

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.639 OF 2014

M/s National Insurance Co.Ltd.,
having its Regd. and Head Office at
Middleton Road, Calcutta Branch Office
LATUR and Divisional Office at Hazari
Chambers Station Road Aurangabad 431 005
through it's Divisional Manager &
Constituted Attorney Mr.banabihari
Dibyasingh patra, aged about 49 years,

**...APPELLANT
(Orgl.IVth Respondent)**

VERSUS

1. Venubai w/o Vithalrao Patil, age 55 yrs.
Occ. Household work.
2. Laxmibai w/o Pandurang Patil, Age 30
Occ. Household and Agri.
3. Ravi s/o Pandurang Patil, age 14
Occ. Education.
4. Kiran s/o Pandurang Patil, 12 years
Occupation: Education.
5. Pallavi d/o Pandurang Patil, aged 8 yrs.
6. Babinanda @ Biba w/o Mallinath Vibhute
32 years, Occ. Household work

No.3 to 5 minors, u/g No.2 mother

All r/o Sangvi (Jewari) Tq. Nilanga,
district Latur.

**(Original claimants
Nos. 1 to 6)**

7. Sanjay s/o Dagdu Hasure, 22 years,
Sangvi (J) Tq. Nilanga, Dist. Latur.
8. Rajendra s/o Ranglal Dhoot, 30 years,
Occ. Business, r/o Raju Medical Stores
Shivaji Chowk, Nilanga Dist. Latur.
9. Pratap s/o Pralhad Hasure, 28 yrs.
Occ. Business r/o as above No.7.

**(Original respondents
1, 3 and 5.)**

- (10. Shyam s/o Sadashiv More, 40 yrs.
Agril., r/o Sangvi Tq. Nilanga, Dist. Latur)

(R/10 is abated as per order dated 10.9.2014)

...RESPONDENTS

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Mr. V.N.Upadhye, Advocate, for the appellant.
Mr. V.D.Gunale, Adv., for respondent nos. 1 to 6.
Mr. S.B.Gastgar, Adv., for respondent nos. 8 & 9
Respondent no.7 served.

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CORAM: P.R.BORA, J.

DATE :JUNE 20th, 2017

ORAL JUDGMENT:

1. The present appeal is filed against the judgment and award passed in Motor Accident claim

Petition No.29/2004 by the Motor Accident Claims Tribunal at Nilanga, decided on 21st of July, 2006.

2. The aforesaid claim petition was filed by the present respondent nos. 1 to 6 claiming compensation on account of death of one Pandurang Vitthalrao Patil alleged to have been caused in a vehicular accident happened on 16th of April, 2004 at Sangavi - Killari road at about 8.30 a.m. having involvement of a Bajaj Scooter bearing registration No.MH-24-141 owned by present respondent no.7 and Hero Honda Motor Cycle bearing registration MH-24-K 6619 owned by respondent no.8 and insured with the appellant Insurance Company.

3. It was the case of the claimants before the Tribunal that deceased was a pillion rider on the Bajaj Scooter and while he was proceeding towards Killari, a Bajaj M-80 motor cycle, coming from opposite direction, gave a dash to the Scooter and, in the accident so happened, deceased Pandurang as well as the scooter rider both fell down. It was the further contention of the claimants before the Tribunal that immediately thereafter,

a motor cycle bearing registration No.MH 24-K 6619 came from behind the M-80 motor cycle, and it run over deceased Pandurang who had fell down because of the dash given to his scooter by the moped and in the accident so happened, eventually, Pandurang suffered death.

4. While opposing the petition, a specific stand was taken by the appellant Insurance Company before the Tribunal that the vehicle insured with it was not at all involved in the alleged accident and, as such, no liability should be fastened on the appellant Insurance Company. The Tribunal, however, turned down the said objection and passed the award even against the owner and insurer of the Hero Honda motor cycle. The Tribunal has held the driver of the M-80 and the driver of the Hero Honda motor cycle responsible in equal proportion for causing the accident in question. The Tribunal has, therefore, directed appellant Insurance Company to pay 50 per cent of the compensation as determined by the Tribunal being the insurer of the motor cycle involved in the alleged accident. Aggrieved thereby, the Insurance company has preferred the present appeal.

5. Shri V.N.Upadhye, learned Counsel appearing for the appellant Insurance Company, invited my attention to the FIR and the spot panchnama. The FIR is at Exh.51 and the spot panchnama is at Exh.53. Learned Counsel submitted that neither in the FIR nor in the spot panchnama, the existence of the Hero Honda motor cycle bearing registration No.MH-24-K-6619 is shown. Learned Counsel, thereafter, read out the evidence of Pradip Patil (PW No. 2). As per the case of the original claimants also deceased Pandurang was pillion rider on the Bajaj scooter which was being driven by Pradip Patil. As such, evidence of Pradip Patil assumes vital importance. Learned Counsel pointed out that in his evidence Pradip Patil has not even deposed about involvement of Hero Honda motor cycle bearing registration No.MH-24-K-6619. Learned Counsel submitted that a foul attempt was made by the claimants to involve owner and insurer of the Hero Honda Motor cycle bearing registration No.MH-24-K-6619 only for the reason that the Bajaj M-80 motor cycle, which was actually involved in the accident as per the FIR and spot panchnama, was not having any insurance.

6. Learned Counsel submitted that an attempt was subsequently made by the claimants to amend the petition and amendment application was also filed, however, the said amendment application merely remained on record and no orders were passed on the said application. Learned Counsel has placed on record certified copy of the said amendment application. Perusal of the said application reveals that the claimants were seeking amendment in the petition to the effect that for occurrence of the alleged accident the negligence on the part of the person who was driving Hero Honda motor cycle bearing registration No.MH-24-K-6619 was responsible.

7. Learned Counsel, taking me through the discussion made by the Tribunal, further submitted that, without any evidence the Tribunal I has recorded an erroneous conclusion holding the motor cycle rider of motor cycle No. MH-24-K-6619 also responsible for the occurrence of the alleged accident. Learned Counsel submitted that the claimants had utterly failed in bringing on record any evidence to prove the involvement of the

motor cycle bearing registration No. MH-24-K-6619. Learned Counsel, therefore, prayed for setting aside the impugned judgment and award to the extent it is passed against the appellant Insurance Company.

8. Shri Gunale, learned Counsel appearing for the original claimants, supported the impugned judgment and award. Learned Counsel submitted that the Tribunal has rightly recorded the conclusion that the motor cycle bearing registration No. MH-24-K-6619 was involved in the alleged accident and, in fact, the death caused of Pandurang was result of the negligence on the part of rider of the said motor cycle. Learned Counsel submitted that Sanjay Hasure, owner of Bajaj M-80 vehicle bearing registration No.MH-12-4013, has categorically deposed in his testimony before the Court that the motor cycle bearing registration No. MH-24-K-6619 was coming from his behind and it run over deceased Pandurang who had fell down in the accident happened because of the collision between his motor cycle and the Bajaj Scooter on which the deceased was pillion rider. Learned Counsel submitted that the Tribunal has also rightly relied upon the

injury certificate pertaining to Shri Pratap Hasure who was plying Hero Honda motor cycle at the relevant time. Learned Counsel submitted that the Tribunal has passed a well reasoned order and no interference is, therefore, required in the judgment and award so passed.

9. Learned Advocate Shri Gastgar adopted the arguments advanced by shri Upadhye, learned Counsel appearing for the appellant Insurance Company.

10. I have carefully considered the submissions made on behalf of the learned Counsel appearing for the respective parties. I have perused the impugned judgment as well as the evidence on record and the other material existing on record. On perusal of all these documents, it is apparently revealed that the motor cycle bearing registration No.MH 24-K-6619 may not be involved in the alleged accident. The FIR and the spot panchnama are the material documents which are relied upon by the claimants as well as Tribunal. Perusal of these documents reveal that there was no involvement of motor cycle bearing registration No.MH-24-K-6619 in

occurrence of the alleged accident. The Tribunal in paragraph no.13 of the judgment has referred to FIR (Exh.51) and has observed that in the FIR it is specifically mentioned that respondent no.3 Pratap was following M-80 of respondent no.1 on his motor cycle. Even on repeated reading of the FIR I do not find any such averment in the FIR. Even the learned Counsel appearing for the claimants could not point out or could not bring to my notice any such averment from the FIR. From where the learned Tribunal has gathered the said information is not understood. The FIR shows involvement of only two vehicles; Bajaj Scooter bearing registration No. MH-24-141, and the M-80 motor cycle / moped bearing registration No.MH-12-4013. The spot panchnama also shows involvement of only aforesaid two vehicles and involvement of the Hero Honda motor cycle bearing registration No. MH-24-K-6619 is not shown in both of these documents.

11. Further, I fully agree with the submission made by Shri Upadhye, learned Counsel appearing for the appellant Insurance Company that the best person to

depose about the occurrence of the accident was Pradip (PW No.2) who was plying Bajaj Scooter at the time when the accident occurred. PW No.2 Pradip Patil, in his testimony before the Court has not uttered a single word about involvement of Hero Honda motor cycle bearing registration No. MH-24-K-6619 much less any negligence on the part of the rider of the said motor cycle. According to evidence of PW No.2, Pradip Patil, the accident happened because of the dash given to his scooter by Bajaj M-80 moped bearing registration No.MH-12-4013. PW No.2 has attributed entire negligence on the part of M-80 rider and has not attributed or even whispered about involvement or negligence on the part of Hero Honda motor cycle or rider of the Hero Honda motor cycle.

12. The Tribunal in its judgment has also discussed the evidence of Sanjay Hasure, owner of Bajaj M-80 involved in the said accident and relied upon his testimony, so far as involvement of Hero Honda motor cycle is concerned. In view of the discussion so made, I carefully perused the evidence of Sanjay Hasure who had

deposed at Exh. 80. I deem it necessary to reproduce here-in-below some portion in his evidence:

"That scooter gave dash to my vehicle, because of which I was injured. So I become semi-unconscious. Then I came to know that Hero Honda Splender Motor-Cycle owned by opponent No.2 Rajendra Dhoot came from behind and gave dash to the vehicle of Pandurang Patil. The wheel of that motor-cycle run over the head of deceased Pandurang. That motor cycle was driven by opponent No.3 Pratap Hasure."

From the aforesaid averments it is quite evident that Sanjay Hasure did not have any personal knowledge about the facts deposed by him before the Court as about involvement of the Hero Honda motor cycle. It is also not disclosed by him as to from whom he came to know about involvement of Hero Honda motor cycle. The statement of the said witness that the Hero Honda motor cycle run over Pandurang and that was the reason that the Pandurang suffered death is hearsay and is not supported by any other evidence, more importantly as mentioned earlier, not even by the person with whom deceased Pandurang was pillion rider when the alleged accident

happened.

13. After having considered the entire material on record, the conclusion recorded by the learned Tribunal holding the Hero Honda motor cycle rider responsible in occurrence of the alleged accident cannot be sustained. The conclusions recorded by the Tribunal are not only without any evidence but contrary to the evidence on record. The finding so recorded by the Tribunal is, thus, perverse and deserves to be set aside. There is absolutely no material to show that in occurrence of the alleged accident the Hero Honda Motor cycle was involved so as to hold the owner and insurer of the said motor cycle responsible for payment of any compensation to the original claimants.

14. The Appeal filed by the Insurance Company, therefore, deserves to be allowed and is accordingly allowed. In the result, following order is passed:

ORDER

1. The impugned judgment and award so far as it imposes liability on the present appellant and present

respondent no.9 stands quashed and set aside.

2. The M.A.C.P. No.29/2004 stands dismissed against respondent nos. 3 and 4 therein.

3. The amount deposited by the Insurance Company in this Court while filing the present First Appeal shall be refunded to it along with the interest accrued, if any.

The First Appeal (No.639/2014) is allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

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AGP/639-14FA