

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1047 OF 2012

- 1) Shaikh Gani s/o Shaikh Mainoddin,
Age 47 years, Occupation Mechanic,
R/o Kallam Tq. Kallam Dist.Osmanabad.
- 2) Jahirabi w/o Shaikh Gani,
Age 43 years, Occupation Household,
R/o As above. ...Appellants.
(Ori.Claimants)

VERSUS

- 1) Balaji Allianz General Insurance
Corporation Ltd., Through Its
Branch Manager, 2nd Floor, Adalat
Road, Aurangabad Dist. Aurangabad.
- 2) Ramesh s/o Shankarlal Gupta,
Age 40 years, Occupation Business,
R/o New Colony, Peth Wadgaon,
Tq. Hatkangale Dist. Kolhapur. ...Respondents.
(Ori.Respdts.)

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Advocate For Appellants : Mr. M. B. Kolpe.

Advocate For Respondent No.1 : Mr. S. G. Chapalgaonkar

Advocate For Respondent No.2 : Mr. A. S. Gandhi holding
For Mr. P.S.Mehta.

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date Of Reserving The Judgment :
09-07-2019**

**Date Of Pronouncing The Judgment :
13-09-2019**

JUDGMENT :

1. Present appeal has been filed by the original claimants challenging the dismissal of their claim petition bearing MACP No.97 of 2009 by learned Member MACT, Osmanabad dated 15-02-2012.

2. The original claimants are the parents of one Javed Gani Shaikh, who was employed as 'cleaner' on pick-up jeep bearing No.MH-10/K-8386. He had been to Jalna in the said jeep on 19-05-2008 and he was returning from Jalna to Kallam at the relevant time. The jeep driver was rash and negligent and then could not control the vehicle , as a result of which the steering rod of the jeep was broken, jeep went out of the road and dashed against a tree. Javed had sustained serious injuries. He was taken to Rural Hospital, Kallam and then to Ambajogai and further shifted to Aurangabad. He had also taken treatment at Solapur. It is stated that, the claimants had incurred expenditure of about Rs.2,00,000/- on his treatment, however he ultimately succumbed to the injuries on 24-12-2008 at Kallam. He was 19 years old, earning Rs.4,000/- per month and daily Bhatta of Rs.50/-. The claimants had claimed compensation of Rs.9,00,000/- but restricted Rs.6,00,000/- for the purpose of Court fees. It was also contended that, the respondent No.1 is the registered owner of the jeep and the said jeep was insured with respondent No.2 on the relevant date. Compensation

was claimed against both the respondents jointly and severally.

3. Respondent No.1 filed written statement at Exhibit 41 and he denied that, he is the owner of the offending vehicle on the date of the accident. It is stated that, he had obtained loan from Shriram Finance Company Limited, however since he could not pay the loan the company had seized the jeep on 30-10-2007 from his possession, and thereafter, the finance company sold the jeep to one Yusuf Mohammed Shaikh. Then said Yusuf Shaikh had sold the said jeep to one Suryakant Namdeo Dhavale on 10-03-2008. He, therefore, prayed for the dismissal of the claim as against him.

4. Respondent No.2-the Insurance Company contended that, they had insured the said pick-up jeep and the period of insurance was from 24-11-2007 to 23-11-2008. It was denied that, deceased was traveling from the said jeep as 'cleaner' thereof. Thereafter, it is denied that the accident had taken place due to the negligence on the part of the jeep driver. It was contended that, since the deceased was travelling as a gratuitous passenger, only in order to get compensation a false claim has been made with fabricated story.

5. Issues were framed. Only claimants have led oral evidence, documentary evidence has been led by both the sides, and therefore, taking into consideration the evidence on record and hearing both sides, the learned Tribunal had come to the conclusion

that, Javed expired due to motor vehicular accident caused by the vehicle bearing No.MH-10/K- 8386 by its driver. It was further held that, respondent No.1 has proved that, on the date of the accident one Suryakant Namdeo Dhavale was the owner of the said vehicle, who is not a party to the proceeding. Therefore, the entire claim was dismissed, hence this appeal.

6. Heard learned advocate Mr. M.B. Kolpe for appellants. Learned advocate Mr. S. G. Chapalgaonkar for respondent No.1–the Insurance Company and learned advocate Mr. A. S. Gandhi holding for Mr. P. S. Mehta for respondent No.2–original respondent No.1.

7. It has been vehemently submitted on behalf of the appellants that, the learned Member MACT has failed to appreciate the evidence on record and exercise its jurisdiction under the Motor Vehicles Act. When a contention was raised by the respondent No.1 that, he is not the owner of the vehicle but Suryakant Namdeo Dhavale was the owner; at that time an application at Exhibit 76 was filed by the claimants to add said Suryakant Dhavale as party to the proceeding, however the said application has been wrongly rejected by the concerned Tribunal. Thereafter, on the basis of evidence the claim has been dismissed as Suryakant Dhavale has not been made as party to the proceeding. The learned Tribunal also failed to consider that, no objection certificate filed by respondent No.2 is a

false document as there is overwriting made on the same. It does not bear any date as to when the vehicle was transferred. The documentary evidence that was placed along with Exhibit 73 i.e. the registration certificate of the vehicle stood in the name of respondent No.1, and therefore, it ought to have been appreciated that registered owner of the vehicle is party to the proceeding. The vehicle was admittedly insured and the learned Tribunal had come to the conclusion that the said accident had taken place due to the negligence on the part of jeep driver. Therefore, the petition ought to have been allowed.

8. The learned advocate for respondents supported the reasons given by the Tribunal. The original respondent No.1 had not entered the witness box. Though he contended that the possession of the jeep was taken by the Finance Company on 30-10-2007 but then what was on record was Exhibit 58, which showed that the finance Company has taken all the documents from the possession of the respondent No.1 and the details about the same was given in that document Exhibit 58. The respondent No.1 had no control over the vehicle on the date of the accident nor he himself was driver or had employed a driver on the said vehicle, therefore respondent No.1 cannot be held responsible for payment of compensation. The learned advocate for Insurance company submitted that, the registered owner of the said vehicle was Suryakant Dhavale and he

was not added as a party. The complaint was given by the father of the deceased belatedly and even if that complaint is perused, it would give impression that, there was marriage of the relative of neighbour of Dhavale. Javed Shaikh had gone to attend the said marriage along with his friends. Therefore, there was documentary evidence on record; so also the circumstantial evidence to show that, Javed was a gratuitous passenger travelling from a commercial vehicle, and therefore, even if this Court comes to the conclusion that the claimants deserve compensation yet the said amount cannot be saddled on the shoulders of Insurance Company as there is breach of terms of policy.

9. Taking into consideration the above said rival submissions, following points arise for determination, findings and reasons for the same are as follows ;

(1) Whether the learned Tribunal was justified in rejecting application Exhibit 76 and then dismissing the claim petition itself on the ground that proper party i.e. Suryakant Dhavale has not been made as party to the proceedings ?

(2) Whether claimants were entitled to get compensation ? If yes, from whom?

10. Both the points are taken up together for the sake of convenience. It is to be noted that, there is no challenge to the findings which have gone against the respondents. The Tribunal had

come to the conclusion that, deceased Javed died due to motor vehicular accident by vehicle No. MH-10 / K-8386. That means, the Tribunal had held driver of the jeep negligent and the accident had taken place due to the sole negligence on his part. It appears that learned Tribunal had not seriously dealt with the point of breach of terms of policy raised by Insurance Company. It is not in dispute that the present claimants are the parents of deceased. In spite of this fact the Tribunal has held that, the claimants are not entitled to get compensation and it appears from the Judgment that it was only on the basis of the fact that said Suryakant Namdeo Dhavale has not been added as party to the proceeding. However, it is to be noted that, the learned Tribunal had not considered its own order rejecting the application Exhibit 76 wherein the claimants had prayed that said Suryakant Namdeo Dhavale should be made as a party to the proceeding. The copy of the registration certificate of the jeep has been produced at Exhibit 73 and it stands in the name of Suryakant Namdeo Dhavale. It also shows that, he had purchased it from one Shaikh Yusuf Shaikh Mohammed. Further Suryakant had taken possession of the said jeep after the accident, as the 'Supurtnama' given by him has been produced at Exhibit 75. Further evidence on record is in the form of Exhibit 64 which was the information given by one Nitin Gaikwad to Kaij Police Station. The contents of the said information shows that, Nitin Gaikwad was the driver of the said

jeep on the relevant day and owner was Suryakant Namdeo Dhavale. That means, there was evidence on record to show that, Suryakant Dhavale was necessary party to the proceeding. Perusal of Exhibit 76 which was the application given by the present claimants would show that, they have given reasons as to why he should be made as a party to the proceeding. But then while rejecting the application it has been stated that the advocate for the claimants appeared in the Court at 4.35 p.m. and presented said application. It is stated that, the contents and submissions made in the application were held to be patently wrong in view of the Exhibits 57, 64, 73 and 75 and it was stated that the statement that is made that claimants came to know about the ownership of Suryakant Dhavale recently. It is stated that, those documents prima facie show that, at the relevant time Suryakant was the jeep owner, and therefore, on the basis of false or incorrect statement, the said application was rejected. This appears to be a wrong approach for the simple reason that, merely because the knowledge cannot be attributed recently and the fact might have been in the knowledge of the claimants since beginning; yet, when in Exhibit 76 they had accepted that he is a necessary party, then the point of knowledge ought to have been ignored. Application to add a person as party can not be rejected only on the ground of delay in such proceedings, as there was no question of limitation in claim petition.

11. One more aspect that has been not considered by learned Tribunal is that, the provisions under Motor Vehicles Act applicable to getting compensation are beneficial in nature, and therefore, Motor Accident Claims Tribunal can not take technical approach. The Division Bench of this Court in, *Bessarlal Laxmichand Chirawala Vs. Motor Accidents Claims Tribunal, Greater Bombay and Others*, reported in *AIR 1970 Bombay 337* has held that,

"Provisions of Section 110-A (2) of the Motor Vehicles Act (present Section 166 of the Motor Vehicles Act, 1988) and Rule 291 of the Rules (present Section 254) made under Section 111-A (present Section 176 of Motor Vehicles Act, 1988) (Bombay) in connection with application for claims for compensation and the prescribed form No.Comp-A do not require any parties to be mentioned as opposite parties in the title of the application for claims for compensation. All the relevant facts are in this connection left to be ascertained by the Claims Tribunal which has been entrusted with the very serious duties of finding out all the parties who may be liable to pay compensation by recording evidence to be produced by the parties concerned. Formal defect of failure to mention appropriate names of the parties who would be liable to pay ultimately compensation to the claimant was never intended to defeat the claims filed under the Act."(addition of present section is made by me)

The Division Bench has taken note of the Form that has been

prescribed and in fact reproduced the said Form in the Judgment and it has been further observed that,

"The Tribunal has failed to realize the true effect of the provisions in the Act in connection with the form of the applications for compensation and its responsibilities in ascertaining the correct facts regarding the parties who should be liable to pay compensation to the claimants under the applications made in the prescribed form."

Therefore, taking note of Section 166 of the Motor Vehicles Act 1988 which prescribes for application for compensation read with Section 176 of the said Act which empowers the State Government to make rules for the purpose of carrying into effect the provisions Section 165 to 174 and in particular such rules may provide for all or any of the following matters namely, Form of the application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications ; The rules have been made by the State Government i.e. under the Maharashtra Motor vehicles Rules 1989. Rule No.254 prescribes for application for compensation arising out of an accident. Sub-rule (1) of the said rule prescribes that,

"An application for compensation arising out of an accident of the natures specified under this Act shall be made to the Claims Tribunal, having jurisdiction over the area in which the accident occurred, which shall be in Form 'COMP' of the First Schedule to these rules with particulars specified in that form."

If we consider the said Form, it does not prescribe name of the opposite party to be mentioned.

Rule 260 provides for, notice to the parties involved. Sub-rule (1) of Rules 260 of the Maharashtra Motor Vehicles Rules, 1989 prescribes,

"If the application is not dismissed under Rule 259, the Claims Tribunal shall, send to the owner or the driver of the vehicle or both involved in the accident and its insurer, a copy of the application, and the annexures thereto together with the notice of the date on which the parties shall enter their appearance either in person, or through their duly authorised agents, and may also file their written statement, if any, with additional copies of the same, for being furnish to the other parties connected with the matter."

If the said provision is read along with the earlier quoted provisions conjointly and the other provisions like Sub-rule (5) of Rule 254 and other similar provisions, then as aforesaid by the Division Bench of this Court, ***it is the job of the Tribunal to see who is the party responsible to pay the compensation and then issue notice to such party.*** When the Act imposes such duty on any Tribunal, then the learned Member of the Tribunal in this case completely failed in rejecting application Exhibit 76 and then without considering his own act of rejecting that application went on to dismiss the claim petition

itself on the ground that the party who was proposed to be added as party by virtue of said application Exhibit 76, has not been made as party to the claim petition. Therefore, the learned Member who passed the impugned Judgment and award failed to use his own powers, and therefore, the Judgment is devoid of good reasons for rejecting the application.

12. As aforesaid when the documents on record showed *prima facie* that, on the date of the accident said Suryakant Namdeo Dhavale was the owner of the offending vehicle, then he ought to have been made as party to the proceeding. Since he was not added as a party and the learned Tribunal had erroneously rejected application Exhibit 76; which deserves to be allowed in this case and the effect of the same would be to add him as a party before the Tribunal, opportunity will have to be given to him to put forth his say and then lead his evidence, the matter deserves remand. Point No. 1 is answered in negative.

13. Since the matter deserves remand, this Court refrains itself from assessing the other evidence on record to come to the conclusion as to whether the claimants are entitled to get compensation or not. Further no discussion can be made on the point of breach of terms of policy, as the owner of the vehicle i.e. said Dhavale may have his defence to state on that point also.

Hence, rest of the points involved in the matter are required to be kept open. Point No. 2 is therefore, answered accordingly. For aforesaid reasons, following order.

ORDER

- (1) The appeal is hereby partly allowed.
- (2) The Judgment and award passed by learned Member MACT, Osmanabad in MACP No.97 of 2009 dated 15-02-2012 is hereby set aside. The said claim petition stands restored on the file of learned Chairman MACT, Osmanabad.
- (3) The order passed below Exhibit 76 in the petition stands set aside. The said application stands allowed.
- (4) Learned Chairman is directed to get the addition of the party mentioned in application Exhibit 76 as party respondent and then after issuing notice to the added party, the matter be proceeded as per the provisions of law.
- (5) Needless to say that, opportunity be given by the learned Chairman to all the parties to lead necessary evidence in addition, if any, if they desire.
- (6) All the parties to this appeal are directed to appear before the learned Chairman MACT, Osmanabad on 23-09-2019.
- (7) Since the application of 2009 is being remanded, learned Chairman is directed to expedite the matter and

dispose it of within a period of six months from the date of appearance as fixed by this Court before the Tribunal.

(8) Parties to act upon an authenticated copy of this Judgment.

(9) Record and proceeding be sent back immediately.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.