

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1386/2014

Smt. Sunita Gorakh Tone & Ors.

... Appellants

V/s.

Ramu Maruti Naike & Ors.

... Respondents

Ms. Namrata Waghole for the Appellants

Mr. S. M. Dange for the Respondent No.3.

CORAM: K.K. TATED, J.

DATED : JANUARY 11, 2016

PC. :

1. Heard the learned counsel for the parties. This court (Coram : Mrs. Mridula Bhatkar, J.) by order dated 14/11/2014 issued notices to the Respondents indicating that the appeal would be heard at the stage of admission itself. Hence, the matter is taken up for final hearing at the stage of admission.

2. This appeal is preferred by the original claimants challenging the judgment and award dated 30/04/2005 passed by the MACT, Sangli in claim petition No.398/2000 by which the Tribunal rejected the Appellants' claim petition. Hence, the First Appeal.

3. In the present proceedings, the accident took place on 26/02/2000 at 9.30 pm in which Gorak Tone, aged 45 years, occupation – driving and agriculturist, died. Hence, the Appellants

original claimants filed claim petition u/s. 166 of the Motor Vehicles Act, 1988 (said Act) on 27/12/2000 claiming compensation of Rs. 4 lacs. The Respondent Nos.1 and 2 and Respondent No.3 Insurance Company filed written statement and denied their liability on the ground that the deceased himself was negligent and therefore the accident took place.

4. The claimant, in support of their claim examined Appellant No.4 Kundlik Tone, father of the deceased, Sunita Tone PW. 2 wife of deceased and Dadasaheb Bhajbale PW.3 pillion rider – eye witness (Exhibit- 42). Similarly, Respondent No.3 examined Rama Naik R.W.1 driver of offending vehicle i.e. truck (Exhibit- 52). Considering the evidence on record and the documents, the Tribunal held that accident occurred because of negligence on the part of the deceased at the material time and he himself was responsible for the same. The Tribunal further held that the deceased was overtaking another vehicle on the motor cycle and in an attempt to overtake, the deceased came on the wrong side of the road and without looking to the vehicle coming from opposite side lost his control and dashed against the truck coming from opposite direction. Hence, the Appellants original claimants were not entitled to any compensation. Hence, the appeal.

5. The learned counsel for the Appellants submits that the Tribunal erred in coming to the conclusion that the claimants were not entitled to compensation because the accident occurred due to the sole negligence on the part of the deceased. He submits that the eye witness PW. 3 Dadasheb Bhajbale, pillion rider was examined at

Exhibit- 42. The tribunal failed to consider his evidence and erred in coming to the conclusion that the accident occurred because of sole negligence on the part of the deceased. He further submits that the Tribunal erred in relying on the evidence of Rama Naik - R.W.1 – driver of offending vehicle. He submits that the Tribunal ought to have held that the accident occurred on 26/02/2000 on Ankali – Jaisingpur road at village Ankali due to rash and negligent driving of the truck being No.MXL-7658 resulting into death of Gorakh Tone. Hence, the impugned judgment and award is required to be set aside holding that the Appellant original claimants proved their case and are entitled to compensation of Rs.4 lacs with interest.

6. On the other hand, the learned counsel for the Respondent No.3 Insurance Company vehemently opposed the First Appeal. He submits that bare reading of the evidence of P.W. 3 Dadasaheb Bhajbale, eye witness Exhibit- 52 who was pillion rider, shows that the accident occurred due to sole negligence of the deceased. He submits that in the present proceedings on 27/02/2000 at 9.30 pm deceased along with P.W. 3 Dadasaheb, pillion rider were coming from Kolhapur towards Sangli by Ankali - Jaisingpur road on motorcycle. In the meantime, a truck bearing No.MXL 7658 which was insured with Respondent No.3, came from opposite direction and accident occurred. The deceased died on the spot and pillion rider sustained some injuries. He submits that there were 2 bridges at the spot of accident. He submits that the truck was coming from Sangli towards Kolhapur and the deceased and pillion rider were proceedings towards Sangli from Kolhapur. Out of these two bridges, one was old and another was new. The vehicles

going towards Sangli have to use old bridge and the vehicles going towards Kolhapur, new bridge. Both these bridges are for one-way traffic. The deceased, while overtaking the front vehicle, proceeded from wrong side and accident occurred. He submits that these facts were proved from the panchanama prepared by the police authority as well as the statements recorded immediately after the accident. He further submits that even the Rama Naik - R.W.1 driver of the offending vehicle, in his deposition Exhibit- 52 specifically stated that the deceased and the pillion rider tried to overtake the front vehicle and in this process, they proceeded towards wrong side and accident occurred. All these facts were proved by the Respondent by producing on record the evidence of offending driver as well as the police record. Considering these facts, the Tribunal held that the accident occurred because of the negligence on the part of the deceased only and therefore the Tribunal rightly dismissed the Appellant's claim petition u/s. 166 of the said Act for Rs.4 lacs. Hence, there is no substance in the appeal and same be dismissed with costs.

7. Heard the learned counsel for the parties at length. The learned counsel for the Appellant filed paper book containing a copy of claim petition, written statement of the Respondent, deposition of the witnesses, copy of panchanama dated 27/02/2000, copy of statements recorded by the police on 28/02/2000 and other documents.

8. Considering the submissions made by the learned counsel for the parties, the point involved in the appeal is *“whether the Appellants claimant proved that in an accident which occurred on 26/02/2000 the*

deceased Gorakh Tone died due to rash and negligent driving of the driver of the truck being NO. MXL 7658?”

9. The evidence of P.W. 1 Kundlik Tone, father of deceased is only on the point of compensation, what deceased was doing, how much he was earning and how they were dependent on his income. Therefore, the evidence of P.W.1 is not useful to decide the point about the negligence in the present matter, so also the evidence of P.W. 2 Sunita, wife of the deceased. The evidence of P.W. 4 Hari Katkar who was doing transportation business, is only with respect to the fact that the deceased was in his employment as a driver since 1998 till his death on monthly salary of Rs.1500/-. The deposition of P.W.3 Dadaso Dnyando Bhajbale, pillion rider – eye witness is required to be considered to decide the present issue. Though this witness has stated that because of negligence on the part of the truck driver the accident occurred, in his cross-examination, he admitted that the accident took place on a new bridge, that itself shows that the deceased proceeded from wrong side because the old bridge was meant to be used to proceed from Kolhapur to Sangli. This itself shows that P.W.3 who was eye witness has admitted the fact that because of mistake on the part of the deceased, the accident occurred.

10. Even bare reading of panchanama dated 27/02/2000 as well as the evidence of Rama Naik, R.W. 1, driver of offending vehicle Exhibit-52 clearly shows that the deceased tried to overtake the front vehicle from wrong side and accident occurred. Considering the description given in the spot panchanama where the accident occurred, clearly

shows that the deceased could have avoided the accident. Same facts were considered by the Trial Court in paragraph Nos.14 and 15 of the impugned award.

11. As the accident occurred because of sole negligence on the part of the deceased Gorakh, the Appellants are not entitled to any compensation. I do not find any reason to interfere with well written judgment by the Trial Court. Hence, the point framed hereinabove is answered in the negative.

12. Accordingly, the First Appeal stands dismissed.

13. Considering the facts and circumstances of the case, there is no order as to costs.

(K.K. TATED, J.)