

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

FIRST APPEAL NO.1565 OF 2012

National Insurance Co. Ltd., having
it's registered and head-office at
3, Middleton Street, Kolkata; One
of its Branch Office at Dhule, **NOW**
through its Divisional Office at
Hazari Chambers, Station Road,
Aurangabad.

**...APPELLANT
(Orig. Resp. No.2)**

VERSUS

1. Smt. Nandabai Wd/o Prakash alias
Pralhad Dhumal,
Age: 39 years, Occu. Household,
R/o. Mohadi Upanagar, Dhule,
Dist. Dhule
2. Kiran s/o. Prakash alias Pralhad Dhumal
Age: 12 years, Occu. Student,
R/o. Mohadi-Upa Nagar, Dhule
a minor, but since then having
attained majority.
3. Pavan s/o. Prakash alias Pralhad
Dhumal, Age: 10 years,
Occu.: Student – A minor U/g. of
his natural mother Smt. Nandabai
Dhumal – Resp. No.1.

**...RESPONDENTS
(Orig. Claimants
No. 1 to 3)**

4. Chandrashekhar s/o. Balramsingh
Patil (Pardeshi), Age: Adult
Occu.Business, R/o. Songir,
Tq. & Dist. Dhule

**...RESPONDENT
(Orig. Resp. No.1)**

Mr. R.C. Bora, Adv. h/f. Mr. P.P. Bafna, Advocate for Appellant;
Mr. S.V. Choudhari, Advocate for Respondent No.1.

...

CORAM: P.R. BORA, J

DATE : July 4th, 2017

ORAL JUDGMENT:

1. Present appeal is filed against the Judgment and Award passed by the Motor Accident Claims Tribunal at Dhule in M.A.C.P. No.1176/2005, decided on 2nd of December, 2011.

2. The Claim Petitions wherein the involvement of the vehicle concerned is seriously disputed, what should be the approach of the Tribunal while appreciating the evidence in such matters is the issue for consideration in the present appeal.

3. The present respondent nos. 1 to 3 (hereinafter referred to as 'claimants') had filed the aforesaid petition

claiming compensation on account of death of one Prakash @ Pralhad Dhumal, alleging that he died in a vehicular accident happened on 1st of April, 2005, having involvement of a truck bearing registration No. MTS 7030. It was the case of the claimants before the Tribunal that on the date of accident, deceased was proceeding towards village Avdhan, on his Scooter bearing registration MH-18-A-1528 and while he was so proceeding, he was dashed by a truck bearing registration No. MTS 7030, coming from the opposite direction in a high speed. It was the further contention of the claimants that the alleged accident happened because of the rash and negligent driving of the driver of the said truck. The claimants had, therefore, claimed compensation of Rs.5,00,000/- from the owner and insurer of the aforesaid truck. Respondent no.3 herein is the owner of the said truck and it was insured with the appellant insurance Company.

4. The owner did not appear before the Tribunal, and the claim petition was proceeded ex-parte against him. The Insurance Company, however, resisted the

petition by filing its written statement raising several grounds. The specific defense was raised by the Insurance Company that the vehicle insured with it was not involved in the alleged accident. In order to substantiate the claim so raised, one of the claimants deposed before the Court and three more witnesses were examined by the claimants. No oral evidence was adduced on behalf of the respondents. The claimants had also placed reliance on the police papers pertaining to the accident in question.

5. The learned Tribunal, after having assessed the oral as well as the documentary evidence brought before it, partly allowed the claim petition and held the claimants entitled for the total compensation of Rs.3,98,500/- inclusive of No Fault Liability amount. The Tribunal held the owner and insurer of the offending truck liable for payment of compensation with interest thereon at the rate of 9 per cent from the date order till realization. Aggrieved thereby, the Insurance Company has filed the present appeal.

6. Heard Shri Bora, learned Counsel holding for Shri Bafna, learned Counsel appearing for the appellant Insurance Company. Learned Counsel submitted that without there being any evidence the Tribunal has held the insured vehicle to have been involved in the said accident and has consequently held the owner and insurer of the said truck liable for payment of compensation to the claimants.

7. Learned Counsel read out the evidence of two witnesses, namely, Bhanudas Marathe and Deepak Sharma, more particularly highlighting vital admissions given by these two witnesses in their cross examination. Learned Counsel submitted that the Tribunal has manifestly erred in appreciating the evidence of these witnesses. Learned Counsel submitted that the admissions given by these witnesses in their cross examination clearly indicate that they have not eye witnessed the alleged accident and were got up witnesses. Learned Counsel further submitted that though alleged accident happened on 1st of April, 2005, the statements of these witnesses

were recorded after a period of 40 days i.e. on 10th of May, 2005. Learned Counsel submitted that the entire said evidence was unbelievable but the learned Tribunal, relying upon such evidence, has held the involvement of the vehicle insured with the appellant Insurance Company to have been proved in occurrence of the alleged accident. Learned Counsel, therefore, prayed for setting aside the impugned judgment and order and exonerate the appellant Insurance Company from its liability.

8. Shri Chaudhari, learned Counsel appearing for the original claimants, supported the impugned judgment. Learned Counsel, reading out observations made by the Tribunal in paragraph nos. 14, 15 and 16 of the judgment, submitted that the Tribunal has appropriately considered the evidence brought on record and recorded correct conclusions. Learned Counsel submitted that no interference is required in the impugned judgment and order. Learned Counsel submitted that the said two witnesses, namely, Bhanudas Marathe and Deepak Sharma have categorically stated about involvement of the

alleged truck in occurrence of the alleged accident. Learned Counsel submitted that in absence of any circumstance brought on record by the respondents showing the reason for these witnesses to state anything false, the evidence of these witnesses cannot be disbelieved. Learned Counsel submitted that in such circumstances, no fault can be found in the conclusions recorded by the Tribunal in relying upon the testimonies of these two witnesses.

9. I have carefully considered the submissions made by the learned Counsel appearing for the parties. I have also perused the impugned judgment and have gone through the oral evidence recorded in the matter as well as the documents placed on record.

10. The FIR was admittedly lodged against unknown vehicle. It is further not in dispute that the spot panchnama, which was prepared on the second day of the accident, also does not contain description of the vehicle involved and reference is to the unknown vehicle. The

alleged accident had happened on 1st of April, 2005. The investigation in such matters may not extend beyond few days. The Police papers, however, show that some statements were recorded on 10th of May, 2005, and in the said statements, witnesses disclosed the involvement of the offending vehicle and thereafter, the charge-sheet came to be filed against the driver of the truck bearing registration No. MTS 7030.

11. I have gone through the evidence of the two witnesses who were examined so as to prove the involvement of the offending vehicle in occurrence of the alleged accident. PW No.2 Bhanudas Marathe in his examination in chief has deposed as under:

Examination in Chief by Shri Advocate for Applicant

"1) The accident had occurred in front of K.D. Company around 9-30 p.m. The person named Dhumal was on Scooter MH/18/A/1558. He was proceeding towards Laling from Dhule. At that time A Dumper dashed him which was coming from Malegaon side. The scooter had come under the wheel of the dumper which was bearing No. MTS/7030. The said accident occurred in my presence.

But I cannot tell who was at fault. Police had recorded my statement."

12. I also deem it appropriate reproduce hereinbelow the entire cross examination of the aforesaid witness which reads as under:

"Cross-examination by Shri. C.P. Kulkarni
Advocate for opponent No.2

2) The garage where I work is located in front of K.D. Company. I come to the garage at 8-30 to 9-00 a.m. and stay there till 10-00 to 11-00 p.m. The accident took place in the year 2005. I was present in my garage at the time of accident and at that time I heard noise and therefore rushed to the spot. The K.D. Company and our garage are located on Highway and there is always traffic on the highway. It is correct to say that when I came to the spot the scooter was lying there but the vehicle giving dash was not seen there. The deceased Dhumal was also the resident of Mohadi. I had not identified the dead body on the spot to be that of Dhumal. I did not carry the injured to the hospital from the spot. I do not know whether the injured was taken or not to the hospital. After the accident I immediately went home. On next day I had attended my work in the garage. The police came to the spot on the next day and made inspection there. I did not go to the spot immediately after the accident to inform them about the incident.

3) My statement was recorded by police after 15-20 days of the accident. The police had come to the garage to record my statement. I had not noted down the registration number of the vehicle giving dash. But I had stored it in my memory. Except the numbers of these two vehicle. I had not stored the number of any vehicle in my memory. I did not feel that after the accident I should go to the police and inform about the accident. Not correct to suggest that no such accident took place in my presence. Not correct to suggest that I am stating false to assist the petitioner that I have seen the accident. Not correct to suggest that I am giving false evidence."

Re-Examination...Nil.
R.O. & A.C."

13. The second witness, who was examined as an eye witness to the alleged accident, was Deepak Sharma. I intend to reproduce his evidence also since in the cross examination he has also given similar material admissions:

Examination in Chief by Shri. Advocate for Applicant.

"1) I run lathe Machine work shop at Thule which is located in the vicinity of K.D. Company. The deceased in this case met with an accident which involved the Dumper at 9-00 to to 9-30 p.m. When I was closing my workshop, I heard that

noise and some people had gathered and by that time the driver of the Dumper ran away from that place with the Damper. It was Dumper bearing No.MTS/7030. The Dumper was coming in high speed from Malegaon side while the deceased was proceeding towards Avdhan. I do not know that name of the deceased. My statement was recorded by police in the accident case on 10-5-2005.

Opponent No.1 already set Ex-parte, hence no cross.

On oral request of Adv. Suryawanshi cross-examination deferred for short time."

Cross-examination resumed on S.A. By Shri. C.P. Kulkarni Advocate for opponent No.2.

2) My workshop is located at Gauri Vansapati Company on Malegaon road by the right side of the road while proceeding towards Malegaon. There are other workshops by the side of my workshop. It is correct to suggest that my workshop was located about 15-20 feet interior from the old Bombay-Agra road during the period incident took place. There were number of Taparies in front of my workshop. My work shop is named Deepak Engineering workshop. K.D. Company is about 10 feet away from my workshop. I had locked my workshop before I heard the noise. There is always traffic on Agra road being Highway. As soon as I heard noise I rushed to that side. The accident occurred about 10-15 feet away from my work shop. Crowd had gathered at the place of incident. When I reached the spot

10 to 12 persons had gathered there. When I reached the spot the scooterwala was lying there. I did not see as to who was the scooterwala and I did not make any arrangement to take him to the hospital. After staying for 2 minutes on the spot, I went away. When I reached the spot the vehicle giving dash had run away. I did not note down the number of the offending vehicle. On next day when the police arrived on the spot or my work shop I was not present in my shop. Police had made inquiry with the nearby shop owners and with me also. Not correct to suggest that on the next day of the incident I had stated to the police that I did not know about the vehicle giving dash. Police had recorded my statement on next day. Police had come to me thereafter also but I do not remember the exact date. I do not remember whether the police had recorded my statement for second time. I had not told the name of deceased to the police at that time. I am aware that his name was Dhumal.

3) Not correct to suggest that I did not see the accident and I do not know about the vehicle which gave dash to the deceased. Not correct to suggest that on next day of incident I had told the police that I was not knowing about the incident. I was not summoned as earlier by the Court in connection with this accident. Not correct to suggest that I am giving false evidence just to assist the relatives of the deceased.

Re-examination..Nil.
R.O. & A.C."

14. On careful reading of the evidence of these

two witnesses, there remains no doubt that none of these witnesses had eye witnessed the alleged accident. It cannot be believed that the witnesses who have seen such serious accident, would not disclose it to the Police or to the relatives of the deceased or anybody else for more than 40 days and for the first time they will disclose the same to the Police. It further cannot be believed that the investigation in the matter of road accident will be stretched for more than 40 days. Normally, while conducting investigating in the accident cases, the Police immediately make an enquiry with the persons who are nearby or around the spot of the accident. As has come on record through the evidence of the aforesaid two witnesses, their garages are just at a distance of 20 to 25 feet from the spot. It has also come on record that on the very second day of the accident, Police had been to the spot and had enquired with the shop owners around the spot. P.W.3 Deepak, in his cross examination, had clearly admitted that on the next day of the accident the Police persons made enquiries with the persons in the shops and garages around the spot of accident. The Police papers

filed on record do not reflect that the involvement of the subject truck was disclosed by any of the said persons with whom the Police had enquired on the next day of the accident.

15. PW 3 Deepak, though, initially stated that he was not present in the garage when Police had come on the next day, subsequently he admitted that the Police had inquired with him also. Thereafter, he candidly admitted that Police had also recorded his statement on the next day of the accident. Admittedly, the said statement of PW Deepak is not part of the Police papers. The statement of PW Deepak, which is filed on record and forms part of the chargesheet filed against the driver of the subject truck, is recorded on 10th May, 2005, i.e. after 40 days of the occurrence of the alleged accident.

16. P.W.2 Bhanudas Marathe, in his examination in chief, has named the person on the Scooter as Dhumal. In his cross-examination, however, it has come on record that he had not identified the person on the spot to be

Dhumal. He has further deposed that he did not carry the injured to the hospital. Further, he stated that after the incident of accident, he immediately went to his home. From the evidence as above of P.W. 2 Bhanudas it is discernible that he was not knowing the person who had met with an accident.

17. It has come in the cross-examination of P.W. 2 Bhanudas that he had not noted down the registration number of the vehicle giving dash. In his statement recorded by the police after 40 days of the alleged accident, he has, however, stated the registration numbers of both the vehicles; the scooter and the truck. As per his version in the cross-examination he had stored the said number in his memory. It is interesting to note that as further deposed by the said witness except the numbers of the said two vehicles he had not stored in his memory the number of any other vehicle. Based on the information given by P.W. 2 Bhanudas that he had stored in his memory the registration numbers of only two vehicles involved in the alleged accident, a further

question seems to have been asked to the said witness; whether, did he then not find it necessary to immediately inform about the same to the Police whereupon he has answered that he did not feel that after the accident, he should go to the police and inform about the accident. The question, therefore, arises as to why PW No.2 Bhanudas then stored the numbers of the vehicles involved in the alleged accident in his memory.

18. PW 2 Bhanudas and PW 3 Deepak both have clearly admitted in their cross examination that when they reached the spot of the accident, the vehicle giving dash had fled from the spot. When the vehicle giving dash had fled from the spot of the occurrence before PW 2 and PW 3 reached to the spot of the accident, there was no occasion for both these witnesses to note down the number of the said vehicle. The fact stated by PW 2 Bhanudas that he had stored the number of the said vehicle in his memory, therefore, is unbelievable and cannot be relied upon. For the same reason though PW 3 Deepak in the statement given by him to the Police after

40 days of the occurrence of the alleged accident might have stated the number of the offending vehicle and has accordingly deposed in his testimony before the Court, the same also cannot be depended upon. After having closely scrutinized the evidence of these two witnesses, I have no doubt in my mind that both the witnesses were got up witnesses and had, in fact, not eye witnessed the alleged accident.

19. It is surprising that the Tribunal has believed the evidence of such witnesses and held the involvement of the subject truck bearing registration No.MTS 7030 to have been proved in occurrence of the alleged accident. The Tribunal has observed that PW 2 Bhanudas and PW 3 Deepak both are natural and trustworthy witnesses. It appears that the learned Tribunal did read only the examination in chief of the said witnesses and did not seem to have taken any pain of reading cross examination of these witnesses and if would have read, has miserably failed in appreciating the said evidence.

20. I have elaborately scanned the evidence of said two witnesses. I need not to reiterate the entire discussion made by me. Suffice it to say that the vital admissions which have been given by these witnesses in their cross examination lead to the only conclusion that they had not eye witnessed the alleged incident. The evidence of both these witnesses is highly improbable and untrustworthy and hence cannot be relied upon. As has been observed by the Honourable Apex Court in the case of **Oriental Insurance Company Vs. Meena Warial (AIR 2007 SC 1609)**, it may be true that the Motor Vehicles Act, in so far as it relates to claims for compensation arising out of the accidents is a beneficial legislation and it may also be true that subject to the Rules made in that behalf the Tribunal may follow a summary procedure in dealing with the claim, it does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law while appreciating the evidence adduced in the matter and in determining the claim for

compensation.

21. In a claim under Section 166 of the Act, the primary burden is on the claimant to prove that the alleged accident happened because of the rash and negligent driving of the vehicle allegedly involved in the said accident. To prove the involvement of the vehicle is thus sine qua non and, thereafter, the other issues would arise whether the driver of the vehicle was rash or negligent in driving the said vehicle or otherwise. In the present matter the very involvement of the offending vehicle has not been proved by the claimants. As stated hereinabove, PW 2 Bhanudas and PW 3 Deepak were the only witnesses examined by the claimants to prove the involvement of the offending truck in occurrence of the alleged accident. When the evidence of both these witnesses is found untrustworthy and unbelievable, the finding recorded by the Tribunal holding the involvement of the subject truck in occurrence of the alleged accident to have been proved, has to be set aside and is accordingly set aside. In the result, the following order is

passed:-

ORDER

i. The Motor Accident claim Petition No.1176/2005 stands dismissed.

ii) It would be open for the appellant Insurance Company to withdraw the amount, if any, deposited by it in this Court in satisfaction of the award impugned in the present appeal.

iii) The respondents i.e. original claimants shall refund the amount withdrawn, if any, to the appellant Insurance Company within four months from the date of this order; failing which, it would be open for the appellant Insurance Company to recover the said amount in the present proceeding itself.

First Appeal stands allowed in aforesaid terms.

(P.R. BORA)
JUDGE