IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2392 OF 2016

1. Sangita w/o Changdeo Gavhane,
   Age : 42 years, Occu. Household

2. Rupali Changdeo Gavhane,
   Age : 19 years, Occu. Education

3. Mahesh Changdeo Gavhane,
   Age : 23 years, Occu. Education

4. Rambhau Dhondiba Gavhane,
   Since deceased, through L.Rs.
   Appellant Nos.1 to 3 and 5

5. Drupadabai Rambhau Gavhane,
   Age : 67 years, Occu. Household,
   All R/o gavhane Vasti, Savedi,
   Wadgaon Gupta Road, Wadgaon Gupta, **APPELLANTS**
   Tq. and District Ahmednagar **(Ori. Claimants)**

VERSUS

1. Vikas Pramod Kale,
   Age : 32 years, Occu. Agriculture
   and Business,
   R/o At Post Madadgaon,
   Jamkhed Road, Tq. Nagar,
   District Ahmednagar

2. Iffco Tokio General Insurance Co.Ltd.,
   1st Floor, Near Sablok Honda Showroom,
   Near Shriram Petrol Pump, **RESPONDENTS**
   Sarjepura, Ahmednagar **(Ori. Respondents)**

Mr. Yuvraj V. Kakade, Advocate for the appellants
Mr. S.G. Chapalgaonkar, Advocate for respondent No.2
None for respondent No.1

CORAM : SUNIL K. KOTWAL, J.

JUDGMENT RESERVED ON : 13th JUNE, 2019
JUDGMENT PRONOUNCED ON : 19th JUNE, 2019

JUDGMENT :

Admit. With the consent of learned counsel for both the parties, taken up for final hearing.

2. This appeal is directed by original claimants against the judgment and award dated 9th February, 2016, passed by the Motor Accident Claims Tribunal, Ahmednagar ("Tribunal", for short) in Motor Accident Claims Petition No.432 of 2014, whereby claim petition for compensation under Section 166 of the Motor Vehicles Act was dismissed. Respondent No.1 is the owner of offending vehicle and respondent No.2 is the insurer.

3. The facts, leading to institution of this appeal, are that deceased Changdev Ramdev Gavhane, on 4th May, 2014, while riding his motorcycle by Nagar-Manmad road met with an accident near Cottage corner and sustained serious injuries. He succumbed to those accidental injuries on 8th May, 2014. According to the claimants, motorcycle bearing registration No.16-BB-4879

owned by opponent No.1 was involved in the accident. Therefore, claimants filed claim petition for compensation against opponent Nos.1 and 2 (respondents in present appeal).

4. Opponent No.1 was proceeded exparte. Only opponent No.2 – insurer of the offending vehicle filed written statement and resisted the claim, denying the involvement of the offending vehicle in the abovesaid accident.

5. Heard Shri Yuvraj V. Kakade, learned counsel for the appellants and Shri S.G. Chapalgaonkar, learned counsel for respondent No.2 – insurer. None appeared for respondent No.1.

6. Learned counsel for the appellants submits that the Tribunal erroneously dismissed the claim petition on the ground of delay in lodging FIR. His contention is that the accident occurred on 4th May, 2014, deceased died on 8th May, 2014 and FIR was lodged on 28th May, 2014. He submits that as the relatives of the deceased, including the claimants were in shock, the delay in lodging FIR cannot be viewed with suspicion.

7. The next submission of the learned counsel for the appellants is that in motor accident claim matters, the petitioners have to prove their case on the touchstone of preponderance of probability and the incident need not be proved beyond reasonable doubt like in criminal trial. He submits that in the FIR, the name of the driver and registration of the offending vehicle was mentioned by the wife of the deceased and on the basis of that information, police investigated the crime and ultimately, filed chargesheet against opponent No.1. Contention of learned counsel for the claimants is that filing of the chargesheet against opponent No.1 by the police is sufficient material to discharge burden of proof, which initially lies on the claimants.

8. Learned counsel for the claimants submits that as the claimants have sufficiently proved the involvement of the offending vehicle in abovesaid accident, respondent No.2 is bound to indemnify respondent No.1, both the respondents are jointly and severally liable to pay compensation to the claimants. In support of his submissions, learned counsel for the claimants placed reliance on ***"Ashabai w/o Kalyan Kothi***

and others Vs. Baban s/o Santosh Bidgar and others" [2016(4) Mh.L.J. 696], "Nagma Shamu Dhotre and others Vs. Chandrakant Sakharam Talgaonkar and others" [2016(1) Mh.L.J. 336] and the judgment delivered by this Court in ***First Appeal No.698 of 2017*** on 12th September, 2017 in "***Bharti Axa General Insurance Company Ltd. Vs. Gautam s/o Ramesh Balvir and others".***

9. In reply, learned counsel for respondent No.2 – insurer submits that though in motor accident claim cases, the claimants need not prove their case beyond reasonable doubt, initial burden always lies on claimants to prove their case on the touchstone of preponderance of probability. He has drawn my attention towards cross-examination of claimant Mahesh Gavhane (PW1) and submits that on the date of accident, the family members of the deceased were knowing the particulars regarding vehicle involved in the accident. However, despite this knowledge, none amongst the claimants lodged report to Police Station within reasonable time, naming opponent No.1 and registration number of the vehicle involved in the accident. He submits that this petition is filed in collusion with opponent No.1. The contention of learned counsel for

opponent No.2 is that as probable view was taken by the Tribunal, this Court need not interfere with the judgment and award passed by the Tribunal.

10. The only point arises in this appeal for my consideration is "whether the claimants have proved involvement of offending vehicle in the abovesaid accident?"

11. With the assistance of learned counsel for the claimants and respondent No.2 – insurer, I have gone through the contents of FIR (Exh-17), which show that though accident occurred on 4th May, 2014, the FIR was lodged on 28th May, 2014, after a delay of 24 days. However, legal position is absolutely clear that merely on the ground of delay in lodging FIR, the claim petition under the Motor Vehicles Act cannot be dismissed, if sufficient material is on record to prove involvement of the offending vehicle on the touchstone of preponderance of probability. As rightly pointed out by learned counsel for respondent No.2 - insurer, this Court in ***First Appeal No.2829 of 2015*** (***New India Assurance Company Ltd., Vs. Ashalata Suryakant Patil and others***), decided on 4th October, 2018, after taking into

consideration various judgments of the Supreme Court of India, has culled out following settled legal principles regarding appreciation of evidence in motor accident claim cases.

(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.

12. In the abovesaid case, this Court also held that mere filing of the chargesheet against the driver of the offending vehicle is not sufficient to discharge the initial burden, wich lies on the claimants to prove the involvement of the offending vehicle.

13. Before proceeding further, I must make it clear that in the cases of ***"Ashabai w/o Kalyan Kothi and others Vs. Baban s/o Santosh Bidgar and others" (supra), "Nagma Shamu Dhotre and others Vs. Chandrakant Sakharam Talgaonkar and others"*** (supra) and the judgment delivered by this Court in ***First Appeal No.698 of 2017*** (supra), eye witnesses were examined by the claimants and their evidence was appreciated by the High Court while allowing those claim petitions.

14. However, in the case at hand, claimants have examined only claimant No.3 Mahesh Gavhane (PW1) and Mohan Gavhane (PW2). Out of these two witnesses, Mahesh Gavhane (PW1) is one of the claimants and the second witness Mohan Gavhane (PW2) was examined to prove the monthly income of the deceased. Thus, obviously evidence of Mohan Gavhane (PW2) is of no avail to prove

the involvement of the offending vehicle.

15. Though Mahesh Gavhane (PW1) deposed before the Tribunal that at the time of accident, opponent No.1 drove the motorcycle in rash and negligent manner and gave dash to the motorcycle of the deceased, from his cross-examination, it emerges that he is not eye witness of the incident and he came to know about the occurrence of the accident ten minutes after the occurrence. From his cross-examination, it emerges that on the date of accident, though he learnt about the particulars of offending vehicle, he did not lodge report to Police Station. From his cross-examination, it also emerges that though the deceased was shifted to Sasoon Hospital at Pune, for treatment and police were available in the hospital and the hospital was also adjacent to Police Station, claimant Mahesh (PW1) did not try to inform the police about the accident. This conduct of Mahesh (PW1) is absolutely abnormal and thus, the only inference that can be drawn is that on the date of accident, none of the claimants had knowledge regarding the vehicle involved in the accident.

16. In view of above discussed circumstances, the

delay of 24 days in filing FIR and naming opponent No.1 as owner and driver of the offending motorcycle and inaction on the part of opponent No.1, despite service of notice of claim petition, suggests lodging of FIR involving the offending vehicle in collusion between the claimants and opponent No.1. Thus, the preponderance of probability tilt in favour of the insurer that the claimants and owner of the offending vehicle in collusion are trying to extract money from the insurer of the offending vehicle, by falsely involving the offending vehicle in the abovesaid accident.

17. Though learned counsel for the appellants submits for remand of the matter to the Tribunal for giving an opportunity to examine the Investigating Officer, I do not find this request acceptable for the simple reason that when absolutely no material is available with the Investigating Officer to prove the involvement of the offending vehicle in abovesaid accident, by examining the Investigating Officer, the claimants would not be in a position to get positive result.

18. In the case at hand, the claimants conveniently

suppressed the evidence of Sangita Gavhane, who lodged the FIR and who could have thrown light regarding the source of her information on the basis of which he named opponent No.1 as owner and driver of the offending vehicle. No other witness is examined by the claimants to atleast prima facie prove the involvement of the offending vehicle in the abovesaid accident. In the circumstances, I have no hesitation to hold that the claimants miserably failed to prove that the offending motorcycle bearing registration No.16-BB-4879 was involved in the abovesaid accident and therefore, the insurer of the offending motorcycle is liable to indemnify opponent No.1 or to pay the compensation amount to the claimants. Accordingly, I answer the abovesaid point in negative.

19. In the result, First Appeal No.2392 of 2016 is dismissed. The parties to bear their respective costs of the appeal.

[SUNIL K. KOTWAL]
JUDGE