act. We find that the decision in *Surenderkumar* does not assist the Appellant in any way. As we have noted, the negligence of the 5th Respondent to his Appeal must be held to have been established *inter alia* from his own evidence. The improbability of what he has

¹ (2009) 6 SCC 121 : 2009 ACJ 1298 (SC)

² 2012 ACJ 1305

suggested is plain to see. What actually transpired was a set of facts especially within his personal knowledge, and if it was his case that he was not negligent or rash, and since he tendered himself as a witness, it was for him to make a full disclosure of those facts. It is in this context that his failure to file a written statement must be seen. For its part, the Insurance Company only said (and quite correctly) that it had no knowledge of this aspect of the matter. We may also note that before the Tribunal, the inquest *panchnama*, the spot *panchnama* and the FIR were all filed in evidence and were considered by the Tribunal, which held that these show that Vaidya was booked for rash and negligent driving in a criminal prosecution. The Tribunal therefore correctly held that the claimants had discharged their evidentiary burden.

26. In these circumstances, we see no reason to interfere with the impugned Judgment and Award. There is no merit in the Appeal. It is dismissed. There will be no order as to costs.

27. By an order dated 8th April 2015 in Civil Application No.905 of 2015 filed by the Appellant in this First Appeal, an ad-interim stay was granted subject to a deposit by the Appellant with the Tribunal within eight weeks of the entire amount awarded. The 1st Respondent was permitted to withdraw a sum of Rs.2,50,000 without security, and, in addition, the 4th and 5th Respondents were permitted to withdraw Rs.1 lakh each without security. The amount deposited with this Court at the time of the appeal was directed to be transferred to the Tribunal. In view of the dismissal of the Appeal, Respondents Nos. 1 to 5 shall now be entitled to

apply to the Tribunal of the remaining balance amount that is yet lying deposited with accrued interest.

28. In view of the foregoing, Civil Application No.905 of 2015 is disposed of. Civil Application No. 2434 of 2015 filed by Respondents Nos. 1 to 5 for leave to withdraw the amount awarded does not survive and is disposed of as infructuous.

(G. S. PATEL, J.)

(A.S. OKA, J.)