

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**FIRST APPEAL NO. 94 OF 2017
WITH
CIVIL APPLICATION NO.13935 OF 2016**

Dashrath s/o Rangnath Gadhave,
Age : 58 years, Occu : Nil,
R/o Waruda, Tq:Dist:Osmanabad,

... **APPELLANT**
(Orig. Respondent No.1)

VERSUS

1. Malan w/o Ramdas Kande,
Age : 32 years, Occu : Household,
2. Pratik s/o Ramdas Kande,
Age : Major, Occu : education,
3. Prashant Ramdas Kande,
Age : Major, Occu : education,
4. Mahesh Ramdas Kande,
Age : 13 years, Occu : education,

Through its guardian Mother,
Malan w/o Ramdas Kande,
The Respondent No.1.

5. Apparao s/o Babu Kande,
Age : 70 years, Occu : Nil,
6. Kadubai w/o Apparao Kande,
Age : 68 years, Occu : Nil,

All the Respondent No. 1 to 6
are the Resident of Hiwarda,
Tq.Bhoom,Dist.Osmanabad... **Ori.Claimants**

7. The United India Insurance Co.
Ltd,Through its Branch Manager,

Minakshi Lodge Building, Near
SBI, Osmanabad, Tq: Dist. Osmanabad.

... **Respondents**

Shri.S. V. Deshmukh, Advocate for Appellant;
Shri.A. S. More ,Advocate for Resp.Nos.1 to 6;
Shri V. R. Mundada., Advocate for Resp.No.7.

WITH

FIRST APPEAL NO.3473 OF 2016

1. Malan w/o Ramdas Kande,
Age : 33 years, Occu : Household,
2. Pratik s/o Ramdas Kande,
Age : 17 years, Occu : Education,
U/g. Of appellant no.1.
3. Prashant s/o Ramdas Kande,
Age : 17 years, Occu : Education,
U/g. Of appellant no.1.
4. Mahesh Ramdas Kande,
Age : 12 years, Occu : Education,
U/g. Of appellant no.1.
5. Apparao s/o Babu Kande,
Age : 71 years, Occu : Nil,
6. Kadubai w/o Apparao Kande,
Age : 69 years, Occu : Nil,

All R/o Hiwarda, Tq. Bhoom,
Dist. Osmanabad.

... **APPELLANTS/**
(Ori. Claimants)

VERSUS

1. Dashrath s/o Rangnath Gadave,
Age : Major, Occu.: Business,

R/o Warud, Tq. and Dist. Osmanabad.

2. The United India Insurance Co.Ltd.,
Through it's Branch Manager,
Minakshi Lodge Building, Near
SBI at Osmanabad. .. **RESPONDENTS**
(Ori. Opponents)

...
Shri.A. S. More ,Advocate for Appellants;
Shri.S. V. Deshmukh,Advocate for Respondent No.1;
Shri V. R. Mundada, Advocate for Respondent No.2.
...

CORAM : P.R.BORA, J.

RESERVED ON : 6th JULY, 2017

PRONOUNCED ON : 29th AUGUST,2017

JUDGMENT:

1) Since both the appeals are arising out of the Judgment and Award passed in MACP No. 85/2011 by Motor Accident Claims Tribunal at Osmanabad (for short the Tribunal) decided on 17th June, 2013, common arguments were heard by me in both these appeals and I deem it appropriate to decide these appeals by a common reasoning.

2) First Appeal No.3473/2016 has been filed by the original claimants, taking exception to the finding recorded by the Tribunal holding

deceased Ramdas Kande to be negligent in the proportion of 90% in occurrence of the alleged accident and consequently to hold that there was no negligence on the part of the deceased in occurrence of the alleged accident; whereas First Appeal No.94/2017 is filed by original Respondent No.1, i.e. original owner of the offending jeep. It is his contention that though the claimants had utterly failed in proving the involvement of the jeep owned by him in occurrence of the alleged accident, the Tribunal has recorded an absolute incorrect finding that the said jeep was involved in the alleged accident.

3) Before adverting to the respective submissions advanced by the learned Counsel appearing for the respective parties, I deem it appropriate to narrate the facts in brief of the alleged occurrence which had given rise for filing the claim petition.

4) It was the case of the claimants that

deceased Ramdas Kande, along with one Arun Sonawane, when was proceeding on motorcycle towards Pardi from the side of Bhoom, was dashed by Black-Yellow colour transport jeep, bearing registration No.MH 25/B.872. It was their further contention that one Sahebrao Sopan Sarukh was travelling from the said jeep along with the other passengers and he made the driver of the jeep to stop the said jeep after occurrence of the accident and when he reached on the spot of the occurrence, noticed that the person, who was severely injured, was his brother-in-law and he took him to the hospital along with the injured pillion rider through S.T.bus and he lodged FIR of the alleged incident. The claimants, therefore, preferred the claim petition against the owner and insurer of the said black-yellow transport jeep. The said jeep was insured with Respondent No.2, i.e.United India Insurance company Ltd.

5) Deceased Ramdas was serving as a driver

in Maharashtra State Road Transport Corporation (for short MSRTC) and was drawing monthly salary to the tune of Rs. 12,000/-. He was in the age group between 35-40 years. The claimants had, therefore, claimed compensation to the tune of Rs. 22,00,000/- from the owner and insurer of the offending jeep.

6) Though the owner of the jeep was duly served, did not appear in the matter. The insurance company contested the claim petition on several grounds. A specific plea was raised by the insurance company that the offending jeep was not involved in the alleged accident. The plea alleging breach of terms and conditions of the insurance policy by owner of the vehicle was also raised by the insurance company for seeking its exoneration from the liability to indemnify the insured.

7) In order to substantiate the claim raised by applicant No.1, i.e. wife of deceased

Ramdas, viz. Malan, testified before the Court. The claimants also relied upon the police papers pertaining to the accident in question. Two witnesses were examined by the insurance company in order to support the defence raised by it.

8) The learned Tribunal, after having assessed the oral and documentary evidence brought before it, though held that the offending jeep was involved in the alleged accident and was duly insured with United India Insurance company Ltd., held the claimants entitled for only 10% of the total amount of compensation as assessed by it from the owner of the offending jeep and passed further order against the insurance company to pay the said amount to the claimants and then recover it from the owner of the vehicle. The Tribunal recorded a finding that in occurrence of the alleged accident, 90% negligence was of the deceased and obviously therefore, disentitled the claimants from receiving the said amount.

9) Aggrieved by the judgment as aforesaid, the original claimants have filed the appeal as stated herein above for setting aside the finding as about the negligence on part of the deceased; whereas the original owner has also filed the appeal, disputing the very involvement of his Jeep in occurrence of the alleged accident.

10) First I would like to deal with the contentions raised in the appeal filed by the owner of the offending jeep.

11) Shri S.V.Deshmukh, learned Counsel appearing for the appellant, assailed the impugned Judgment and Award mainly on the ground that the finding recorded by the Tribunal holding the jeep owned by him to be an offending vehicle and holding its involvement in occurrence of the alleged accident is wholly unsustainable. The learned counsel submitted that the Tribunal has utterly failed in appreciating that though the alleged accident had happened on 18th October,

2010, the FIR in that regard came to be lodged after long lapse of two days, i.e. on 20th October, 2010. The learned Counsel further submitted that the Tribunal has further failed in appreciating that the claimants did not bring on record any evidence to prove the involvement of the offending jeep in occurrence of the alleged accident. The learned counsel further submitted that merely on the basis of one statement, recorded by the police during the course of investigation pertaining to the alleged accident, the tribunal has answered the issue in affirmative that the jeep in question was involved in the accident and that the same was the offending vehicle.

12) The learned Counsel, taking me through the evidence on record and more particularly, the statements recorded of the witnesses during the course of investigation submitted that from such evidence, in no case, a conclusion can be drawn that the jeep owned by the appellant was involved

in the alleged accident. The learned Counsel submitted that the evidence on record clearly demonstrates that the jeep owned by the appellant was falsely involved in the alleged accident. The learned Counsel submitted that in the discussion made in the judgment, the Tribunal, though, has doubted the involvement of the jeep in occurrence of the alleged accident, eventually has recorded a contrary finding holding the involvement of the jeep to have been proved by the claimants. The learned Counsel, therefore, prayed for setting aside the said finding recorded by the tribunal and consequently to dismiss the claim petition against him.

13) Shri A.S.More, learned Counsel appearing for Respondent No.1 to 6, i.e. original claimants, supported the finding recorded by the Tribunal as about the involvement of the offending jeep in occurrence of the alleged accident. The learned Counsel submitted that the ample evidence was adduced by the claimants to

prove the involvement of the offending jeep in occurrence of the alleged accident and the Tribunal has correctly appreciated the said evidence and no interference is required in the finding recorded by the Tribunal in that regard. The learned Counsel, therefore, prayed for dismissal of the appeal.

14) Shri V.R.Mundada, learned Counsel appearing for Respondent No.2, insurance company, submitted that the finding recorded by the Tribunal in regard to involvement of the jeep in occurrence of the alleged accident, is unsustainable. The learned Counsel submitted that the insurance company had in its written statement seriously disputed the involvement of the jeep in occurrence of the alleged accident and has also led the evidence in that regard.

15) I have considered the submissions made on behalf of learned Counsel appearing for the respective parties. I have perused the impugned

judgment and the entire evidence on record. At the outset, it has to be stated that despite being duly served with the notice of the claim petition, present appellant did not appear before the Tribunal and the claim petition was proceeded exparte against him. In the present appeal, the appellant has not provided any explanation as to why he did not appear before the Tribunal, when, according to him, the vehicle owned by him, was not at all involved in the alleged accident. A note has also to be taken that though the impugned Judgment and Award was passed on 17th June, 2013, the appellant did not prefer any appeal against the said Judgment and Award till 2016. The record reveals that delay of 1,108 days has been caused in filing the present appeal by the appellant, the fact apart that the same has been condoned by this Court.

16) The material on record reveals that in order to substantiate the contentions raised in the claim petition, claimant No.1, viz. Malan

Ramdas Kande, deposed before the Court and that was the only oral evidence adduced on behalf of the claimants. The claimants have, however, placed on record the certified copies of the police papers pertaining to the accident in question, which contain the FIR, spot panchanama, inquest panchanama, post mortem report and the copies of the statements recorded by the police during the course of investigation of the crime registered pertaining to the alleged accident. The copy of the final charge sheet is also placed on record by the claimants.

17) As has been argued by the learned Counsel for the appellants, in absence of any cogent explanation as to why the FIR could not be lodged for two days when according to his own statement, the informant was well aware of the fact, that the jeep was involved in the alleged accident, reasonable doubts are created as about the involvement of the said Jeep in occurrence of the alleged accident. The learned Counsel

submitted that the informant is the brother in law of the deceased and more importantly is a lawyer by profession. According to the learned Counsel, it therefore does not appear probable that he would not promptly lodge the F.I.R. if there was another vehicle involved in the alleged accident.

18) The learned Counsel further submitted that the statement recorded of the driver of the ST bus, by which deceased and injured were carried to the hospital, if perused, would reveal that the people on the spot of occurrence had not, in any way, disclosed or alleged at the relevant time that any jeep was involved in the occurrence of the alleged accident. The learned Counsel submitted that had it been the fact that some other vehicle was involved in the alleged accident, it would have been certainly disclosed by the persons assembled on the spot. The learned Counsel submitted that if the statements of Ashok Vitthal Tipe and Rajendra Sambhaji

Chandre are perused, who according to the informant – Sahebrao Sarukh, were co-passengers along with him in the jeep and they all had alighted from the jeep along with him and had simultaneously visited the spot of occurrence, none of them has deposed before the Court that the deceased was identified by informant Sahebrao on the spot of occurrence and that he was the brother in law of said Sahebrao. The learned Counsel submitted that when both these witnesses have stated the fact that the driver of the bus through which deceased was carried to the hospital identified the deceased to be the ST driver, the earlier fact that the deceased was identified by informant Sahebrao to be his brother in law could not have been missed by them while giving their statements to the police or while testifying before the Court. According to the learned Counsel, the said circumstance, creates doubt about the FIR lodged by the informant Sahebrao.

19) The learned Counsel submitted that the injured viz. Anil Sonawane was speaking when he was being taken by a ST bus to the hospital, however, he also did not disclose to the persons in the bus or to the driver or conductor of the said ST bus that one jeep gave them a dash and fled away from the spot of occurrence. According to the learned Counsel, such conduct is also improbable and, therefore, such evidence cannot be depended upon. The learned Counsel further submitted that the statement of Sangram Sharad Gadekar also cannot be a base for reaching to the conclusion that the jeep owned by him was involved in the alleged accident. The learned Counsel submitted that in absence of any such evidence, the Tribunal has recorded a finding that the jeep owned by him was the offending vehicle and that it was involved in the occurrence of the alleged accident.

20) I am, however, not convinced with the arguments advanced by the learned Counsel. In so

far as the delay in lodging the FIR by the informant is concerned, the Tribunal has rightly discussed that the evidence on record sufficiently indicates that there was a confusion as about the location of the spot of occurrence for registering the FIR either at police station Bhoom or at police station Washi. One such document is existing on record which indicates that since the deceased and injured were taken to the hospital at Bhoom, the inquest panchanama etc were recorded by the police officer attached to Bhoom police station, but, subsequently, the case papers were transferred to police station Washi for the further investigation since the spot of occurrence was falling within the jurisdiction of Washi police station. In the circumstances, finding of fact was recorded by the Tribunal in Para 11 of the impugned judgment that there was a dispute relating to the boundary or the area, where the spot was located between two police stations. From the facts so recorded and in absence of any contrary evidence, it can be

reasonably inferred that the same may be a reason for the delay, which has occurred in lodging the FIR.

21) The material on record further reveals that thereafter the police station officer at Washi recorded the statements of Ashok Tipe, Rajendra Sambhaji Chandre and Sangram Sharad Gadekar. Witnesses Ashok Tipe and Rajendra Chandre, both have deposed about the involvement of the jeep in occurrence of the alleged accident. As per their statements, they were travelling by the said jeep at the relevant time. These witnesses have corroborated the facts, as are stated by the informant Sahebrao in his report lodged with the police station Washi. The contents of the FIR reveal that at the relevant time, Ashok Tipe and Rajendra Chandre were also travelling by the said jeep along with the informant. In absence of any contrary evidence, I see no reason for discarding the said evidence. Though it is true that these witnesses were not

examined by the claimants before the Tribunal, mere non-examination of the said witnesses will not be fatal for the case of the claimants. The claimants had relied upon the police papers pertaining to the accident in question and the aforesaid statements were forming part of the charge sheet filed against the driver of the offending jeep.

22) Son of the present appellant was driving the jeep when the alleged accident happened and the record shows that he has been prosecuted in relation to the said accident. The appellant has not produced on record any document to show whether the said criminal case is still pending or disposed of and if disposed of whether his son has been convicted or has been acquitted from the said case and more importantly what was the defence by his son Manoj in the said case. In absence of any contrary evidence brought on record, merely because the FIR was lodged belatedly and that the ST driver did not disclose

that the jeep was involved in the alleged accident, it is difficult to reach to any such conclusion that the alleged jeep was not at all involved in the occurrence of the alleged accident.

23) Even if the statement of Sangram Gadekar is perused, who happens to be witness on the spot of occurrence, he has informed to the police that one black-yellow jeep coming from the side of Bhoom in excessive speed, gave dash to the motorcycle. He has further stated that the jeep did not stop at the spot, but stopped at some distance and 3 persons alighted from the jeep and reached to the spot of occurrence and further that the persons, who alighted from the said jeep, lifted the injured persons from the spot of occurrence and removed them to the side of the road. Though the further part in his statement that he subsequently came to know the number of the jeep and about name of the jeep, is ignored, the earlier facts stated by the said witness duly

corroborate the version of the informant as well as other two witnesses, whose statements were recorded by the police, viz. Ashok Tipe and Rajendra Chandre.

24) After having considered the evidence on record, it does not appear to me that any error has been committed by the Tribunal in recording a finding that the jeep bearing No.MH.25/B.872 was involved in the occurrence of the alleged accident. I, therefore, do not see any reason for setting aside the said finding.

25) I reiterate that the appellant has not challenged the finding recorded by the Tribunal on the other issues framed by it as about the breach of the policy conditions, percentage of negligence on part of the deceased and the final amount determined to be payable to the claimants as compensation.

FA NO. 3473/2016

26) Present appeal is filed by the claimants. Though the imugned judgment is challenged by the claimants on various grounds, the only objection, which was pressed in the arguments was that the Tribunal has manifestly erred in recording a finding that in occurrence of the alleged accident, negligence on part of the deceased motorcyclist was to the extent of 90%.

27) The learned Counsel appearing for the appellants-claimants submitted that the vehicles involved in the alleged accident were coming from the opposite direction of each other and it is, therefore, evident that it was a head-on-collision accident. The learned counsel submitted that in the case of head on collision accident, the proportion of negligence is ordinarily equal on part of both the vehicles. The learned Counsel submitted that in the present matter, the Tribunal has, however, wrongly held the

negligence on part of the deceased to the extent of 90% without any such evidence there for. The learned Counsel submitted that since the another vehicle involved in the alleged accident, i.e. the jeep, which gave dash to the motorcycle, was not available on the spot, the spot panchanama has not been properly prepared and the location of the vehicles on the spot have also not been properly indicated. The learned Counsel submitted that from the evidence on record, a reasonable inference can be drawn that the jeep coming from the opposite direction, was being driven in rash and negligent manner and it gave a dash to the motorcycle at its front.

28) The learned Counsel submitted that the impact was so heavy that the motorcycle was extensively damaged. The learned counsel further submitted that moreover, the informant himself was travelling by the said jeep and he has deposed that the jeep was being driven in rash and negligent manner and it gave dash to the

motorcycle coming from the opposite direction. The learned Counsel submitted that without there being any contrary evidence, merely relying upon the spot panchanama the tribunal has incorrectly held the deceased motorcyclist negligent to the extent of 90% in causing the alleged accident.

29) The learned counsel submitted that in fact the evidence on record clearly suggests that the alleged accident happened due to the sole negligence of the driver of the jeep and no blame could have been attributed on part of the deceased motorcyclist. The learned counsel, therefore, prayed for setting aside the finding recorded by the Tribunal as regards to the extent of negligence on part the deceased motorcyclist in occurrence of the alleged accident and to hold that the alleged accident happened because of the absolute negligence on part of the driver of the offending jeep. The learned counsel further prayed that consequently, the entire amount of compensation as assessed by the Tribunal shall be

jointly and severally made payable by the respondents i.e. owner and insurer of the offending jeep.

30) The learned Counsel appearing for Respondent No.1, opposed the submissions made on behalf of the appellants. The learned Counsel submitted that Respondent No.1 has denied the very involvement of the jeep in the alleged accident. The learned Counsel submitted that Respondent No.1, has, therefore, filed independent appeal for setting aside the finding recorded by the Tribunal as about the involvement of the jeep owned by him in occurrence of the alleged accident. The learned Counsel alternatively submitted that the spot panchanama has been relied upon by the claimants themselves and in such circumstances, relying upon the averments in the spot panchanama as well as the sketch attached to the spot panchanama, if the Tribunal has recorded such finding, no interference can be caused in the finding of fact

as recorded by the Tribunal. The learned Counsel, therefore, prayed for dismissal of the appeal.

31) I have carefully considered the submissions advanced on behalf of the appellants as well as on behalf of the respondents. In the discussion made by me while deciding First Appeal No.94/2017, I have referred to the evidence in regard to the spot panchanama. It has to be stated that the claimants had also relied upon the spot panchanama and the same has been filed on record by the claimants themselves. As is the case of the claimants and as was testified by claimant No.1 – Malan Kande in her testimony before the Court, deceased Ramdas was proceeding towards Bhoom on his motorcycle from the side of Pardi. Pardi is towards north side, whereas Bhoom is towards southern side. The road by which the deceased was proceeding was thus north to south. Since the deceased was proceeding from north to south, he was supposed to be on the

eastern side of the road which was his left side. According to the version of the claimants, the offending jeep was proceeding towards Pardi. The jeep was, therefore, required to be on the western side of the road. Now, it will be useful to see the sketch of the spot of occurrence, as has been drawn while preparing the spot panchanama. It is not in dispute that the spot of occurrence was shown by Sahebrao Sarukh, who has lodged FIR in the matter. The sketch, as has been prepared and which is the part of spot panchanama, shows the spot of occurrence at the western end of the north south Bhoom Pardi road. Having regard to the spot of occurrence, there remains no doubt that deceased motorcyclist, who was supposed to drive his motorcycle from the eastern side of the said road or keeping safe margin from the midst of the road at his side, had completely entered on the wrong side and dashed with the jeep coming from Bhoom and proceeding towards Pardi. The sketch demonstrates that the jeep was being driven from

its correct side. It also does not appear that the jeep was being driven from the center of the road or had entered on the wrong side. Having considered all these circumstances, the Tribunal has recorded a finding that in occurrence of the alleged accident, greater negligence was on part of the motorcyclist and has, therefore, determined the proportion of the said negligence to the extent of 90%.

32) Though it was sought to be canvassed on behalf of the claimants that in the spot panchanama, the spot of accident has been wrongly shown at the western end of the road, the contention so raised cannot be accepted in view of the fact that the spot of occurrence was shown by Sahebrao Sarukh, who according to the claimants, was an eye-witness to the alleged accident, and who had filed FIR of the said accident. Said Sahebrao was present on the spot when the spot panchanama was prepared. Having considered the evidence, as aforesaid, I do not

see any reason to cause any interference in the finding of fact recorded by the learned Tribunal and the objection raised by the complainants in this regard is liable to be rejected.

33) Further, an objection was raised by the learned Counsel for the Claimants that while determining the amount of compensation the tribunal has not followed the guidelines, as laid down by the Hon'ble Apex Court in the case of **Sarla Verma**. However, the objection so raised also appears to be without any substance. As has come on record the deceased was drawing a monthly salary of Rs.9,000/-. While determining the amount of compensation, the Tribunal has duly considered the future prospects of the deceased and has accordingly given incremental enhancement in his monthly income to the tune of Rs.3,000/- per month and has held his salary to the tune of Rs.12,000/- per month for determining the amount of dependency compensation. Further, having regard to the number of dependents, the Tribunal

has rightly deducted $1/4^{\text{th}}$ of the total income of the deceased towards his personal expenses. It further does not appear to me that the tribunal has committed any error in awarding the sum of Rs.60,000/- towards love and affection and RS.5,000/- towards funeral expenses. It therefore, does not appear to me that the Tribunal has committed any error in determining the amount of compensation.

34) After having considered the entire material on record, I do not find any substance in the appeal so preferred. No interference is therefore warranted in the impugned Judgment and Award. The Appeal being devoid any substance, deserves to be dismissed. In the result, the following order is passed.

ORDER

- i) First Appeal No.94 of 2017 and First Appeal No.3473 of 2016, both stand

dismissed, however without any order as
to the costs. Pending Civil
Applications, if any, stand disposed of.

(P.R.BORA)
JUDGE

bdv/
fldr 28.8.17