

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.581 OF 2001

- 1) Ashabai w/o Ashok Pawar
Age: 25 Yrs./, occu. Household,
R/o Narangwadi, Tq. Omerga,
District Osmanabad.
- 2) Kum.Priti d/o Ashok Pawar,
Age: 6 Yrs., occu. Nil, Minor,
R/o Narangwadi, Tq. Omerga,
District Osmanabad.
- 3) Pavan s/o Ashok Pawar,
age: 4 Yrs., occ. Minor,
R/o Narangwadi, Tq. Omerga,
District Osmanabad.
- 4) Kum.Priya d/o Ashok Pawar,
Age: 2 Yrs., occu. Minor,
R/o Narangwadi, Tq. Omerga,
District Osmanabad.

(Claimant Nos. 2 to 4 are
minors under guardianship
of their natural mother -
claimant No.1.)

= **APPELLANTS**
(Claimants)

VERSUS

- 1) Sayad Shoukat s/o Chandsab
Age: 35 Yrs., occu. Driver,
R/o Killari, Tq. AUSA,
District Latur.
- 2) Kasturabai Dnyanoba Pawar,
age: 55 Yrs., occu. Household,
R/o Narangwadi, Tq. Omerga,
District Osmanabad.
- 3) Mr.Mahasukhlal Vadhabai Patel,
Age: 43 Yrs., ocu. Busines,
R/o Samarada, Tq. Bhenara,
Dist. Banaskntha (North Gujrat)

- 4) United India Insurance Company
Through Branch Manager,
Near ST Stand, Osmanabad.
Tq. And Dist. Osmanabad.
- 5) Janardhan Namdeorao Sangve,
Age: 38 Yrs., occu. Service,
R/o Hatte Nagar, Latur,
Now at Janta Sahakari Bank,
Omerga branch, Dist.Osmanabad.
- 6) The New India Assurance Company
through Manager, Osmanabad.
Tq. And Dist. Osmanabad. = **RESPONDENTS**

Mr.MP Tripathi, Advocate h/for Mr. KJ Ghute-Patil,
Adv. for Appellants;

Mr.SG Chapalgaonkar, Adv. for Respondent No.4;

Mr.Dhananjaya Deshpande, Adv. For Resp.no.6.

CORAM : P.R.BORA, J.

DATE : 11th April,2016.

ORAL JUDGMENT:

1) Heard the learned Counsel appearing for
the respective parties.

2) Original claimants have filed the
present appeal taking exception to the judgment
and award passed in MACP No.170/1994 decided on
9.1.2001 by Motor Accident Claims Tribunal,
Osmanabad (for short, the Tribunal). The

claimants had filed the aforesaid Claim Petition claiming compensation of Rs.2,00,000/- on account of death of Ashok Dnyanoba Pawar, who died in a vehicular accident happened on 11.09.1992, having involvement of truck bearing registration No. GJ-8-T-4033 and Motor cycle bearing registration No.MH-24-2500.

3) As is revealing from the pleadings on record, the accident in question happened at about 1.00 am at Jalkot Naka on Omerga — Hyderabad road. The truck involved in the accident while was stopped on the road near the octroi post for the purpose of paying octroi, the deceased, who was on the motor cycle rammed into the said stationery truck along with the pillion rider and in the accident so happened, both suffered the death.

4) It was the contention of the claimants before the Tribunal that the accident in question happened because of absolute negligence on the

part of the driver of the aforesaid truck, since he has illegally stopped the said truck on the road, without keeping the rear lights or parking lights on of the said truck so as to identify the said vehicle. The learned Tribunal has however, rejected the contention so raised by the claimants and has recorded a finding that the claimants have failed in proving the negligence of the driver of the truck in occurrence of the alleged accident and consequently, the Tribunal has exonerated the owner, driver and the insurer of the said truck from liability to pay compensation. Consequently, the claim petition has been dismissed. The claimants have filed the present appeal, challenging the said judgment and award passed by the Tribunal.

5) Shri Tripathi, the learned Counsel appearing for the claimants, submitted that the Tribunal has grossly erred in appreciating the evidence on record. The learned Counsel submitted that the claimants have examined one

witness, by name Suresh Mane, who is an eye-witness of the alleged accident and in his evidence he has categorically stated that the vehicle was carelessly stopped on the road and further that there was no parking lights on of the said vehicle. The learned Counsel further submitted that at the relevant time, one another vehicle was coming from the opposite side in the head lights of which it was not possible for the deceased to notice the offending truck which was carelessly stationed on the road. The learned Counsel submitted that the Tribunal has ignored all these facts that, the truck was stationed on the road; that there were no parking lights; that since a vehicle was coming from the opposite direction, there was every possibility that in the head-lights of the said vehicle coming from the opposite directions, the deceased might not have noticed the truck so stopped on the road and thus has rammed into the said truck. In such circumstances, according to the learned Counsel, even if it is presumed that there was some

negligence on the part of the deceased - motorcyclists, the Tribunal of the truck cannot be completely absolved from his liability. The learned Counsel, therefore, submitted that the findings recorded by the Trial Court are contrary to the evidence on record and hence deserve to be set aside. The learned Counsel, therefore, prayed for allowing the appeal and consequently the claim petition filed by the appellants/claimants.

6) Shri Chapalgaonkar, the learned Counsel appearing for respondent No. 4 - insurance company, resisted the submissions made on behalf of the learned Counsel appearing for the claimants. The learned Counsel, taking me through the averments of the FIR as well as the spot panchanama, submitted that both these documents sufficiently indicate that there was no negligence on part of the driver of the offending truck in occurrence of the alleged accident. The learned Counsel, relying upon the judgment of

the Hon'ble Apex Court in the case of Oriental Insurance Co. Ltd. Vs. Premlata Shukla and Ors. - 2007 AIR SCW 3591, submitted that the contents of the documents cannot be partly relied upon and once the document is taken on record, the document has to be read as a whole and to be relied upon as a whole. The learned Counsel submitted that if the FIR and the spot panchanama are read as a whole, both these documents sufficiently indicate that there was no negligence on part of the truck driver. On the contrary, the situation on the spot of occurrence volumely shows that the motorcyclist was plying the motorcycle at the relevant time in high and speed and negligent manner, which has resulted in occurrence of the alleged accident. The learned Counsel, therefore, submitted that the Tribunal has not committed any error and the findings recorded by the Tribunal cannot be in any way said to be perverse or contrary to the evidence on record. He, therefore, prayed for dismissal of the appeal.

7) I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have gone through the evidence recorded in the present case and I have also carefully perused the spot panchanama and the FIR filed in the matter. The findings recorded by the Tribunal, in the light of the aforesaid documents, apparently do not appear to be in any way perverse or contrary to the evidence on record. It does not appear to me that the Tribunal has recorded any incorrect finding so far as the negligence on the part of the driver of the offending truck. The Tribunal has correctly analyzed the situation on the spot and has recorded the conclusion that from the evidence, brought on record, it is not possible to hold that the alleged accident had happened because of any negligence on part of the driver of the offending truck.

8) Admittedly, the road on which the accident had happened was 32 ft. wide. There is

no dispute that the truck was stopped near the octroi post for the purpose of paying the octroi. It is also not disputed that there was octroi post near the spot of the accident. The averments in the FIR, which was promptly lodged by the Octroi Superintendent working on the said octroi post, reveals that at the relevant time, the driver of the offending truck, after paying the octroi was proceeding towards his truck and in the meantime, the motorcyclists rammed into the said truck from its rear side. From the situation on the spot, it is quite evident that the truck was stationed at the left side of the road and sufficient space was available for the vehicles passing from both the sides. As has been rightly observed by the Tribunal, there must be sufficient light at the octroi post so as to identify the location of the octroi post. Thus, the stationed truck was quite noticeable from the adequate distance. Moreover, it was quite possible for the motorcyclist to notice the stationed truck in the head light of his own

motorcycle from the adequate distance. The story of other vehicle coming from the opposite side throwing light on the eyes of the deceased motorcyclist appears to be after thought. I agree with the observations made by the learned Tribunal that evidence of PW 2 - Suresh cannot be depended upon. Moreover, on perusal of his evidence, it is difficult to accept that he did eye witness the alleged accident. It appears that only after he heard the bang because of dash given by the motorcyclist to the truck that his attention was invited to the spot of occurrence. From the material on record there is reason to believe that the deceased motorcyclist was negligent in driving his motorcycle and may be plying the motorcycle at the relevant time at excessive speed and that was the reason that he could not notice the stationed truck at the side of the road and rammed into the same from its rear side.

9) In the above circumstances, it does not appear to me that the learned Tribunal has erred

in recording a finding that the claimants have failed in proving the negligence on part of driver of the offending truck in occurrence of the alleged accident.

10) For the reasons stated above, the appeal deserves to be dismissed and is accordingly dismissed without any order as to costs.

sd/-
(P.R.BORA)
JUDGE

bdv/