

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 22 OF 2001

The Oriental Insurance Co. Ltd. & Anr. ... Appellants
Vs.
Smt. Sumitra Shankar Chalke & Ors. ... Respondents

Ms. D. Shalini Shankar, Advocate for the appellants.
Ms. Shruti Gokhale i/b. Mr. A.M. Gokhale, Advocate for respondent nos. 1 to 4.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: 7th January, 2016.

P.C.:

By consent, the Appeal is heard finally and decided at the stage of admission.

2. This Appeal, filed by the insurance company and the owner of the vehicle, is directed against the judgment and award dated 10th February, 2000 passed by the learned Member, Motor Accident Claims Tribunal, Mumbai in M.A.C.P. No. 3232 of 1993.

3. The respondents/original claimants filed the claim for compensation for the death of Shankar Gangaram Chalke, husband of respondent no. 1 and father of respondent nos. 2 to 4. The claim of compensation was made for Rs.4,00,000/-. When Shankar Chalke was walking alongwith his friend, i.e. eye witness Ganesh Sudam Nimbalkar, near Five Garden at

Matunga, an offending vehicle bearing No. MH-02-J-4522 owned by appellant no. 2 dashed him on 1st November, 1992. He was taken to the hospital but was succumbed to injuries on 7th November, 1992. After receiving notice, the opposite party and insurance company appeared and filed their written statement. The involvement of the vehicle was denied and the fact of accident due to impact by the impugned vehicle was also challenged. Sumitra, wife of deceased Shankar Chalke entered the box. So also the evidence of PW-1 P.S.I from Matunga Police Station, PW-2 R.T.O. Officer Suresh Sadashiv Brahmane and PW-3 eye witness GaneshSudam Nimbalkar was tendered along with the documentary evidence. After considering the documentary as well as oral evidence, the learned Member of the Tribunal was pleased to pass an award of Rs.2,10,000/- with interest thereon @10% p.a. from the date of filing of the Application. Being aggrieved by the said judgment and order, the insurance company along with the insurer have filed this appeal.

4. The point of determination is whether the award passed by the Member of the Tribunal is illegal and is to be set aside.

5. The learned counsel for the appellant/insurance company submitted that the insurance company has moved an application under section 170

and therefore, they are free to take other defences than the statutory defence available to the insurance company. She further submitted that the fact of involvement of the vehicle is seriously challenged by the insurance company, as there was mistake of vehicle number mentioned in the FIR (Exhibit 8). She further submitted that the learned Member of the Tribunal has not properly appreciated the evidence of RTO Officer and P.S.I. Matunga Police Station in respect of involvement of the vehicle in the accident. She submitted that the learned Member should have given weightage to the admission of the P.S.I. that he did not make effort to trace the real offending vehicle. She further submitted that this evidence should have been the evidence of the eye witness and should have been discarded. She further submitted that the insurance company also challenges the award on the point of quantum. She submitted that the judgment and award passed by the learned Member is to be set aside.

6. The learned counsel for the respondents submitted that the Appeal filed by the insurance company along with the owner of the vehicle is not maintainable in law on the basis of the decision of Hon'ble Supreme Court in the case of **Chinnama George and Ors. vs. M.K. Raju and another, reported in 2000 ACJ 777.**

7. Perused the judgment, notes of evidence and documents produced herein. The main challenge in this Appeal is in respect of involvement of impugned vehicle. From the record, it appears that the said vehicle was insured and the accident has taken place. Shankar Chalke got injured in the accident and succumbed to injuries on 7th November, 1992. On this point, the evidences of PW-1 P.S.I. Matunga Police Station, PW-2 R.T.O. Officer and PW-3 eye witness Ganesh Nimbalkar are important. There is inconsistency in the vehicle number written in the FIR and the actual number of the vehicle. However, whether the vehicle number written in FIR is completely different than the vehicle no. **MH-02-J-4522** provided by the RTO. The vehicle number written in FIR is **MH-OJ-2-4522** marked as Exhibit 8 but the police officer could not locate this vehicle. When he made enquiry with the RTO, he found that the vehicle number is wrongly written in FIR and the number of the vehicle as **MH-02-J-4522** and name of the owner was provided by RTO. If the incorrect and correct number of the vehicle are compared with, then it is entirely incorrect number, however, the last digits, i.e., 4522 is rightly taken down. When the accident took place, Ganesh Nimbalkar was present and he noted down the number. So there can be possibility of some confusion in respect of one or two digits. It is to be noted that no wrong digit is mentioned, however, the place of digits "02" is exchanged and therefore, that evidence cannot be

discarded and the observation made by the learned Judge on the point that this vehicle was involved in the accident is correct.

8. In the case of **Chinnama George** (*supra*), the Hon'ble Supreme Court has held that the Appeal filed by the insurance company along with owner or driver is not maintainable, however it is subject to availability of the defence on the ground under section 149(2) of the Motor Vehicle Act.

9. In respect of second defence of quantum taken by the insurance company, after going through the evidence of PW-4 Sumitra Shankar Chalke and the discussion in respect of earning that the salary of the deceased was Rs.2,500/- p.m. is correct. The learned Member of the Tribunal has deducted 1/3rd for personal expenses as he was married and having a family responsibility. I do not find any illegality in the finding given learned by the learned Member of the Tribunal while fixing the compensation. The compensation awarded is just and adequate, hence no need to interfere with the judgment and award passed by the learned Member of the Tribunal. The First Appeal is dismissed.

(MRIDULA BHATKAR, J.)