

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 773 OF 2016

1. Savita w/o Parmeshwar Jadhav
Age 24 years, Occ. Household
R/o. Dasala, Tq. Sailu
District Parbhani
 2. Vaishanavi d/o Parmeshwar Jadhav
Age 4 years, Minor, u/g of real mother
Savita w/o Parmeshwar Jadhav
i.e. petitioner No.1, R/o. As above
- ...Appellants

versus

1. Mr. Satyanarayanji s/o Dashrathji Zanwar,
Age 45 years, Occ. Business,
R/o. Marwadi Galli, Sailu
Tq. Sailu, District Parbhani
 2. The Oriental Insurance Company Ltd.
Through its Branch Manager,
"Daulat Building"
Shivaji Chowk, Parbhani,
Tq. and District Parbhani
- ...Respondents

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Advocate for Appellants : Mr. Khedkar Amol P.
Advocate for Respondent No.2 : Mr. A.S. Deshpande

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CORAM : V. K. JADHAV, J.
DATED : 11th JANUARY, 2017

PER COURT :-

1. Heard finally with consent of parties, at admission stage.
2. Being aggrieved by the judgment and award passed by the Chairman, M.A.C.T. Parbhani dated 5.3.2014 in M.A.C.P. No. 391 of 2010, the original claimants preferred this appeal.

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

a) On 27.5.2010, deceased Parmeshwar was going on motor cycle with one Baliram by Sailu-Pathri Road. On way, near Mauli Ginning, one unknown vehicle gave a dash to the said motor cycle. In consequence of which, deceased Parmeshwar died on the spot whereas said Baliram had sustained grievous injuries on his person.

b) The appellants, who are legal representatives of deceased Parmeshwar, had filed M.A.C.P. No. 391 of 2010 for grant of compensation under various heads.

c) Respondent No.1 owner had strongly resisted the claim petition by filing written statement at Exh.14, contending that the accident was not occurred on account of rash and negligent act of the driver of the jeep. It has also contended that the driver of the jeep has been falsely impleaded. Respondent No.2 insurer has raised same defence as well as certain statutory defence. Claimant No.1 widow has examined herself on oath and relied upon relevant papers of the investigation. The respondents have not examined any witness. The learned Chairman of the Tribunal, by its judgment and award dated 5.3.2014, dismissed the claim petition with costs.

Hence, this appeal.

4. Learned counsel for the appellants-claimants submits that respondent No.1 owner has not denied the happening of accident. On the other hand, it has contended by respondent No.1, in his written statement, that deceased was riding the motor cycle in rash and negligent manner. It has also stated in the written statement that deceased and said Baliram were under the influence of liquor and deceased himself gave dash to the jeep and thus, the accident occurred due to the fault on the part of deceased. It has also contended in the written statement that at the time of accident, the driver of the jeep was not driving the jeep in rash and negligent manner. Learned counsel submits that on the basis of complaint lodged by said Baliram, initially, crime was registered against unknown vehicle and during the course of investigation, one eye witness viz. Vyankat Eknath Thorat has disclosed about involvement of vehicle jeep in the accident. Thus, after due investigation, concerned police has submitted charge sheet against the driver of the jeep and said jeep came to be seized by the police. Learned counsel submits that claimant No.1 has given necessary details about the accident and same is also not disputed by the respondent No.1 owner.

Learned counsel for the appellants submits that in the given set of facts, the maxim of *res ipsa loquitur* squarely applies in the case and it is for respondent No.1 owner to prove that the driver of the jeep was not responsible for accident and that deceased himself is responsible for the accident. Learned counsel submits that the Tribunal has disbelieved the entire evidence of the claimants and dismissed the claim petition erroneously. Learned counsel submits that deceased Parmeshwar was mason by occupation and he was earning Rs.6000./- p.m.. He was the only earning member in the family and the claimants were entirely depending upon his income.

5. Learned counsel for respondent No.2 insurer submits that the claimants have failed to prove the accident and on the basis of the statement of so called eye witness Venkat, the concerned police has filed charge sheet against the driver of jeep. In the given set of facts, driver of the jeep was necessary party. Even though said Baliram, who was riding on the motor cycle at the relevant time, was available, the claimants have not examined him as a witness and said Baliram, though riding on motor cycle at the time of accident, failed to give registration number and description of the vehicle. Thus initially, the crime was registered against unknown vehicle. There is collusion between the claimants and the insured and after a gap of four months, involvement of jeep in question is falsely shown in the

accident. The Tribunal has therefore, rightly dismissed the claim petition and therefore, no interference is required.

6. Claimant No.1 Savita has filed her affidavit of evidence and stated therein that on 27.5.2010 at about 20.00 hours, her deceased husband had been to Sailu at construction site and after completion of work, her deceased husband alongwith one Baliram, had started to return to the village Dasala on motor cycle bearing No. MH-22-M-3084. On Sailu to Pathri road, near Mauli Ginning, one jeep bearing registration No. MVV 9501 came in rash and negligent manner, from opposite direction and gave dash to the motor cycle of deceased. She has further contended in her affidavit of evidence that driver of the jeep ran away from the spot. Her husband Parmeshwar died on the spot on account of severe injuries sustained in the accident.

7. On perusal of written statement filed by respondent No.1 owner, it appears that in para 3 of the written statement, respondent No.1 has denied the manner in which accident occurred. It has denied that said jeep had given dash to the motor cycle of the deceased when it reached near Mauli Ginning. It has further submitted in the said para of written statement that the deceased and one Baliram s/o Sitaram were riding on Motor cycle No. MH-22-M-3084 and deceased was driving the said motor cycle in rash and

negligent manner. They were under the influence of liquor and deceased himself gave dash to the jeep in question. Thus, it is clear that respondent No.1 owner has not denied the happening of the accident.

8. Respondent No.1 since has not denied the happening of the accident, and when claimant No.1 has given all details of accident, the maxim *res ipsa loquitur* squarely applies to the facts of the present case. By application of said maxim, the burden shifts on respondent No.1 owner to prove that deceased was responsible for the accident and the driver of the jeep had not driven the jeep in rash and negligent manner at the time of accident.

9. So far as eye witness Venkat is concerned, the claimants have not examined the said witness before the Court. I am unable to understand as to why the learned Chairman of the Tribunal has commented upon the statement of eye witness recorded during the course of investigation.

10. By application of maxim *res ipsa loquitur* the burden shifts on respondent No.1 owner to prove that the driver of the jeep had not driven the vehicle involved in the accident in rash and negligent manner at the time of accident. However, respondent No.1 owner

has failed to discharge the said burden and he has not adduced any evidence to substantiate the contentions raised in the written statement.

11. Apart from that, on careful perusal of spot panchnama Exh.27, it appears that the road, where accident in question occurred, runs South-North in direction and admittedly the motor cycle was proceeding in North-South direction. It is thus clear that for the vehicles proceeding in North-South direction, the east side is the correct side. The said vehicle jeep was proceedings from South to North and east side of the road is wrong side for the jeep. On perusal of spot panchnama Exh.27 and the map drawn on it, it appears that the said motor cycle was lying on the extreme east side of the road and blood spot also found on the east side of the road. It is thus clear that the vehicle jeep involved in the accident went on wrong direction and gave dash to the motor cycle. Learned Chairman of the Tribunal has ignored everything and dismissed the claim petition without applying the mind.

12. In view of the above discussion, in my considered opinion, the appellants claimants proved that deceased Parmeshwar Ramkisan Jadhav died in vehicular accident on 27.5.2010 at about 8.00 p.m. on Sailu Pathri Road near Mauli Ginning on account of rash and

negligent driving of the driver of jeep bearing registration No. MVV-9501. Respondent Nos. 1 and 2 failed to prove that the accident occurred because of negligence on the part of deceased.

13. Learned counsel for respondent No.2 insurer has placed reliance on the judgment in the case of ***Machindranath Kernath Kasar vs. D.S. Mylarappa and Ors, reported in AIR 2008 SC 2545*** and submitted that driver of vehicle should have been impleaded as party. In the instant case, the accident is not denied by respondent No.1. In this way, the driver of the vehicle was not necessary party to the claim petition. The facts of the case cited above, are altogether different and cannot be made applicable to the facts and circumstances of the present case. Learned counsel has further placed his reliance on the judgment in the case of ***Bajaj Allianz General Insurance Co. Ltd. vs. Meera w/o Raju Choudhary and others, reported in 2014 (6) Mh.L.J. 556***. In the facts of said case, this Court has observed that the discreet sources of involvement of the vehicle not disclosed in the final report of police and claimants failed to establish involvement of vehicle insured with the appellant. In the instant case, respondent No.1 owner has admitted the accident. Though learned counsel for respondent No.2 insurer has vehemently submitted that there is collusion between the claimants and respondent No.1 insured, there is no pleading to that effect

before the Tribunal. In absence of any pleadings to that effect, the same cannot be considered.

14. The claimant No.1 has deposed that her husband was doing the mason work and he was earning Rs.6000/- per month. However, except the bare words of claimant No.1, she has not examined any witness to support her contention. In view of this, the notional income of deceased Parmeshwar is required to be considered at Rs.4000/- p.m. and not more than that. The claimant No.1 has deposed that her husband was 27 years of age at the time of his accidental death. Though, there are no documents produced on record by claimant No.1 to substantiate her contention, in inquest panchnama Exh.28, the age of the dead body was shown as 25 years and in the post mortem report, the age is shown as 27 years. The claimant No.1 is young widow aged 21 years of age and the claimant No.2 is her minor daughter of 5 months only. These facts explain that deceased Parmeshwar was 27 years of age at the time of accident.

15. The notional income of the deceased Parmeshwar is considered at Rs.4000/-p.m. and if 1/3rd amount is deducted towards his personal expenses, the claimant has sustained loss of income/dependency to the extent of Rs.2600/- p.m. corresponds to

Rs.32,000/- per year. Considering the age of deceased Parmeshwar, the relevant multiplier is 17. In view of this, the claimants are entitled for compensation of Rs.5,44,000/-. The claimant No.1 is young widow and she is entitled for Rs.50,000/- towards loss of consortium. The claimant No.2 is minor daughter and she is entitled for Rs.5000/- for love and affection. The claimants are entitled for amount of Rs.25,000/- towards funeral expenses and Rs.5000/- towards loss of estate. Thus, the break up of compensation under various heads can be broadly categorized as under:-

I)	Loss of income/dependency	Rs. 5,44,000.00
II)	Loss of consortium	Rs. 50,000.00
III)	Funeral expenses	Rs. 25,000.00
IV)	Love and affection (for claimant No.2)	Rs. 5,000.00
V)	Loss of estate	Rs. 5,000.00

		Rs. 6,29,000.00
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(Rupees Six lacs twenty nine thousand only)

16. Thus, the claimants are entitled for total compensation for Rs.6,29,000.00/- alongwith interest @ 9% p.a. from the date of application till realization of the amount. The appellants-claimants

have claimed Rs.5,00,000/- as a compensation, however, they are entitled for the reasonable compensation, admissible under the heads as discussed above. The appellants-claimants need to be directed to pay deficit court fees, within a period of four weeks from the date of this order. In view of above discussion, I proceed to pass the following order:-

O R D E R

- I. First appeal is hereby partly allowed.
- II. The judgment and award dated 5.3.2014 passed by the Chairman, M.A.C.T. Parbhani, in M.A.C.P. No. 391 of 2010 is hereby quashed and set aside.
- III. The M.A.C.P. No. 391 of 2010 is hereby partly allowed and the respondent Nos. 1 and 2 are hereby directed to pay compensation of Rs.6,29,000/- (Rupees Six lacs twenty nine thousand only) inclusive of N.F.L. amount, if not paid earlier, jointly and severally, with interest 9% from the date of application till realization of entire amount.
- IV. The award be drawn up accordingly.
- V. The appellants-claimants shall pay deficit court fees within

a period of four weeks from today.

VI. Out of the amount, as directed above, Rs.4,00,000/- shall be invested in any Nationalized Bank, in the name of claimant No.2 Vaishnavi d/o Parmeshwar Jadhav, till she attains the age of majority and claimant No.1 is permitted to withdraw the quarterly interest on the said F.D.R., if desire.

VII. The remaining amount alongwith interest shall be paid to claimant No.1 Savita w/o Parmeshwar Jadhav.

VIII. First appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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