

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

FIRST APPEAL NO. 3333 OF 2015

M/s I.C.I.C.I. Lambord
Insurance Company Ltd.,
Mumbai -
Office at ICICI Bank Tower,
Bandra Kurla Complex,
Mumbai-400 0151 and
Divisional Office at
Alaknanda Building,
Adalat Road, Aurangabad-431 001
Legal Manager Mr. Rahul
Raosaheb Sanap, 25 yearss

...Appellant
[Orig.Resp.No.2]

VERSUS

- 1] Janabai wd/o Dinkarrao
Ghorpade, age 47 years,
occ. Household,
R/o N-7, F-23/7,
Ayodhya Nagar, CIDCO,
Aurangabad,
- 2] Lalita d/o Dinkarrao Ghorpade,
age 22 years, occ. Education,
R/o as above,
- 3] Ganesh s/o Dinkarrao Ghorpade,
age 20 years, occ. Education,
R/o as above,
- 4] Chudaman Vanji Patil,
age 63 years, occ. Pensioner,
R/o Shree Krupa, Plot No.13/A,
Siddhi Vinayak Colony,
Devpur, Dhule,
- 5] Sanjay s/o Ramesh Sonawane,
age 31 years, occ. Driver,
R/o Unnatinagar, Nakane Road,
Devpur, Dhule

...Respondents
[Nos. 1 to 3 Orig. Claimants
Nos.4 and 5 Orig.Respondent
Nos. 1 and 3]

...

Mr. D.T.Kambale h/f Mr. V.N.Upadhye, advocate for Appellant

Mr. N.T.Tribhuvan, advocate for Resp. nos.1 to 3
Appeal against Respondent nos.4 and 5 dismissed
by order, dated 17.2.2016

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING

THE JUDGMENT : 05.12.2018

DATE OF PRONOUNCEMENT

OF JUDGMENT : 14.12.2018

J U D G M E N T :

This appeal is directed by original respondent no.2 I.C.I.C.I. Lombard General Insurance Company Limited, against the judgment and award, passed by the Motor Accident Claims Tribunal, Aurangabad, in Motor Accident Claim Petition No. 351 of 2009.

2. Respondent nos. 1 to 3 are original claimants. Respondent nos. 4 and 5 are the owner and driver of offending car No. MH-4/C-1777.

3. Hereinafter the parties are referred in accordance with their status in the original proceeding.

4. Facts, leading to institution of this appeal, are that on 1.6.2007 at about 8.00 p.m. claimant no.1 was proceeding towards Aurangabad as pillion rider by the motor cycle, driven by her husband Dinkar Shankarrao Ghorpade. When they reached near Mausala phata, Kagzipura village, that time offending car came from opposite direction and gave dash to the said motor cycle. In that accident, claimant no.1 and her husband Dinkar Ghorpade (hereinafter referred to as, 'deceased') sustained injuries. Deceased succumbed to those injuries on 25.6.2007. Claimant no.1 lodged report to police station, Khultabad about the occurrence of the accident. In the result, Crime No. 58 of 2007 was registered for the offences under Sections 304A, 279, 337, 338 of the Indian Penal Code against unknown driver of unknown vehicle. The claimant filed claim petition for compensation of Rs.11,00,000/- against respondent nos. 1 to 3.

5. By filing written statement, respondent no.1 owner denied the involvement of his car in the above said accident as well as his liability. Even

respondent no.2 insurance company specifically denied the involvement of car in above said motor vehicular accident and its liability to pay the compensation. Respondent no.3 driver of the car was proceeded ex parte.

6. After considering the evidence placed on record, the Tribunal awarded compensation of Rs.8,90,000/- and liability to pay compensation was saddled on respondent nos. 1 to 3. Therefore, this appeal arises.

7. Heard Shri D.T.Kambale h/f Shri V.N.Upadhye, learned counsel for the appellant-insurance company and Shri N.T.Tribuvan, learned counsel for respondent nos. 1 to 3/claimants.

8. Learned counsel for the insurance company submits that though accident occurred on 1.6.2007 at 8.00 p.m. and the deceased died on 25.6.2007, the claimant lodged report to police station, Khultabad only against unknown vehicle and its driver on 2.7.2007, and therefore, even offence was

registered against unknown vehicle driver. He submits that till 20.8.2007 neither the registration number of offending vehicle nor the name of the driver and owner of the vehicle were informed to the police station, Khultabad. For the first time on 20.8.2007, claimant no.1 gave supplementary statement to the police station and gave registration number of the offending car and other particulars. He has pointed out that in all the papers of investigation, it is specifically mentioned that dash to the motor cycle of deceased was given by unknown vehicle. He submits that even the claimant did not disclose the source of her information as to how she came to know the registration number of the offending car and name of the driver, only on 20.8.2007.

9. Learned counsel for the insurance company submits that even the investigating officer is not examined by the claimant to bring before the court regarding source of information disclosing the registration number of the offending car. He submits that only because the deceased was

Assistant Police Inspector, in collusion with police department, false criminal case was filed against respondent no.3 driver of the offending car and this false claim petition is filed against the respondents. He submits that no material is placed on record by claimants to establish link in between accident and the offending car, even on the basis of preponderance of probability. He has placed reliance on following judgments : -

- 1] Anil and others vs New India Assurance Co. Ltd. And ors.[AIR 2018 SC 612]
- 2] Bajaj Allianz General Insurance Co. Ltd. Vs Manisha w/o Lahu Kale and others [First Appeal No. 2742 of 2015, decided by this Court on 4.9.2018]
- 3] New India Assurance Co. Ltd. Vs Laxman s/o Dadarao Karpe and other [First Appeal No. 2973 of 2013, decided by this Court on 28.7.2015]
- 4] M/s Shriram General Insurance Co. Ltd. Vs Narayan s/o Nivrutti Bembde and others [First Appeal No. 1535 of 2013, decided by this Court on 23.1.2014]
- 5] New India Assurance Co. Ltd. Vs Ashalata Suryakant Patil and others [First Appeal No. 2829 of 20135 decided by this Court on 4.10.2018]
- 6] Farida Begum Shaikh Yousuf and ors. Vs Daulat Khan Sardar Khan (Died) Through L.Rs. And others [IV (2015) ACC 803]
- 7] Oriental Insurance Co. Ltd. Vs Premlata Shukla and others [(2009) 1 SCC (Cri.) 204]

10. Learned counsel for the claimants-respondent nos. 1 to 3 supported the judgment passed by the Tribunal, on the ground that only delay in lodging first information report cannot be a ground to disbelieve the contention of the claimants. He has pointed out that the owner of the offending car stood as guarantor for its driver before the criminal court.

Next contention of learned counsel for the claimants is that in supplementary statement, claimant no.1 has given registration number of the offending car to the police. Therefore, it cannot be said that no link is established in between accident and offending car by claimants. He submits that even married daughter of the deceased was not made party to the claim petition, which indicates bona fides of the claimants. He submits that neither owner of the offending car nor insurance company has examined the driver to prove that the offending car was not involved in the accident. He submits that filing of criminal case against the driver is prima facie sufficient to show the involvement of offending car in the above

said accident.

11. In the case at hand, the fate of this appeal revolves around, whether the involvement of offending car is established by the claimants even on the basis of preponderance of probability.

12. No doubt, the rules of pleading or the Evidence Act are not strictly applicable in the motor accident claim proceeding, as Tribunal has to follow summary procedure in dealing with the claim. However, the Apex Court in **"Oriental Insurance Co. Ltd. Vs Meena Variyal and others"** [(2007) 5 SCC 428] held that while deciding the motor accident claim petition, the Tribunal should not ignore all basic principles of law in determining the claim for compensation.

13. This Court in **"M/s Shriram General Insurance Co. Ltd. Vs Narayan s/o Nivrutti Bembde and others"** (supra) held that police report under Section 161 of the Code of Criminal Procedure

cannot be read in evidence, and therefore, reliance or reference cannot be attributed to it to accelerate the claim canvassed. Same view is reiterated by this Court in **"Bajaj Allianz General Insurance Co. Ltd. Vs Manisha w/o Lahu Kale and others"** (supra) and **"New India Assurance Co. Ltd. Vs Ashalata Suryakant Patil and others"** (supra). Therefore, on the basis of copies of statements of witnesses recorded by police, the claimants cannot establish link in between accident and offending car.

14. In the case at hand, though claimant Janabai Ghorpade (PW 1) stepped in witness box and deposed that on 1.6.2007 when she was proceeding as pillion rider on the motor cycle of her husband, that time offending car gave dash to that motor cycle resulting into injuries to them. Her report to police station, Khultabad, dated 2.7.2007 (Exh.40) shows that claimant Janabai lodged report to the police station regarding occurrence of the accident, only against unknown car driver. In the

first information report (Exh.40) she has specifically mentioned that one car came from opposite direction, gave dash to the motor cycle and left the spot of accident. She has nowhere mentioned in the report, the registration number or even make of the said car. On the other hand, the recitals of the first information report show that with the help of persons gathered on the spot, she stopped Maruti-800 car bearing No. MH-41/C-1777 and by that car she took her injured husband to Ghati hospital. She has specifically mentioned in the first information report that the said car driver admitted her and her husband in Ghati hospital, Aurangabad. In the first information report, the claimant has nowhere mentioned that the car, by which she was taken to Ghati hospital after the accident, was the same car which gave dash to the motor cycle driven by the deceased. Even in the spot panchanama (Exh..42) it is mentioned that unknown vehicle gave dash to the motor cycle of the deceased. Same recitals are mentioned in inquest panchanama (Exh.44). When the deceased succumbed to his injuries on 25.6.2007 at Kamalnayan

Hospital, the concerned doctor informed police station, Osmanpura about the said death and in that letter, dated 25.6.2007, it is again mentioned that unknown vehicle had given dash to the motor cycle of the deceased. Thus, the police papers show that till 20.8.2007 neither the claimant nor her family member or even police were knowing the registration number of the offending car. For the first time, on 20.8.2007 in her supplementary statement, the claimant had given registration number of the offending car to the police which gave dash to the motor cycle of her husband. These circumstances indicate that as true offender could not be traced out on 20.8.2007 with the help of police department as deceased was police officer, the respondent nos. 1 and 3 are made scape goat, who were easy to get as they took injured to Hospital.

15. No doubt, when claimant no.1 herself was injured and admitted in the hospital, the delay in lodging the first information report cannot be viewed with suspicion. However, while the first information report was lodged on 2.7.2007 i.e. one

month after the occurrence of the accident, that time claimant no.1 was certainly out of mental shock and she was mentally stable. Therefore, she could have mentioned every true details about the occurrence of the accident. However, despite such stable condition, even after one month from the date of accident, claimant no.1 Janabai Ghorpade did not mention in her first information report (Exh.40) that the car by which she was taken to Ghati hospital and admitted there, had given dash to the motor cycle of her husband. On the other hand, recitals of the first information report show that after accident when offending car left the spot, the claimant, with the help of other persons, stopped the another car of respondent no.1, which was passing by the road and by that car the claimant and her husband were taken to the hospital. From the first information report itself, it becomes clear that the car, by which claimant was taken to the hospital, did not give dash to the motor cycle of the deceased, but the car which gave dash to the motor cycle immediately left the spot of accident. Thus, the first

information report to police station, Khultabad totally falsifies the contention of Janabai (PW 1) that by the car, by which dash was given to the motor cycle of her husband, her husband was taken to the hospital.

16. Another important fact to be noted is that claimant Janabai (PW 1) in her evidence nowhere disclosed the source of information as to how on 20.8.2007 she came to know about registration number of the offending car which was disclosed to police. Even the investigating officer is not examined by the claimant to prove his source of information regarding the offending car.

17. In the circumstances, the first information report (Exh.40) relied by the claimant herself falsifies her case. The Apex Court in "**Oriental Insurance Co. Ltd. Vs Premlata Shukla and others**" (supra) observed as follows :-

" 13. However, the factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the

party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an Exhibit as both the parties intended to rely upon them.

14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise."

18. In view of this legal position, now claimant cannot make out case against the first information report (Exh.40) which was lodged by claimant no.1 to police station, Khultabad one month after the accident. Thus, I have no hesitation to hold that the police papers placed on record by the claimant itself falsify the contention of Janabai (PW 1) regarding involvement of the offending car in the motor vehicular accident, dated 1.6.2007. Only because respondent no.1 owner stood as guarantor for his driver in the

criminal case, inference cannot be drawn that the car of respondent no.1 was involved in the accident. Such inference drawn by the Tribunal on the basis of this sole circumstance, is absolutely erroneous.

19. In the circumstances, I have no hesitation to hold that even on the basis of preponderance of probability the claimants cannot prove that the offending car bearing No. MH-41/C-1777 was involved in the accident, dated 1.6.2007, which resulted into fatal injuries to the deceased. As involvement of the offending car is not established, respondent nos. 1 to 3 cannot be held liable to pay compensation to the claimants under Section 166 of the Motor Vehicles Act.

20. Accordingly, my conclusion is that the judgment and award passed by the Motor Accident Claims Tribunal, Aurangabad, in Motor Accident Claim Petition No. 351 of 2009 holding respondent nos. 1 to 3 jointly and severally liable to pay compensation to the claimants is incorrect and

deserves to be set aside. It follows that this appeal deserves to be allowed.

21. Accordingly, First Appeal No. 3333 of 2015 is allowed.

The judgment and award passed by the Motor Accident Claims Tribunal, Aurangabad, in Motor Accident Claim Petition No. 351 of 2009 is set aside.

Motor Accident Claim Petition No. 351 of 2009 is dismissed.

Original claimants (respondent nos. 1 to 3) shall deposit the withdrawn amount of compensation in this Court within a period of six months from the date of passing of this order. On deposit of said compensation amount, it be refunded to the appellant I.C.I.C.I. Lambord Insurance Company.

Appellant is also permitted to withdraw the compensation amount which is already lying in this

Court.

Parties to bear their respective costs of appeal.

[SUNIL K.KOTWAL, J.]

22. Learned counsel for respondent nos. 1 to 3 prays for stay of the execution of order passed by this Court for a period of eight weeks from today.

Learned counsel for appellant objects for grant of stay. However, respondents being original claimant nos. 1 to 3, it is desirable to award them proper opportunity.

Therefore, execution and operation of the order passed by this Court in First Appeal No. 3333 of 2015 is stayed for a period of next eight weeks from today.

[SUNIL K.KOTWAL, J.]

dbm