

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

5 FIRST APPEAL NO. 1461 OF 2014

ROYAL SUNDARAM ALLIANCE INSURANCE CO. LTD. CHENNAI
VERSUS
ASHIYA SALIM SAYYAD AND OTHERS

...

Advocate for Appellant : Mr. Deshpande Avinash S.
Advocate for Respondents 1 to 3:Mr.V P Latange

CORAM : V. K. JADHAV, J.

DATE : 8th March, 2016

PER COURT :

1. In view of order dated 13th January, 2016, this appeal is taken up for final disposal at the stage of admission.

2. Being aggrieved by the judgment and Award passed by the learned Member of the Motor Accident Claim Tribunal, Ahmednagar dated 13.09.2013 in MACP No. 465/2009, the Insurer/original respondent No.2 has preferred this appeal.

3. Brief facts giving rise to the present appeal are as follows:

i. On 07.02.2009, at about 11 p.m. deceased Salim had gone to inspect river-bed of Ghod River alongwith

his superior officer Kailas Kapade to find out whether theft of sand is being committed. On reaching there, it was found that one tractor bearing registration No. MH 16 AF-07 lifting the sand from the said river-bed illegally. Deceased Salim, in discharge of his duties as Kotwal, questioned the driver of the said Tractor about lifting of the sand illegally. Consequently, the driver got annoyed and he drove the tractor on the person of the deceased Salim. Due to dash of the tractor, Salim died on the spot.

ii. The Respondents/ original claimants, who are the legal representatives of deceased Salim, filed the claim petition under section 163-A of the Motor Vehicles Act claiming compensation of Rs.4,17,500/- before the Motor Accident Claim Tribunal, Ahmednagar, bearing MACP No. 465/2999 against the owner of the said vehicle/tractor and also against the Insurer of the said vehicle.

iii. The appellant Insurer has strongly resisted the claim by filing written statement before the Tribunal mainly on the ground that there is no accidental death as such and the deceased Salim was

murdered and therefore his legal representatives are not entitled to claim compensation under the provisions of the Motor Vehicles Act.

iv. The learned Member, Motor Accident claim Tribunal, by relying on the case of **Rita Devi Vs. New India Assurance Co. Ltd.**, reported in **2000 (5) SCC 113**, partly allowed the claim petition and granted compensation of Rs.2,44,000/- to the respondents/claimants with interest and proportionate costs. Being aggrieved by the same, the appellant Insurer has filed this appeal.

4. The learned counsel for the appellant/Insurer submits that in respect of the said incident, which had taken place on 07.02.2009 at river bed of River Ghod, on the basis of complaint lodged by the said Kailas Kapade, the concerned Shrigonda Police Station registered Crime No. 48/2009 for the offences punishable under sections 302, 332, 504, 506 of the Indian Penal Code. The learned counsel submits that it is a clear case of murder and thus, provisions of Section 163-A of the Motor Vehicles Act are not attracted at all. The learned counsel submits that the learned Member of the Motor Accident Claim Tribunal, Ahmednagar has wrongly

placed his reliance on the case of **Riti Devi** (supra).

5. Learned counsel for the respondents/original claimants submits that deceased Salim had been to river-bed along-with his superior officer to inspect whether there is theft of sand in the night time. On reaching there, when deceased Salim found that sand was being lifted illegally from the bed of the river, he had questioned the driver of the Tractor. Consequently, the driver of the said tractor got annoyed and he drove the tractor on the person of deceased Salim. The learned counsel submits that stealing of the sand from the river bed was the object and in that process, certain act was committed which is incidental to the act of stealing. The learned counsel submits that murder was not originally intended and the same appears to have been caused in the process of said act of stealing of sand and therefore the said murder can be termed as accidental murder as observed by the Hon'ble Apex Court in the case of **Rida Devi** (supra). The learned counsel submits that learned Member of the Tribunal has rightly allowed MACP No.465/2009 and accordingly granted compensation. The learned counsel submits that there is no merit in the appeal and the same is liable to be dismissed.

6. Following points arise for my consideration and I have recorded my findings thereon for the reasons mentioned below:

Points	Findings
1) Do the respondents/claimants prove : that deceased Salim Sayyadnoor died in motor vehicular accident on 07.02.2009 as asserted in the claim petition?	In the affirmative.
2) Do the respondents/claimants prove : that the appellant/orig. respondents are liable to pay compensation ?	In the affirmative.
3) Whether the impugned judgment and award calls for interference ?	In the negative.
4) What order ?	: As per final order.

7. In the case of **Rita Devi** (supra), in para 10 of the Judgment, the Hon'ble Apex Court has made following observations.

“(10) The question, therefore is, can a murder be an accident in any given case ? There is no doubt that murder, as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a

motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts . The difference between a murder which is not an accident and a murder which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder."

8. In the present case, contentions of the appellant Insurer is that the death of deceased Salim was not caused by an accident and it is a murder simplicitor.

9. On careful perusal of the contents of FIR Exh.44, it appears that deceased Salim had questioned the driver of the Truck for lifting of sand from the river-bed illegally. In response to the said question, the said driver of the tractor, on the other hand, questioned the deceased Salim as to whether he would not be able to see other vehicles lifting the sand illegally from the river-bed and only obstructing him in that way. By saying so, the the driver of the tractor started

abusing the deceased Salim and his superior officer. Thereupon, the deceased Salim had questioned him. There upon, the driver of the said tractor started his tractor. However, the deceased Salim had directed him to stop the vehicle. Consequently, the driver got annoyed and drove the tractor on the person of Salim. It also appears from the contents of the FIR at Exh. 44 that rear side wheel of the tractor passed over the head of deceased Salim.

10. It appears that murder was not intended and the same was caused in furtherance of lifting of the sand from the river-bed. Thus, based on the facts and circumstances of this case, death of Salim was caused accidentally in the process of illegally lifting of sand from the river-bed with the help of motor vehicle. Thus, the ratio laid down in **Rita Devi's** case (supra) squarely applies to the facts and circumstances of the present case. I do not find any fault in the judgment and award passed by the Motor accident Claim Tribunal, Ahmednagar. Except this ground of entitlement, no other ground is raised by the appellant Insurer in this appeal. As such, the appeal fails.

11. Accordingly, I answer Point No.1 in the

affirmative, Point No.2 in the affirmative , Point No.3
in the negative and proceed to pass the following order:

O R D E R

- i. The appeal is hereby dismissed.
- ii. In the circumstances, there shall be no order as
to costs.

(V. K. JADHAV, J.)

JPC