

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

FIRST APPEAL NO. 582 OF 2015

SMT. SUMAN TRIMBAK PALVE AND ANOTHER
VERSUS
NATHA VAMAN PALVE AND ANOTHER

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Advocate for Appellants : Mr. A. G. Ambetkar.

Advocate for Respondent No.1 : Mr. Ajay T. Kanawade.

Advocate for Respondent No.2 : Mr. S. G. Chapalgaonkar.

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CORAM : **V. K. JADHAV, J.**

DATE : 30th January, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Ahmednagar dated 20th November, 2014 in MACP No.485 of 2008, the original Claimants preferred this appeal.

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

- i. On 29th April, 2008, deceased Trimbak was riding his motorcycle and on Nagar-Pathardi road within

the limit of village Tisgaon, one pick up van bearing registration No.MH-16-Q-2451 gave dash to his motorcycle from the front side. In consequence of which, deceased Trimbak had the sustained injuries. He was immediately shifted to civil hospital, Ahmednagar where he succumbed to the injuries. The Appellant / Claimants approached to the Motor Accident Claims Tribunal, Ahmednagar by filing MACP No.485 of 2008 contending therein that the accident had taken place due to rash and negligent driving of the driver of the said pick up van and that deceased Trimbak was only earning member of the family and the Appellants / Claimants were depending upon his earnings entirely. The Appellants / Claimants by filing the said motor accident claims petition, prayed for grant of compensation under the various heads.

- ii. Respondent No.1 / owner has not disputed the happening of the accident, however, contended

that deceased Trimbak was entirely responsible for the accident and the driver of the said pick up van was not at fault.

- iii. Respondent No.2 / Insurer, however, has strongly resisted the said claim petition by filing the written statement. It was contended that the Claimants and the insured in collusion with each other, filed the claim petition seeking compensation from the Respondent / Insurer. It has also contended that a collusive FIR came to be lodged in the concerned police station 11 days after the happening of the incident. The Member of the Tribunal vide its impugned judgment and award dated 20th November, 2014, after considering the evidence adduced by the parties, dismissed the claim petition. Hence, this appeal.

4 The learned counsel for Appellants / original Claimants submits that even though the police investigation papers are placed on record and those documents are certified by the Investigating

Officer and even though the said documents are exhibited, the learned Member of the Tribunal has discarded the said documents for the reason that the certified copies of the said documents are not placed on record. The learned Member of the Tribunal has further erroneously observed that even though opportunity was given to the Appellants / Claimants, the certified copies of the aforesaid documents are not produced before the Tribunal. The learned counsel submits that even though the Respondent / Insurer has not adduced any evidence to indicate that there is active collusion between the Appellants / Claimants and the insured in filing the claim petition, the learned Member of the Tribunal has drawn the inference only on the basis of the similarity in the surname of the deceased and Respondent No.1 / owner. The learned counsel in the alternate submits that the matter may be remanded to the Tribunal with liberty to the Appellants / Claimants to adduce evidence in support of their contentions.

5 The learned counsel for Respondent / Insurer has fairly admitted that the Appellants / Claimants have produced on record the certified copies of the police documents including FIR, spot Panchanama, postmortem report, inquest Panchanama etc.

however, the learned counsel has pointed out that the Respondent / Insurer has not admitted the said documents. The learned counsel submits that the Respondent / Insurer has raised a specific plea that the claim petition has been preferred in collusion with Respondent No.1 / owner. There is nothing in the FIR to indicate as to how the informant thereafter, approached to the police and lodged the complaint 11 days after the accident in question. There is no explanation whatsoever in the FIR as to why delay has been caused in lodging the complaint. Furthermore, there is absolutely no reference in the inquest Panchanama about the alleged accident showing involvement of some other vehicles beside the vehicle motorcycle being driven by deceased Trimbak at the time of the alleged accident. The learned counsel for the Respondent / Insurer fairly admits that both the parties have not adduced the sufficient evidence before the Tribunal for coming to a definite conclusion. The learned counsel representing the Respondent / Insurer in the alternate submits that the matter may be remanded to the Tribunal with liberty to the Respondent / Insurer to adduce evidence in support of its defence.

6 I have also heard the learned counsel for Respondent No.1 / owner.

7 On perusal of the impugned judgment and award, it appears that the learned Member of the Tribunal has not considered the copies of the documents though placed on record and marked as Exhibit – 27 (FIR), Exhibit – 28 (spot Panchanama), Exhibit – 29 (inquest Panchanama) and Exhibit – 30 (postmortem report). On perusal of the said documents, it appears that the aforesaid documents are certified by the Investigating Officer of the Pathardi Police Station, who was assigned with the investigation of the crime registered on the basis of the complaint Exhibit – 27. However, apart from that, it is a part of record that the Appellants / Claimants have not examined informant Adinath Palve, who has lodged the complaint Exhibit – 27. The Respondent / Insurer though raised a specific defence about the collusion between the Appellants / Claimants and Respondent No.1 / owner, has failed to substantiate the same by examining any witness on that point. In consequence of which, unfortunately there is no material before the Tribunal to arrive at a definite conclusion as to whether the accident as alleged had taken place or not or whether there is collusion between the

Appellants / Claimants and the insured. Since, in the alternate the counsel representing the parties have no objection if the matter is remanded to the Tribunal with certain directions, I proceed to pass the following order:

ORDER

- I. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Ahmednagar dated 20th November, 2014 in MACP No.485 of 2008, is hereby quashed and set aside.
 - II. The matter is remanded to the Motor Accident Claims Tribunal, Ahmednagar with the following directions:
 - a) Re-admit Motor Accident Claims Petition No.485 of 2008 to its original number.
 - b) The evidence, if any, recorded during the original trial of the claim, shall be the evidence during the trial after remand.
- The Claimants as well as the

Respondents are at liberty to lead additional oral / documentary evidence in support of their rival contentions.

- c) The learned Member of the Tribunal shall decide the motor accident claim petition afresh in accordance with law.

III. Parties shall appear before the Tribunal on 27th February, 2017.

IV. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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