

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 77 OF 2002

New India Assurance Company Limited,
having its Head and Registered Office
at New India Assurance Building, 87 M.G. Marg,
Fort, Mumbai, Branch Office at Beed,
and Divisional Office at Aurangabad.

... APPELLANT

VERSUS

1. Venubai W/o Baban alias Vasant Thapde
Age about 29 years, Occupation Household,
R/o Dhekanmoha, Taluka & District Beed.
2. Miss. Ashabai D/o Baban alias Vasant Thapde
Age 10 years
3. Miss. Vidya D/o Baban alias Vasant Thapde
Age 5 years
4. Miss. Puja D/o Baban alias Vasant Thapde
Age 5 years
5. Eknath S/o Baban alias Vasant Thapde
Age 5 years

(In certified copy of Judgment age of No.3, 4 & 5
is mentioned as 1 years therefore age of
No.3, 4 & 5 is mentioned as 5 year) No.2, 3, 4 & 5
are minors under the guardianship of their mother
Venubai W/o Baban alias Vasant Thapde.)

6. Subhadrabai W/o Sopan Thapde,
Age 69 years, Occ. Household,
R/o. Dhekanmoha, Tq. & Dist. Beed,
7. Sopan S/o Bajirao Thapde,
Age 75 years, Occu. Nil, R/o as above.

deleted as per order passed on
16/2/2017 by Hon'ble Court.

8. Ramkishan S/o Karbhari Wadjakar,
Age 50 years, Occupation Service
and Tractor owner, R/o. Kuppa,
Taluka Dharur, Dist. Beed.
9. Bharat S/o Haribhau Patankar,
Age major, Occ. Driver, R/o. Giriwali,
Tq. Ambajogai, Dist. Beed.

... **RESPONDENTS**

...
Mr. D. S. Kulkarni, Advocate for the Appellant.
Mrs. Sangmitra Wadmare, Advocate for Respondent Nos.1 to 5.
Mr. T. G. Gaikwad, Advocate for Respondent No.8.

...

CORAM : **V. K. JADHAV, J.**
DATE : 16th February, 2017.

ORAL JUDGMENT:

. Being aggrieved by the judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Beed dated 24th September, 2001 in MACP No.81 of 1997, the original Respondent No.3 / Insurer has preferred this appeal.

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

- i) On 8th November, 1996 at about 07:15 pm, deceased Baban alias Vasant Thapde got down from S. T. Bus at Dhekanmoha Bus Stop and started proceeding on foot

towards his residential house. After crossing a distance of hardly 150 foot from Dhekanmoha Bus Stop, the tractor bearing registration No.MH-23-B-2020 being driven by Respondent / driver came from his backside and gave a dash to him. Deceased Baban crushed under the wheels of the tractor and died on the spot.

- ii) The legal representatives of deceased Baban preferred MACP No.81 of 1997 for grant of compensation under the various heads. It has contended in the claim petition that the Respondent / driver of the said tractor driven the vehicle in rash and negligent manner and caused the accident. Deceased Baban was doing private work of welding and he was earning Rs.1,500/- per month. He was the only earning member of the family and the Claimants were entirely depending on his income.
- iii) Respondent / tractor owner has strongly resisted the claim petition by filing the written statement. It has contended that accident did not occur by said tractor. It has contended that the police concerned in collusion

with one Jagatsing Hanumansing Thakur falsely shown the involvement of his tractor by recording the supplementary statement. He is not liable to pay the compensation as claimed.

- iv) Respondent / tractor driver despite service did not appear and therefore, the hearing was ordered to be proceeded *ex-parte* against him.
- v) The Appellant / Insurer has strongly resisted the claim petition by filing the written statement. It has contended that the Respondents / Claimants in collusion with police falsely shown involvement of the vehicle tractor bearing registration No.MH-23-B-2020 and thus, the Appellant / Insurer is not liable to pay any compensation. The claim petition is also resisted on the ground that the Claimants have claimed exorbitant amount of compensation.
- vi) Both the parties led their oral and documentary evidence in support of their rival contentions. The learned Chairman of the Motor Vehicle Claims Tribunal vide its impugned judgment and award dated 24th September,

2001 allowed the claim petition and thereby directed the Respondent / owner and the Appellant / Insurer to pay jointly and severally Rs.1,92,000/- as a compensation to the Claimants with interest @ 9% per annum from the date of filing of petition till realization of the amount. Hence, this appeal.

3 The learned counsel for Appellant / Insurer submits that witness Jagatsing Thakur examined by the Claimants as eye witness is a got up witness. After the accident, said witness Jagatsing Thakur had lodged a complaint in the police station against the driver of the tractor bearing registration No.MH-23-B-2665. However, during the course of investigation in collusion with the police machinery, said witness Jagatsing Thakur has changed the registration number of the vehicle and improved the story by giving supplementary statement alleging therein that vehicle tractor bearing registration No.MH-23-B-2020 owned by Respondent / owner was in fact involved in the accident. The learned counsel submits that the Respondent / owner has examined his driver and the said driver has deposed before the Tribunal that on the day of accident, said vehicle tractor did not even pass from the said road and that the said vehicle tractor was not at all

involved in any accident on that day. The learned counsel submits that the Tribunal has discarded his evidence and further held the Appellant / Insurer and Respondent / owner liable to pay the compensation only on the ground that there were blood stains on the tires of the trolley attached to the tractor owned by Respondent / owner. The learned counsel submits that the entire approach of the Tribunal is incorrect and improper. The learned Chairman of the Tribunal ought to have dismissed the claim petition for want of satisfactory evidence about the involvement of the vehicle tractor in the accident.

4 The learned counsel for Respondents / original Claimants submits that witness Jagatsing Thakur is an independent eye witness. He had noticed the accident and further arranged a jeep for taking the injured person to the nearby hospital. Further, said witness Jagatsing Thakur also tried to chase the tractor. Witness Jagatsing Thakur has deposed before the Tribunal that he could not notice registration number of the vehicle tractor involved in the accident due to night time and on suspicion, he initially given the registration number of the said vehicle tractor as MH-23-B-2665. He has further given correct number because he has chased the vehicle and even found blood

stained marks on the tires of the trolley attached to the said tractor. The learned counsel submits that the Respondent / driver has failed to appear before the Tribunal though duly served. However, at the instance of the Respondent / owner has examined himself before the Tribunal. However, said witness had not given any explanation as about the said blood stains appearing on the front wheels of the trolley attached to the tractor bearing registration No.MH-23-B-2020. The learned counsel submits that the Tribunal has rightly appreciated the oral and documentary evidence and awarded the compensation to the Claimants directing the Respondents to pay jointly and severally the compensation as worked out. No interference is required.

5 On careful perusal of the evidence adduced by the parties in support of their rival contentions and the impugned judgment and award passed by the Tribunal, it appears that the learned Chairman of the Tribunal has rightly come to the conclusion about the involvement of the vehicle tractor bearing registration No.MH-23-B-2020 in the accident. On perusal of the evidence of witness Jagatsing Thakur, it appears that he is an independent eye witness and after the accident he not only tried to help the injured Vasant @ Baban but also tried to chase the tractor. He had noticed that the tractor kept stationary

within the limits of village Mainda Shivar. He had chased the said tractor in a jeep and accordingly, after noticing the said tractor, inspected the wheels of the tractor and the trolley. During the course of investigation, it was transpired that there were blood stains on the front wheels of the trolley and those blood stain seems to have washed at some place. The Claimants have examined police head constable Sampat Kamble as Witness No.3. He had noticed the said blood stains on the front wheels of the trolley and accordingly prepared the Panchanama to that effect. He had also attached the tractor / trolley under the said Panchanama. After due investigation, he had submitted the charge-sheet against the Respondent / driver. He has denied that a conspiracy was hatched against the tractor driver with the help of said witness Jagatsing Thakur and the charge-sheet came to be filed against the Respondent / driver. I do not find any substance in the submissions that in collusion with said witness Jagatsing Thakur the police machinery falsely submitted the charge-sheet against the Respondent / driver by showing the involvement of the vehicle tractor falsely in the accident. There is a satisfactory evidence in the form circumstantial evidence unmistakably pointing out the involvement the tractor bearing registration No.MH-23-B-2020

in the accident. The learned Chairman of the Tribunal has therefore, rightly drawn the inference to that effect. No interference is required in the said finding holding the driver of the said tractor responsible for causing the accident by driving the tractor bearing registration No.MH-23-B-2020 in a rash and negligent manner.

6 So far as quantum of compensation is concerned, the learned counsel for Appellant / Insurer has not made any submissions in this regard. The learned counsel submits that though the ground raised to that effect, it appears from the impugned judgment and award that the Tribunal has awarded just and reasonable compensation. In view of the above discussion, I proceed to pass the following order:

ORDER

- I. The appeal is hereby dismissed with costs.
- II. In response to the award passed by the Tribunal, if any amount is deposited before this Court or before the Tribunal as the case may be, the Respondents / Claimants are permitted to withdraw the said amount alongwith interest accrued thereon.

III. Appeal is accordingly disposed of.

[V. K. JADHAV, J.]

ndm