

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

**FIRST APPEAL NO. 1261 OF 2015**

- 1 Sophiyan S/o. Maheebub Shaikh,  
Age 14 years, Occu. Education,  
R/o. Jamgaon, Tal. Ashti, Dist. Beed.
- 2 Aman S/o. Maheebub Shaikh,  
Age 12 years, Occu. Education,  
R/o. Jamgaon, Tal. Ashti, Dist. Beed.
- 3 Jishan S/o. Maheebub Shaikh,  
Age 9 years, Occu. Education,  
R/o. Jamgaon, Tal. Ashti, Dist. Beed.
- 4 Manbee W/o. Chand Shaikh,  
Age 67 years, Occu. Household,  
R/o. Jamgaon, Tal. Ashti, Dist. Beed

Appellants No.1 to 3 are minor and under guardian of applicant No.4.

Appellants  
(Ori. Claimants)

**Versus**

- 1 Naju S/o. Babu Mahmad Pathan,  
Age Major, Occu. Business,  
R/o. Akbar Nagar, Aurangabad Road,  
Ahmednagar, Dist. Ahmednagar.
- 2 Mohmad S/o. Manu Pathan,  
Age Major, Occu. Driver,  
R/o. Akabar Nagar, Aurangabad Road,  
Ahemadnagar, Dist. Ahemadnagar.
- 3 The Branch Manager,  
The New India Assurance Co. Ltd.,  
Sathe Chowk, Jalna Road, Beed,  
Dist. Beed.
- 4 Dnyaneshwar S/o. Kacharu Narle,  
Age Major, Occu. Business,  
R/o. Tisgaon, Tal. Pathardi,  
Dist. Ahemadnagar.  
Died Through L.Rs. -
- 4-A Shashirekha w/o. Dyaneshwar Narle,  
Age 34 years, Occu. Household,  
R/o. Nirmal Nagar, Savedi, Tapovan Road,  
Ahemadnagar, Dist. Ahemadnagar.
- 4-B Atharva S/o. Dyaneshwar Narale,  
Age Minor years, Occu. Education,
- 4-C Sarvadnya S/o. Dyaneshwar Narale,  
Age Minor years, Occu. Education,

Both respondents No.4-B and 4-C are minor and under guardian of respondent No.4-A. .. Respondents (Ori. Respondents)

...  
Shri. Sushant B. Choudhari, Advocate for Appellants.  
Shri. P. G. Tambade holding for Shri. Satosh S. Jadhavar, Advocate for Respondents No.1, 2.  
Shri. Mohit Deshmukh, Advocate for Respondent No.3.  
Shri. Dattatraya R. Markad, Advocate for Respondents No.4-A, B, C.  
...

**CORAM : A. M. DHAVAL, J.**

**DATED : 7<sup>th</sup> AUGUST, 2018.**

**JUDGMENT :-**

Being aggrieved and dissatisfied by the Judgment and Award dated 06-02-2015 passed by the learned Chairman of Motor Accident Claims Tribunal at Beed in M.A.C.P. No. 166 of 2013, thereby dismissing the claim petition, the original claimants have preferred this appeal.

2. Heard learned Advocates for the parties.

3. The appellants are original claimants. They are children and mother of deceased Maheebub Chand Shaikh. Respondent No.1 is owner, respondent No.2 is driver and respondent No.3 is the insurance company, whereas, respondent No.4 was previous owner of the offending vehicle. According to the claimants, deceased Maheebub, on 26-02-2013 on 9.00 p.m., was proceeding on his bike bearing No. MH-23-L-3041 from Jamgaon to Ashti road. One Sunil Takale was pillion rider. When they reached near Khandoba temple at Redekar Vasti, there was collusion and dash in between two bikes, another bike bearing No. MH-16/P-1504 belonging to respondent No.1, driven by

respondent No.2 and insured with respondent No.3. It is alleged that respondent No.2 came from opposite direction in a rash and negligent manner and accident took place due to his rashness. The deceased and Sunil Takale have fallen on the road and sustained serious injuries. They were immediately shifted to Rural Hospital, Ashti, and thereafter, to City Care Hospital, Ahmednagar. But, on the next day the deceased succumbed to the injuries. The FIR (Exhibit-32) was lodged by Sunil Takale at Ashti Police Station on 05-03-2013. The Crime was registered vide C.R.No. 42 of 2013 against respondent No.2 driver of another bike. The claimants claimed that the deceased was earning Rs.5000/- per month and all of them were depending on him. He was working as Supervisor in Ashti Taluka Dudh Utpadak and Purwatha Sahkari Sangh Maryadit, Ashti, Dist. Beed. They calculated loss of income @ Rs.17,05,000/-, but restricted their claim to Rs.10,00,000/-.

4. Respondents No.1 and 2 filed their written statement (Exhibit 22). They admitted that the accident involving vehicle of respondent No.1 and driven by respondent No.2, but, it was claimed that the accident took place due to rash and negligent driving of the deceased. They also claimed that the vehicle was duly insured with respondent No.3. Hence, the claim deserves to be dismissed against respondents No.1 and 2.

5. The respondent No.3 Insurance Company filed written statement (Exhibit-16) denying the various contentions of the claim petition. Respondent No.3 claimed that respondent No.2 was not holding valid and effective driving license. There was collusion between two vehicles. The owner and the insurance company of another bike

bearing No. MH-23-L-3041 are necessary parties. So the claim should fail for non-joinder of necessary parties. The vehicle was not fit to ply on the road and not used for which it was registered. The accident and involvement of motorbike No. MH-16-P-1504 is denied as no one on this vehicle is injured. It appears that there is collusion between the claimants and owner of another vehicle. The liability of respondent No.3 is subject to terms and conditions of policy provided under Section 149(2) of the Motor Vehicles Act, no addition liability can be fixed on this respondent. The compensation and interest claimed thereon is excessive, vague and not as per prevailing interest rate approved by the RBI.

6. The respondent No.4 erstwhile owner of alleged offending motorcycle was served with notice, however, he remained absent. The claim proceeded ex-parte against him.

7. The claimants examined claimant No.4 Manbee w/o. Chand Shaikh (Exhibit-28) and one witness Bapurao Yeshwant Malsekhare (Exhibit-41) on the point of income of deceased and relied on relevant copies of income (Exhibits-42,43) and police papers (Exhibits-32 to 38). Learned Tribunal dismissed the claim on the ground that there was delay in lodging the FIR and there was collusion between the claimants and respondent No.1, and the pillion rider Sunil Takale was not examined in this claim petition.

8. Shri. Chaudhari, learned Advocate for appellants submitted that mere delay in lodging the FIR can not be fatal to the case of claimants. Besides, there was an accidental death report lodged and spot

panchnama drawn within two days showing that both motor bikes were found on the spot in damaged conditions. He stated that he is ready to examine pillion rider, but the respondents have also not examined respondent No.2 driver of the offending vehicle. The claimants were not on the spot and there could not be any fault on their part.

9. Shri. Markad, learned Advocate for respondent No.4 submitted that he is not concerned with the accident and he has sold the vehicle much earlier and it was transferred in the name of respondent No.1. The RC book was not on record and he was ready to produce it.

10. Shri. Mohit Deshmukh, learned Advocate for respondent No.3 supported the Judgment of the trial Court.

11. The points for my determination and findings thereon are as follows :-

| Nos. | Points                                                                                       |    | Findings                                                                       |
|------|----------------------------------------------------------------------------------------------|----|--------------------------------------------------------------------------------|
| 1    | Whether the learned MAC Tribunal has applied it's mind while dismissing the claim petition ? | .. | In the negative.                                                               |
| 2    | What order ?                                                                                 | .. | The Judgment and Order is set-aside and matter is remanded to the trial Court. |

### **REASONS**

12. It is settled law that mere delay in lodging FIR will be not fatal of the claim for damage. In the present case, accident took place on 26-02-2013 and FIR came to be lodged on 05-03-2013. Since there was delay in lodging FIR, there was admission by respondents No.1 and 2 about the accident and as the pillion rider was not examined, the learned Tribunal jumped to the conclusion that the case was false

implication of the vehicle. The copy of spot panchnama (Exhibit-33) shows that accidental death case was registered under Section 174 of the Code of Criminal Procedure, 1973 on 27-02-2013 and in the same case, spot panchnama was drawn on 28-02-2013. At the time of spot panchnama, both the vehicles including the offending vehicle were found in damaged condition on the spot. Learned Tribunal completely failed to apply his mind and consider the effect of this spot panchnama. The spot panchnama indicates that there is no possibility of plantation of offending vehicle in this case, unless the police have also joined the hands with the claimants. Though, there was 7 days' delay in the matter, the learned Tribunal has recorded that the FIR is lodged after 10 days of the accident. Mere delay to lodge FIR cannot be sufficient to discard the claim for compensation specially when the accident was not challenged. As far as non examination of pillion rider is concerned, the learned Tribunal could have called upon the Advocate to examine him and to find out the truth about the accident. It was duty of the learned Member to elicit the truth in this regard. I rely on ***Ritesh Tiwari Versus State of Uttar Pradesh [(2010) 10 SCC 677]***, wherein, it is held that "*Every trial is voyage of discovery in which truth is the quest.*" Truth should come ideal to inspire the courts to pursue. This can be achieved by statutorily managing courts to become occupant successors of truth. It should become the paramount duty of every one to assist the court in specific. Truth is foundation of justice. It must be the endeavour of which Judicial Officers and Judge to ascertain the truth in every matter and no stone should be unturned to achieve this object.

13. In a case ***R.M. Sheshadri Vs. C. Vasantha Pai (AIR 1969 SC 692)***, it is held that the power of a Civil Court under Order XVI, Rule 14 of the C.P.C. provides to *suo motu* summon a court witness if it thinks that the ends of justice require or that the case before it needs that kind of evidence.

14. Considering the facts, the impugned order is not sustainable and the matter needs to be remanded to decide it afresh on all issues.

15. Respondent No.4 has submitted that he has already sold his motor bike before the accident and bike was transferred in the name of respondent No.1. But, he has not appeared in trial Court and has not filed the documents. Since, I am remanding the matter, respondent No.4 is at liberty to file such documents and seek discharge. Hence, the order :-

#### **ORDER**

1. The appeal is partly allowed.
2. The Judgment and Award dated 06<sup>th</sup> February, 2015, passed by learned Member, Motor Accident Claims Tribunal, Beed, is set aside.
3. The matter is remanded to the M.A.C.T., Beed with direction to rehear it afresh by giving opportunity to both the parties to lead their evidence and decide the same afresh.
4. There shall be no order as to the costs.
5. Learned Advocates to keep the parties present in the trial Court on 1<sup>st</sup> September, 2018.

**[ A. M. DHAVAL ]**  
**JUDGE**