

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2538 OF 2017

Dilip s/o Jagdish Deshmukh,
age: 48 years, Occ: Agriculture
& Milk Business, R/o Tandalwadi,
Tq.Washi, Dist.Osmanabad

Appellant

Versus

01 Chandrakant s/o Mahadeo Shinde,
age: major, Occ: Business,
R/o Para, Tq.Washi,
District Osmanabad.

02 National Insurance Company Ltd.,
through the Branch Manager,
Branch Officer, Datt Chowk,
Solapur, Tq. & Dist.Solapur.

Respondents

Mr. Shinde, advocate holding for Mr. J.R.Patil, advocate for the
appellant.
Mr.V.R.Mundada, advocate for Respondent No.2.

CORAM : M.S.SONAK, J.

DATE : 07th February, 2018.

ORAL JUDGMENT :

1. Heard learned counsel Mr. Shinde holding for Mr. J.R. Patil,
learned counsel for appellant and, Mr. Mundada, learned counsel
for respondent no. 2. Respondent no. 1 has been duly served.

2. On 13th July, 2017, this Court had issued notice for final disposal of this appeal to respondents returnable on 7th September, 2017. Record and proceeding were also called for. Accordingly, record and proceeding have been perused for the purpose of disposal of this appeal.

3. Mr. Shinde, learned counsel for appellant submits that the tribunal has itself, on the basis of evidence on record, recorded a categorical finding that the appellant was injured while travelling on his motor cycle bearing No. MH-25-S-4522 on account of collusion with tax bearing Registration No.Mh-25-R-1454, which came in rash and negligent manner. After recording such categorical finding of fact, he submits that the learned Tribunal, has very erroneously dismissed the claim petition only on the basis of certain discrepancies in FIR and because, FIR in this case, was lodged 4 months after the date of the accident. Mr.Shinde submits that the record indicates that MLC Case No.32/2011 was registered by police on 20.05.2011 i.e. on the date of the accident. He submits that in pursuance of the same, police also conducted spot panchanama in which, there is clear reference about involvement of two vehicles. Mr. Shinde submits that on the basis of certain inconsequential discrepancies in the vehicle number and on the basis that formal FIR was lodged after four months, the learned Tribunal was not, at all, justified in dismissing the claim petition in its entirety, however, even discussing the issue of computation of quantum of compensation. He submits that the Tribunal has dealt with the issue as if it was deciding the criminal case. He submits that the view taken by the Tribunal is in direct conflict with the decision of the Hon'ble Supreme Court in **Ravi**

Vs. Badrinarayan & others, 2011 (4) MhLJ 514 and, therefore, impugned award, to the extent it dismisses the claim of the appellant, may be reversed and the matter may be remanded to the Tribunal only for computation of quantum of compensation payable to the appellant.

4. Mr.Mundada, learned Counsel for Respondent No.2 - Insurance Company, submits that delay in lodging FIR in this case is of four months and that should be regarded as fatal to the maintainability of the claim petition. He submits that there are serious discrepancies as regards vehicle number and, therefore, the Tribunal has very rightly concluded that vehicle bearing no.MH-25-R-1454 cannot be said to have been involved in the accident. He submits that the vehicles, which have been referred to in the FIR, have not been insured by the Insurance Company. He submits that there is also no evidence that tax no.MH-25-R-1454 has been insured with Respondent No.2-Insurance Company. He too relies upon decision of the Hon'ble Supreme Court in the matter of **State of Andhra Pradesh Vs. Madhusudan Rao** (2008) 15 SCC 582, which is a decision which has been relied upon by the learned Tribunal in order to non suit the appellant on the ground of delay in lodging of FIR. Mr.Mundada submits that since the close relation of the appellant is an advocate, the appellant should have known the requirements of filing FIRs, at the earliest instance. He submits that since close relation of the appellant is an advocate, possibility of collusion with the police machinery, cannot be ruled out. He submits that since there is shadow of doubt created as to whether vehicle bearing registration no.MH-25-R-1454 was at all involved in the accident, learned Tribunal was

very much justified in dismissing the claim petition. For all these reasons, Mr. Mundada submits that there is no merit in this appeal and it deserves dismissal.

5. On consideration of rival contentions and on perusal of record as well as impugned judgment and award, this is a fit case to set aside the impugned award passed by the learned Tribunal to the extent it non suits the appellant and fails to determine compensation due and payable to the appellant.

6. The Tribunal, upon evaluation of material on record has recorded following categorical findings of fact in paragraph no. 13 of the impugned judgment and award which reads as follows :

13. I have also gone through the oral evidence of claimants witnesses i.e. CW.No. 2 to CW No. 7. It appears from their oral evidence that, claimant on 20/5/2011 was traveling by his motor cycle no. MH-25-S-4522 in slow speed by correct side of the road and when claimant reached near Ganpat Vasti, at that time one Trax Cruiser jeep No. MH 25 R/1454 came in high speed in rash and negligent manner and driver of said vehicle could not control the speed of jeep and given forceful dash to his motor cycle due to which claimant fall down on the road and sustained grievous multiple head injuries.

7. However, after recording aforesaid categorical findings of fact, the learned Tribunal has non-suited the appellant and denied compensation only on the following two grounds :

a) That there was delay of four months in lodging FIR and

therefore, a shadow of doubt is created as to whether such an accident took place or in any case, whether Trax No. MH 25 R 1454 was at all involved in the accident.

b) FIR in paragraph no. 7 makes reference to Trax No. MH 25 R 1464 and in paragraph no. 12 to Trax No. MH 25 R 4554. In contrast, it is the case of appellant that the trax which was involved in the accident bears registration No. MH 25 R 1454.

8. Both the reasons stated by the learned Tribunal are entirely unsustainable and therefore, the impugned judgment and award to the extent it non-suits the appellant is required to be set aside.

9. Insofar as first reason as regards delay in lodging FIR is concerned, the appellant has explained that as his brother is an advocate and upon realising that FIR may not have been lodged, caused the formal FIR to be lodged on 10.09.2011 i.e. almost 4 months after the date of accident which took place on 20.05.2011. Evidence on record, however, establishes that on the date of accident i.e. on 20.5.2011, when the appellant was moved to the hospital for treatment and was in no position to lodge FIR, MLC No. 30/2011 was registered at Washi police Station in respect of the accident, from out of which, the claim arises. The record also indicates that spot panchanama was carried out by the police in pursuance of MLC no. 30/2011 registered on 20.05.2011 and, in the spot panchanama, very clearly, involvement of two vehicles i.e Motor Cycle No. MH 25 S 4522 and Trax No. MH 25 R 1454 has been mentioned. Besides, there is oral evidence on record which completely corroborates the fact that the accident did not take

place on 20.05.2011 in which, these two vehicles were involved. On the basis of oral as well as documentary evidence, the learned Tribunal has recorded a categorical finding of fact at paragraph no 13 of the impugned judgment and award. At paragraph no. 16 of the impugned judgment and award, the learned Tribunal has noted the following :-

16. After perusal of spot panchanama it shows that M.L.C. No. 30/2011 is registered on 20.05.2011 at Washi police station and accident was taken place on Saramkundi vicinity near Gapat Vasti road. In the spot panchanama, the numbers of involvement of suit vehicles are mentioned as Motor cycle No. MH-25/S-4522 and Jeep No. MH-25/R-1454. While in paragraph no. 7 of the FIR the numbers of suit vehicles are mentioned as MH-25/R-1464 and in paragraph no. 12 of FIR it is mentioned suit Jeep No. MH-25 R-4554. There are variance in the numbers of suit vehicles in the claim petition.

10. In view of aforesaid overwhelming documentary as well as oral evidence, delay in recording formal FIR can certainly not be said to be fatal to the claim of the appellant. Mr.Shinde, learned Counsel for the appellant is quite right in his criticism that learned Tribunal has dealt with the matter as if dealing with the criminal case in which delay in recording FIR may have its own implications. This is quite clear from paragraph 18 of the impugned judgment and award wherein the learned Tribunal has, after quoting Section 154 of Cr.P.C., relied upon decision of Hon'ble Supreme Court in the case of **Madhusudan Rao** (*supra*) and ruled that a shadow of doubt is created about police papers, involvement of vehicle in Crime No.109/2011 and claim of claimant.

11. The decision of the Hon'ble Supreme Court in the case of **Madhusudan Rao**, (*supra*) was in the case of charge under Section 498A of I.P.C. and it is, in this context, observations were made as regards effect of delay in lodging FIR on the veracity of criminal prosecution. Such observations could not have been read entirely out of context by the learned Tribunal in order to non suit the appellant to claim compensation on account of injury suffered by him in the accident.

12. In **Ravi** (*supra*), the Hon'ble Supreme Court, at paragraphs 20 to 23, has categorically ruled that delay in lodging FIR cannot be a ground to doubt claimant's case. Said paragraphs are transcribed below for ready reference:-

20 It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay the Courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If Court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that

ground.

21 The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.

22 In the case in hand, the Claims Tribunal as well as the High Court committed grave error in not appreciating the mental agony through which Suresh was passing, whose son was severely injured.

23 In the light of the aforesaid discussion, we are of the considered opinion that the MACT as well as High Court committed error in coming to the conclusion that lodging the FIR belatedly would result in dismissal of the claim petition.

13. It is obvious that doubt expressed by the Tribunal and the approach of the learned Tribunal in non suiting appellant on the basis of such doubt, is entirely contrary to the law laid down by

the Hon'ble Supreme Court in the case of **Ravi** (supra).

14. Learned Tribunal also failed to appreciate that in the matters of this nature, relevant test for evaluation of evidence is the test of preponderance of probabilities and not test of proof beyond reasonable doubt. In the present case, the learned Tribunal has virtually extended some sort of benefit of doubt to the owner/driver/insurer of the trax bearing No.MH-25-R-1454. This is contrary to the principles which are ordinarily applicable in the matters of this nature. In **Bimla Devi & others Vs. Himachal Road Transport Corporation & another** (2009) 13 SCC 530; and **Dulcina Fernandes & others Vs. Jaoquim Xavier Cruz & another**, 2014 (2) MhLJ 510, the Hon'ble Supreme Court has reiterated that in Claim Petitions under Motor Vehicles Act, 1988, the claimants have to establish their case on preponderance of probabilities and the stand of proof beyond reasonable doubt is not at all applicable. Learned Tribunal, in the present case, has not adverted to this principle and, therefore, the impugned judgment and award, to the extent it non suits the appellants warrants interference.

15. Insofar as second reason is concerned, again, the learned Tribunal has grossly erred in laying over emphasis upon discrepancies and paragraphs no.7 and 8 of the FIR. M.L.C. No.30/2011, registered on 20.05.2011 and spot panchanama carried out in pursuance of the same very clearly state registration no. of the trax/Jeep as "MH-20-R-1454". In the claim petition also, the appellant has stated this number. In the evidence led before the Tribunal also, this is the number, which is stated. Incidentally,

reference is necessary to written statement filed on behalf of Respondent No.2 - Insurance Company, in which also, there was no categorical denial that trax no.MH-25/R-1454 was involved in the accident. Denial was to the statement that the accident had taken place on account of rash and negligent driving of the driver of the suit jeep/trax. Positive statement was made in the written statement filed by Respondent No.2-Insurance Company that it is the appellant-claimant, who himself contributed to the accident by driving his motor cycle in high speed. Further, defence was taken that driver of the trax/jeep did not have requisite valid license, and, therefore, he violated terms and conditions of the insurance policy and, therefore, Respondent No.2-Insurance Company should be exonerated. In the light of such pleadings, it is indeed surprising that Respondent No.2-Insurance Company should argue in this case that there was some doubt as regards involvement of Jeep/Trax No.MH-25-R-1454 in the accident out of which the claim arises. It does not behore of the insurance company to take such an inconsistent stand and to take some undue advantage out of patently erroneous finding or rather doubt expressed by the learned Tribunal in the impugned judgment and award.

16. Merely because in paragraph no.7 of the FIR, reference to Registration No. is "1464" instead of correct number "1454" or that in paragraph no.12 of the FIR, reference is to registration no."4554" instead of correct number "1454", the Tribunal was not, at all, justified in non suiting the appellant. It is very obvious that such minor discrepancies are clerical and inadvertent. In any case, there is overwhelming documentary and oral evidence establishing

involvement of Jeep/Trax MH-25-R-1454. As noted earlier, there is no denial as regards involvement of this vehicle in the pleadings of the parties. By ignoring all these cogent and relevant material and by overemphasizing on the so called discrepancies in the FIR, the Tribunal, in the facts and circumstances of the present case, was not at all justified in non suiting the appellant. Accordingly, even the second reason stated by the learned Tribunal for non suiting the appellant is unsustainable and is required to be set aside.

17. The learned Tribunal was not at all justified in not computing the quantum of compensation though, evidence was led on this aspect by the parties. The Tribunal had framed an issue as regards compensation but has failed to answer the same. Perhaps, in the light of doubt as regards involvement of Jeep/Trax No.MH-25-R-1454 in the accident. This is not a correct approach. The learned Tribunal was required to answer all the issues because the appellate Court could have then disposed of the entire matter without necessity of any remand.

18. In the aforesaid circumstances, impugned judgment and award, only to the extent it non suits the appellant and denies compensation, is hereby set aside. The matter is remanded to the learned Tribunal for only determination of compensation in accordance with law and on its own merits. Since the evidence is already led, there is no question of leading any further evidence. Thereafter the Tribunal shall compute the compensation and make its award within a period of two months from the date of production of authenticated copy of this order before it.

19. Appeal is consequently allowed. Respondent No.2-Insurance Company is directed to pay cost of Rs.10,000/- (Rs.Ten Thousand) to the appellant within a period of four weeks from today. Such costs be deposited before the learned Tribunal within four weeks from today. The appellant shall be at liberty to withdraw such costs unconditionally.

20. Parties to appear before the Tribunal on 26th February, 2018 at 10.30 a.m. and produce authenticated copy of this judgment and order.

M.S.SONAK
JUDGE

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