

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

FIRST APPEAL NO. 2829 OF 2015

New India Assurance Company Ltd.
Through Branch Manager, Branch
Office, Dhule.

Through its Divisional Manager /
Authorized Signatory.
Adalat Road, Aurangabad.

Appellant.

Versus

1. Ashalata Suryakant Patil
Age : 47 years, occu.: household
2. Sandesh s/o Suryakant Patil
Age : 23 years, occu.: service
3. Suyogi Suryakant Patil
Age : 21 years, occu.: service
4. Nishikant Suryakant Patil
Age : 19 years, occu.: education.
5. Yamunabai Shivdas Patil
(Deleted as dead).

All above r/o Chorwad,
Taluka Parola, District Jalgaon.

6. Bhatu s/o Bhivsan Mali
Age : major, occu.: business,
R/o Warwade, Tal. Shirpur,
District Dhule.

7. Mohammad Salim Mohammad Shafiq
Age : major, occu. : driver
R/o Palasner, Taluka Shirpur,
District Dhule.

Respondents.

Mr. S.G. Chapalgaonkar, Advocate for the appellant.

Mr. L.S. Mahajan, Advocate for respondent Nos.1 to 4.

CORAM : SUNIL K.KOTWAL,J.

Judgment reserved on : 19th September 2018.

Judgment pronounced on : 4th October 2018.

JUDGMENT.

1. This appeal is directed against by the original respondent No.2 (Insurance Company) of the offending vehicle, against judgment and award passed by the Motor Accident Claims Tribunal, Dhule in Motor Accident Claim Petition No.473/2007, awarding compensation of Rs, 16,81,200/- to the claimants and fastening the joint and several liability even on appellant – Insurance Company.

2. Respondent Nos.1 to 4 are the original claimants, who are dependents of deceased Suryakant Patil, who died on 22.04.2007 in a motor vehicular accident on account of rash and negligent driving by the driver of Truck bearing registration

No.MH-18-M-3205 (hereinafter referred as “offending vehicle”).

3. Undisputedly, on the date of the accident the offending vehicle was insured with appellant – Insurance Company and respondent No.6 is the registered owner whereas respondent No.7 was the driver of offending vehicle.

4. However, in the case at hand, the appellant has disputed the involvement of offending vehicle in the motor vehicle accident dated 22.04.2006 resulting into the death of deceased Suryakant. Mr. Chapalgaonkar, learned Counsel for the appellant – Insurance Company submitted that though absolutely no substance was placed before the Tribunal regarding involvement of offending vehicle in the above-said accident, merely on the basis of filing of charge-sheet by police against the driver of offending vehicle, the Tribunal fastened liability on the Insurance Company to pay the compensation. Learned Counsel for the appellant fairly concedes that in the summery proceeding before the Motor Accident Claims Tribunal, the rules of evidence and pleading are not strictly applicable. However, the basic principle of law cannot be forgotten that at least on the basis of preponderance and probability the claimants shall establish the

involvement of offending vehicle in the motor vehicle accident resulting into the death of deceased.

5. Learned Counsel for the appellant placed reliance on the judgment in the case of **“Oriental Insurance Co. Ltd. Vs. Meena Variyal and others”** [(2007) 5 SCC 428], wherein the Apex Court held that in relating to the claims for compensation arising out of the accident which is beneficent piece of legislation, the Tribunal may follow summary procedure in dealing with the claim. However, that does not mean that the Tribunal approached with the claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation.

6. Learned Counsel for the appellant has drawn my attention towards cross-examination of Investigating Officer Bhalchandra Pagar (PW-3) examined by the claimants in support of their claim and submits that this witness has merely filed charge-sheet against the driver of offending vehicle. This witness did not carry out actual investigation and he has not placed on record any material as to the source of information to connect the offending vehicle with the above-said motor vehicle accident. He

placed reliance on the judgments in the cases of **“Pukh Raj Vs. Jagannath Naik and others”** [2014 (4) Mh.L.J. 447], **“Farida Begum Vs. Daulat Khan”** [2014 (6) Mh.L.J. 751], judgment delivered by this Court in **First Appeal No.1535 of 2013 (Shriram General Insurance Co. Vs. Narayan Bembde)**, **First Appeal No.2742 of 2015 (Bajaj Allianz General Insurance Co. Ltd. Vs. Manisha Lahu Kale)** and **“Anil and others Vs. New India Assurance Co. Ltd.”** [2018 SCC (2) 482].

7. In reply, Mr. Mahajan, learned Counsel for respondent Nos.1 to 4 supported the judgment passed by the Tribunal and submits that in the proceeding before the Tribunal under motor vehicular accident claim, involvement of offending vehicle need not be proved beyond reasonable doubt like criminal case and further submits that by examining Investigating Officer Pagar (PW-3) the claimants have proved that after investigation police filed charge-sheet against the driver of offending vehicle (respondent No.7). He submits that as no eye witness of the accident is available, occurrence of the accident is to be proved on the basis of police papers which support the case of claimants.

He submits that spot panchnama and charge-sheet are sufficient to discharge the initial burden, which lies upon the claimants, to prove involvement of the offending truck. He placed reliance on the judgments in the cases of **“Gurdeep Singh Vs. Bhim Singh and others” [(2013) 11 SCC 507]**, **“Mangala Ram Vs. Oriental Insurance Co. Ltd. & others” [(2018) 5 SCC 656]**, **“Bala and others Vs. Moti Chand Gupta and others” [2003 (71) DRJ 573 (Delhi High Court)]**, **“Bimla Devi and others Vs. Himachal Road Transport Corporation” [(2009) 13 SCC 530]** and **“Kusum Lata and othres Vs. Satbir and others” [(2011) 3 SCC 646]**.

8. I have gone through the above-referred Authorities by both the sides. The legal principles which can be culled down from these Authorities, are as below:-

- (i) Only on account of technicalities the claim petition cannot be defeated.
- (ii) Strict proof of the accident by particular vehicle in a particular manner is not required.
- (iii) Standard of proof beyond reasonable doubt cannot be applied.

(iv) Evidence is to be appreciated by applying the principle of preponderance of probability.

(v) Absence of name of driver and number of motor vehicle involved in the accident, is not fatal in every case.

(vi) Statement of witness recorded under Section 161 of the Code of Criminal Procedure could not be read, and therefore, no relevance or reference can be attributed to it to accelerate the claim canvassed.

9. It is undisputed position of law that in the proceeding before the Tribunal, the rule of Evidence Act is not strictly applicable. Therefore, without examining panchas and Medical Officer, the certified copies of panchnamas and postmortem notes prepared by Investigating Officer can be read in evidence. However, that does not mean that the claimants in accidental claim cases need not prove anything on the basis of oral and documentary evidence. Initial burden always lies on the claimant to establish claim by bringing oral and documentary evidence on record in support of his claim. However, proof beyond reasonable doubt is not required. Applying the principle of preponderance of probability, the claimant can discharge his burden.

10. In the case at hand, to prove involvement of offending vehicle in the above-said motor vehicle accident resulting into the death of deceased, the claimants have placed reliance on the certified copy of F.I.R. (Exh.32) lodged by Vijay Patil, who for the first time found the deceased in injured condition lying by the side of the road on 22.04.2007 at about 8.00 p.m. Therefore, he took the injured to the hospital where he was declared as dead. From the recitals of F.I.R. (Exh.32) it emerges that at the time of registration of offending neither registration number of the vehicle involved in the accident nor name of the driver was known to anybody. In other words, it was the case of “hit and run” accident.

11. Learned Counsel for the claimants or even the Tribunal has heavily placed reliance on the panchnama (Exh.33) of the Tata Tempo bearing registration No. MH-18-M-3205 (offending vehicle). This panchnama shows that the said Tempo had minor denting on front portion of the vehicle. However, it cannot be ignored that this panchnama of the vehicle was prepared on 27.04.2006 i.e. after five days from the date of occurrence of the accident. This panchnama does not indicate

that it was the same vehicle which hit the deceased and ran away. Minor denting on such motor vehicle cannot be treated as prima facie evidence regarding involvement of vehicle in the accident which occurred before five days from the date of preparation of this panchnama. Other police papers placed on record by the claimants except the charge-sheet (Exh.36), do not indicate slightest connection in between the accident and offending vehicle. The charge-sheet (Exh.36) only indicates that criminal case was filed against the driver of offending vehicle. From the cross-examination of so called Investigating Officer (PW-3), it emerges that in fact Bhalchandra Pagar (PW-3) is not the person who carried out actual investigation of the motor vehicular accident dated 22.04.2006. This witness has only filed charge-sheet against driver of offending vehicle as the Investigating Officer P.S.I. J.A. Shaikh expired. From the cross-examination of this witness, it becomes crystal clear that even he did not bring papers of investigation before the Tribunal and this witness has no personal knowledge about the said motor vehicular accident. Though this witness (PW-3) poses himself as Investigating Officer of this crime, in fact he has no personal knowledge regarding the source of information on the basis of

which driver of the offending vehicle was arrested and offending vehicle was seized on 27.04.2006. Even no statements of any witness examined by the Investigating Officer are placed on record, which indicate that the offending vehicle was involved in the above-said accident. Even the claimant (PW-1) is undisputedly not an eye witness of the accident and she came to know about the accident subsequently from Vijay Patil, who lodged F.I.R. As observed above, even Vijay Patil had no personal knowledge about the vehicle which was involved in the accident as he reached on the spot subsequently when the vehicle which dashed against the deceased had already left the spot of accident.

12. In the circumstances, unless there is slightest material on record which is sufficient to point finger towards the offending truck and its driver regarding their involvement in the accident, even applying the principle of preponderance of probability, neither the offending vehicle nor its driver can be connected with the motor vehicular accident dated 22.04.2006 which resulted into the death of deceased. Therefore, after careful examination of the documents placed on record, I am fully satisfied that even the slightest evidence is not available on

record which is sufficient to prima facie connect the offending truck and its driver with the motor vehicular accident dated 22.04.2006. If only on the basis of filing of charge-sheet the liability is fastened against the offending vehicle and its Insurance Company, the ultimate decision of every motor accident claim cases would be entirely at the whims of the Investigating Officer, who files charge-sheet. However, law does not permit this.

13. I hold that unless there is some substance in the investigation papers to connect the offending vehicle with death of deceased, merely on the basis of filing of charge-sheet against the driver of offending vehicle, even the Tribunal cannot draw conclusion that the offending vehicle was involved in the accident. To prove involvement of the offending vehicle with the principle of preparation and probability, there should be at least some prima facie material to show the involvement of offending vehicle in the accident.

14. Thus, after careful examination of the oral and documentary evidence placed on record, I am fully satisfied that absolutely no evidence is available on record which even slightly

indicates the involvement of offending vehicle in the accident dated 22.04.2006 resulting into the death of deceased. Therefore, though this Court has every sympathy with the claimants, even then the liability to pay compensation to the claimants cannot be fastened either on owner or driver of the offending vehicle nor on Insurance Company of the above-said truck.

15. I hold that the claim petition deserves to be dismissed entirely as the involvement of offending vehicle is not established. In this appeal I need not decide whether the quantum of compensation awarded by the Tribunal is appropriate or not.

16. Accordingly, First Appeal No.2829 of 2015 is allowed. Motor Accident Claim Petition No.473/2007 is dismissed. The judgment and award passed by the Motor Accident Claim Tribunal, Dhule in Motor Accident Claim Petition No. 473/2007 is set aside. Considering the nature of litigation, I hold that parties shall bear their respective costs of appeal.

17. The compensation amount, if any, deposited by Insurance Company in this Court be refunded to appellant Insurance Company. If the compensation amount is already paid

to the original claimants, the claimants shall deposit the same before the Tribunal and the Tribunal shall refund the same to the Insurance Company.

18. Pending Civil Application is disposed of.

(SUNIL K. KOTWAL)
JUDGE

vdd/