

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

FIRST APPEAL NO. 2545 OF 2016

DADASAHEB GOPINATH DANGE AND OTHERS
VERSUS
MAHESH MACHINDRA WAGH AND ANOTHER

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Advocate for Appellants : Mr D R Markad
Advocate for Respondent 2 : Mr S G Chapalgaonkar

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CORAM : V.K. JADHAV, J.

Dated: April 17, 2017

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PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the Judgment and Award passed by the Member, Motor Accident Claims Tribunal, Shrirampur dated 19.3.2016 in MACP no.286/2012, the original claimants have preferred this appeal.
3. Brief facts, giving rise to the present appeal are as follows :-
 - a] On 6.9.2012 deceased Mininath alongwith his friend Rajendra Mali, as a pillion rider, was proceeding on a motor cycle on Shrirampur to Newasa Road. On way, a pick up van bearing registration No.MH-02/YA-4610 gave dash to his motor cycle within the limits of

village Bhokar. In consequence of which, deceased Mininath had sustained injuries. He was immediately shifted to hospital, where he succumbed to the injuries six days after the accident. The claimants/legal representatives, with these averments in the claim petition, approached to the M.A.C.T., Shrirampur for grant of compensation under various heads. It has been contended in the claim petition that the claimants incurred expenses to the tune of Rs.2.00 lacs. Deceased Mininath was the only earning member of the family and the claimants were depending on his income.

b] Respondent/owner-cum-driver has filed his written statement at exh.20, wherein he has admitted the factum of accident, however, it has been contended that respondent no.1 was not driving his vehicle in a rash and negligent manner and the accident occurred on account of negligent driving on the part of deceased Mininath.

c] Respondent No.2 insurer has strongly resisted the claim petition by filing written statement and denied

each and every material fact. It has also been contended that there was breach of the terms and conditions of the policy for want of valid driving licence.

d] The claimants as well as respondent no.2 have adduced oral and documentary evidence in support of their rival contentions.

e] The learned Member of the Motor Accident Claims Tribunal, Shrirampur, by its impugned judgment and award dated 19.3.2016 dismissed the petition with costs. Hence, this appeal.

4. The learned counsel for the appellants-original claimants submits that, respondent no.1 owner cum driver has admitted happening of the accident involving two vehicles. It has been contended in the written statement by respondent no.1 that the accident occurred on account of the rash and negligent driving of the motor cycle on the part of the deceased Mininath. Learned counsel submits that, though, respondent/insurer has denied each and every material

fact, there is no specific denial about happening of the accident. Respondent-insurer has not taken a specific plea about the collusion between the claimants and respondent no.1/owner for claiming compensation before the Tribunal from the respondent-insurer. Learned counsel submits that the Tribunal has given unnecessary weightage to the history recorded in the private hospital. Respondent no.2-insurer has examined witness Dr. Ankit Sahu, who has admitted in his cross-examination that said history of fall from bike came to be recorded by Casualty Medical Officer and not by him. Learned counsel submits that, the appellants/claimants have examined witness Shri Kailas Bhange, Investigating Officer, who has deposed that after due investigation into the crime, he has submitted charge sheet against respondent no.1-owner cum driver. Furthermore, witness No.3-Rajendra Mali, who was the pillion rider at the time of accident, has also deposed before the Tribunal about the registration number of the pick up van and also the manner in which the accident had taken place. However, the Tribunal has not considered the evidence of eye witness. Learned counsel

submits that the impugned judgment and award passed by the Tribunal suffers from perversity. Learned Member of the Tribunal without any basis has observed that possibility of fabricating of a story cannot be ruled out and dismissed the claim petition on such observations.

5. In order to substantiate his contentions, the learned counsel for the appellant relied on following cases :-

I/ Sneha Saularam Bankar and others Vs. Haumant Vaman Pednekar and another reported in [2016 (1) Mh.L.J.200].

II/ Minu Rout and anr Vs. Satya Pradyumna Mohapatra and others reported in 2013 AIR SCW 5375.

6. Learned counsel for respondent-insurer submits that, though witness Dr. Ankit Sahu has admitted in his cross-examination that he himself has not recorded history, however, he has also stated in his cross examination that on another medical papers he himself has also recorded the same history of fall from a bike. Learned counsel submits that the respondent-insurer has denied each and every contents of the claim

petition. It is for the appellants-claimants to prove their case and in case, respondent no.2-insurer succeeds in pointing out to the Tribunal the suspicious circumstances indicating false involvement of the vehicle, the same is required to be considered. In the instant case, the Tribunal has considered the same and rightly dismissed the claim petition. Learned counsel submits that, said witness No.2 I.O. Kailas Bhange has admitted in his cross-examination that he did not record the statement of any eye witness to the accident. Furthermore, witness No.3 Rajendra Mali/pillion rider admitted in his cross-examination that the police did not record in his statement that he saw the registration number of the offending vehicle. Police statement is marked at exh.63, said witness Rajendra Mali has sated before the police that he learnt about the registration number of the offending vehicle from the people who gathered on the spot of incident. Said witness I.O. Kailas Bhange has admitted in his cross-examination that he has not recorded statement of those persons who disclosed the registration number of the offending vehicle to the pillion rider witness Rajendra Mali.

Learned counsel submits that, considering all these suspicious circumstances, the Tribunal has rightly dismissed the claim petition. No interference is required.

7. On careful perusal of the pleadings, evidence and judgment and award passed by the Tribunal, it appears that, though, respondent no.1 owner-cum-driver has admitted the accident in question, the Tribunal on the basis of some suspicious circumstances dismissed the claim petition. Respondent Insurer has examined witness Dr. Ankit Sahu. According to him, on 6.9.2012 i.e. the date of accident, deceased Minanath was admitted in P.M.T. Hospital, Loni and he treated himself personally alongwith his colleagues. He has brought all the original case papers of deceased Mininath and accordingly produced the same before the Tribunal. He has further deposed that Casualty Department has recorded history as per the statement of the relatives of the patient and history mentioned in the M.L.C. report is as per the version of the relatives of the patient, who admitted the patient. History of the patient was not

recorded in Sahakar Kamgar Hospital. He has produced the attested copies of the record available with him. So far as the MLC report is concerned, the same is not exhibited by the Tribunal, however, referred in the impugned judgment and award. Similarly, though attested copies of the admission papers were placed on record by witness Dr. Ankit Sahu, the same is not exhibited by the Tribunal. In terms of the evidence of witness Dr. Ankit Sahu, I have no hesitation in my mind to consider those documents placed on record before the Tribunal. In the M.L.C. sent by Pravara Rural Hospital and Medical College, Loni, to the police there is a specific reference about history of fall from bike though recorded by the Casualty Medical Officer of the said hospital and not by witness Ankit Sahu. Witness Dr. Ankit Sahu has further stated in his cross-examination voluntarily that, he has also recorded the same history. I have carefully gone through each and every admission papers produced before the Tribunal and it appears that witness Dr. Ankit Sahu has also recorded the history in his admission papers as "Fall from Bike". He has further admitted in his cross-examination that he has

recorded history as stated to him by the relatives of the patient. It thus appears from the aforesaid papers that twice history was recorded to the effect that deceased Mininath had sustained injuries by fall from the bike.

8. The claimants have examined pillion rider Rajendra Mali. After the accident and even after the death of Mininath, witness Rajendra Mali has not lodged any complaint in the police station. Witness Rajendra Mali has admitted in his cross-examination that after the accident deceased Mininath was taken to Kamgar Hospital, where doctor had advised to shift him to Pravara Hospital, Loni. Witness Rajendra Mali has further admitted in his cross-examination that, he himself, one Prakash Dange, Ashok Dange took the deceased Mininath to Pravara Hospital. Thereafter, he has also admitted that they have given history of the accident to doctor at Pravara Hospital, Loni. He has further admitted that his statement came to be recorded by police on 22.10.2012 i.e. after one and half months of the accident approximately. He has further admitted in his cross examination that from 6.9.2012 (the date of

accident) to 22.10.2012 he has not given registration number of the said pick up van to the police. He has also admitted in his cross-examination that he is resident of village Dighi and village Chitali is at a distance of one and half kilometers. Admittedly, respondent no.1 owner cum driver is hailing from village Chitali. He has stated before the Tribunal that when his statement was recorded on 22.10.2012, he has not personally seen the registration number of the said pick up van and he learnt about the same from the people who gathered on the spot of the accident.

9. On this backdrop witness No.2 Kailas Bhangе who happened to be Investigating Officer, has stated in his cross-examination that he did not record the statement of any eye witness to the accident and that he has also not recorded statement of the persons gathered on the spot from whom witness Rajendra Mali came to know registration number of the offending vehicle.

10. On the basis of the history recorded by the concerned Medical Officer Ankit Sahu, who has treated

the deceased Mininath after his accident and further in view of the admissions given by the witness Rajendra Mali/pillion rider and witness Kailash Bhangé I.O., involvement of this vehicle in the accident appears to be doubtful. Furthermore, even after the accident, witness Rajendra Mali has not lodged any complaint in the concerned police station. Only Investigating officer has registered the crime belatedly on 17.10.2012 on the basis of statement of said witness Rajendra Mali.

11. Respondent No.1 owner-cum-driver is also residing at a distance of one and half to two kilometers from the residence of the appellants-claimants as admitted by the appellant no.1 Usha Dange in her cross-examination. The learned Member of the Tribunal has, therefore, rightly observed that possibility of fabricating a story cannot be ruled out in this case. Respondent No.1 owner-cum-driver though admitted in his written statement about happening of the accident, has not entered in the witness box to accept his liability.

12. On perusal of the police papers, it appears that I.O. has drawn seizure panchnama of the said vehicle pick up van which is marked at Exh.56. Said panchnama was drawn belatedly on 25.10.2012, wherein it is noticed that mudguard of the said pickup van placed in front of the head light found in damaged condition. Even though accident had taken place on 6.9.2012, it is difficult to believe that said vehicle pick up van came to be used in the same damaged condition even after one and half months of the accident.

13. In a case Sneha Saularam Bankar (supra) relied upon by the learned counsel for the appellant, this Court had an occasion to deal with the question of discrepancies between the FIR and the evidence on record and on the facts of the said case, this Court has observed that no strict proof of liability is required in the summary proceedings before the Tribunal.

In a case of Minu Rout and another Vs. Satya Pradyumna Mohapatra and ors (supra) relied upon by the learned counsel for the appellant, point for discussion was about contributory negligence on the

part of the deceased and in the facts of the said case, Court has observed that non-production of the FIR has no consequence. Both the cases cited above cannot be made applicable to the facts and circumstances of the present case.

14. In view of the same though respondent-insurer has not raised a specific plea about collusion between the claimants and respondent-owner, in the facts and circumstances of the present case, I find that the Tribunal has rightly dismissed the claim petition. No interference is required. I do not find any substance in the appeal. Hence, following order.

O r d e r

1. Appeal is hereby dismissed.
2. In the circumstances there shall be no order as to costs.
3. Appeal is accordingly disposed of.

sd/-
(**V.K. JADHAV, J.**)

aaa/-

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