

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2602 OF 2011

Sk.Ahemad s/o Sk.Rasool

Age : 47 Yrs., Occ. Mistri-

cum-contractor, R/o :

Shahnoorwadi Dargah Road,

Osmanpura, Aurangabad.

.... APPELLANT

V E R S U S

1. Ajay s/o Ganeshrao Jadhav

Age : Major, Occ. Business,

R/o : A/p V.I.P. Road,

Bhadkal Gate, Aurangabad.

2. Abdul Qadar s/o Abdul Lateef

Age : Major, Occ. Driver,

R/o : Juna Bazar, /Budhi Line,

Aurangabad.

3. The Manager

ICICI Lombard General

Insurance Co. Ltd.,

Lombard near Baba Petrol

Pump, Aurangabad.

.... RESPONDENTS

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Ms. Harshata Manglani h/f Mr. A.S.Bajaj

Advocate for Appellant.

Resp. Nos. 1 & 2 – though served, absent.

Mr. Abhijit Choudhari, Advocate for R – 3.

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CORAM : V.I.ACHLIYA, J.
JUDGMENT RESERVED ON : 16/04/2019
JUDGMENT PRONOUNCED ON : 03/05/2019

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JUDGMENT :

1. Being aggrieved by the Judgment and Order dated 11/05/2011 passed in M.A.C.P. No. 480/2008 by the learned Member, Motor Accident Claims Tribunal, Aurangabad, the appellant – claimant has preferred this Appeal.

2. Heard learned Counsel for appellant and respondent No. 3. Perused the record and proceedings. For the convenience, the parties are referred as they referred in the impugned Judgment and Order passed by Tribunal.

3. Before adverting to deal with the submissions advanced, it is useful to refer few facts leading to this appeal. The appellant herein filed claim petition seeking compensation of Rs. 3 Lakhs alleging therein that on 04/01/2008 at about 10.00 a.m. while he was walking in front of Gurusing Teg Bahadur High School, Osmanpura,

Aurangabad; one motorcycle bearing registration No. MH-20/BD-4387 driven by respondent No. 2 in a rash and negligent manner gave severe dash to him which resulted into causing fracture injury to his right leg. He was shifted to Krishna Orthopedic Hospital, Jalna road, Aurangabad. He was treated in said Hospital from 04/01/2008 to 08/01/2008. Crime No. I-82/2008 was registered against respondent No. 2 on the basis of complaint lodged by the appellant/claimant. He was required to be operated due to injury sustained in the accident. The accidental injury caused permanent disablement to him. On account of accident, the appellant has claimed compensation of Rs. 3 Lakhs as pecuniary and non pecuniary loss. Pursuant to the summons issued, though respondent Nos. 1 and 2 appeared but failed to contest the claim by filing Written Statement. They remained absent through-out the proceeding. The claim petition filed by the appellant contested by respondent No.3/Insurance company. Respondent No. 3 has denied the accident as well as involvement of motorcycle bearing registration No. MH-20/BD-4387 in the accident. The Tribunal has dismissed the claim petition holding that appellant/claimant has failed to prove that he sustained injuries in the motor

vehicular accident, occurred on 04/01/2008 at about 10.30 a.m. in front of Gurusing Teg Bahadur High School, Osmanpura, Aurangabad. It is further held that the appellant/claimant has failed to prove that alleged accident occurred due to rash and negligent driving of the driver of motorcycle bearing No. MH-20/BD-4387. Being aggrieved the appellant/claimant has preferred this appeal.

4. Learned counsel for appellant assailed the Judgment and order passed by the Tribunal with contention that the Tribunal has not considered the evidence adduced in the case in proper perspective and arrived at wrong conclusion. It is submitted that the Tribunal has given undue weight-age to the delay in lodging F.I.R. It is submitted that the Tribunal has failed to take into consideration that the claim petition filed seeking compensation is neither Suit nor adversarial lis. It is contended that the proceeding under the provisions of Motor Vehicles Act seeking compensation is regulated by the provisions contained in Chapter XII of Motor Vehicles Act which is a complete Code in itself. The legislation being beneficial legislation, same is required to be construed liberally and strict proof of accident is not

required at the instance of claimant. In support of the submissions advanced, the learned counsel has referred and relied upon the decision in the case of *National Insurance Company Ltd. Vs. Smt. Vimla & Ors. reported in 2017 (3) ALL MR (JOURNAL) 101* and the decision in the case of *Vimla Devi and Ors. Vs. National Insurance Company Ltd. and Ors. reported in 2018 (4) T.A.C. 842 (S.C.)*.

5. On the other hand, learned counsel representing respondent No. 3/Insurance company supported the Judgment and order passed by the Tribunal. By referring the rival pleadings, oral and documentary evidence adduced in the case the learned counsel submits that there is absolutely no perversity in any of the reasons and findings recorded by the Tribunal so as to call for interference in exercise of appellate jurisdiction of this Court. It is submitted that the reasonings and findings recorded by the Tribunal to dismiss the claim petition are consistent with the pleadings and evidence on record. It is submitted that immediately after the accident, the history in respect of alleged accident was recorded by Medical Officer who attended the claimant. He enquired in respect of the accident with the appellant/claimant who

in turn disclosed that on 04/01/2008 at 11.15 a.m. he was proceeding on motorcycle bearing registration No. MH-19/R-0542 which was given dash by another motorcycle. He was brought to hospital by his son Sk. Wasim Sk. Ahemad and further stated that he do not want to register criminal case. No complaint in respect of incident was lodged till 10/04/2008. After the period of more than 3 months, the complaint was lodged on 11/04/2008 with altogether different version of accident. In the complaint lodged, the complainant has first time disclosed that he was dashed by the motorcycle bearing registration No. MH-20/BD-4387 driven by respondent No. 2 while he was walking and going towards Gurusing Teg Bahadur High School, Osmanpura, Aurangabad. On close analysis of the evidence adduced on the part of complainant and respondent No. 3, the Tribunal has dismissed the claim petition. It is submitted that the reasonings and findings recorded by the Tribunal are fully in consonance with the evidence on record. The view taken by the Tribunal can not said to be perverse and based upon mis-reading of evidence. In absence of perversity in the reasonings and findings recorded by the Tribunal, the appeal deserves to be dismissed.

6. I have carefully considered the rival pleadings, oral and documentary evidence adduced in the case and further scrutinized the reasoning and findings recorded by the Tribunal. In my view, the reasoning and findings recorded by the Tribunal are fully in consonance with the rival pleadings and evidence adduced in the case. In order to prove the accident and involvement of motorcycle bearing registration No. MH-20/BD-4387, the claimant has examined himself and further examined Sk. Rizwan Sk. Khalil, the alleged witness to the incident [P.W.3]. Beside the oral evidence, the appellant has relied upon the F.I.R. lodged on 11/04/2008 and spot panchanama of the alleged accident dated 04/01/2008 recorded on 11/04/2008. Respondent No. 3/Insurance Company has examined A.S.I. Ratan Haribhau Shingane, the Investigating Officer attached to police station Osmanpura, Aurangabad who conducted the investigation. Beside the said witness, respondent No. 3 has relied upon the copy of MLC register produced by the appellant i.e. Exh.43/c.

7. If we consider the fact of accident reported first in time and the version of alleged accident given to the Doctor who treated the appellant/claimant immediately

after the accident, then the version of accident given in the complaint after 3 months of alleged incident runs in complete contrast to earlier version of accident given by the appellant. As per the copy of MLC register produced at Exh. 43 i.e. history of accident given by the appellant/claimant, I.e. disclosure made first in time, the appellant has disclosed that accident was occurred at about 11.15 a.m. on 04/01/2008 while he was proceeding on his own motorcycle bearing registration No. MH-19/R-0542 near Gurusing Teg Bahadur High School, Osmanpura, Aurangabad. He was suddenly given dash by another motorcycle. The history given by the appellant was recorded by Dr. N.K.Kapahatia, the consulting Orthopedic Surgeon who treated the appellant from 04/01/2008 to 08/01/2008 and operated the appellant. The history given by the appellant and recorded in MLC register and produced at Exh. 43 reads as under :

" Patient was traveling on his own motorcycle (MH-19 R-0542) and suddenly was given dash by another motorcycle on the above mentioned square [Near Gurutech Bahadur High school, Osmanpura, Aurangabad]. Patient was brought to the hospital by his son – Shaikh

Wasim Shaikh Ahmad at 2.45 p.m. on 04/01/2008. "

8. The above quoted history given by the appellant was duly recorded by the surgeon who admitted and treated the appellant from 04/01/2008 to 08/01/2008. The history noted was counter signed by the son of appellant and appellant has endorsed his thumb impression over the history recorded by Doctor. There was no reason for treating Doctor to record incorrect history of accident.

9. If we consider the testimony of appellant and the F.I.R. lodged after more than 3 months after the alleged accident, then the appellant has given altogether different version of accident. He has deposed that on 04/01/2008 he was proceeding on feet and while passing in front of Gurusing Teg Bahadur High School, Osmanpura, Aurangabad, the motorcycle bearing registration No. MH-20/BD-4387 driven by respondent No. 2 in a rash and negligent manner gave dash to him. He fell down on the ground. Sk. Rizwan [P.W.3], the alleged witness to the incident, brought him to Krishna hospital with the help of respondent No. 2 and got

admitted in the hospital. The time of admission in the hospital disclosed as 10.30 a.m.

10. Thus, if we consider the version of accident first in time and the version of incident given after more than 3 months after the accident, then there is no consistency. There was an attempt to give complete go-bye to the version of accident given first in time by the appellant. The manner in which the accident has occurred, the time at which the accident has taken place and involvement of vehicle are altogether different. The complaint lodged by the complainant is nothing but improved version of the incident. By way of improved version of incident the deliberate attempt has been made to any how show the involvement of motorcycle bearing registration No. MH-20/BD-4387, as well as respondent No. 2 as the person driving motorcycle and insured with respondent No. 3 so as to make out the case for claiming compensation from respondents.

11. The name of Sk. Rizwan (P.W.3), as the witness to incident first time introduced by way of complaint lodged more than 3 months after the accident. The statement of

Sk. Rizwan was not recorded during the investigation of criminal case. The presence of P.W. 3 on the spot itself raises serious doubt.

12. If we consider the testimony of Sk. Rizwan [P.W.3], the witness to the incident examined by the appellant, then he has given altogether different version of the accident. He has deposed that after the accident he informed the son of appellant about the accident and then the son of appellant came from his house. Thereafter, the appellant along with his son brought the appellant to hospital. In cross examination, P.W. 3 has deposed that Abdul Quadar, the respondent No. 2, not accompanied them to hospital. As per the disclosure made in the F.I.R., the appellant has stated that he was brought to hospital by respondent No. 2. P.W. 3 has deposed that prior to alleged accident, he was not knowing Abdul Quadar, the respondent No. 2. Thus, the appellant as well as the witness to the incident i.e. P.W. 3 were not knowing respondent No. 2 prior to the accident. Therefore, it raises serious doubt as to involvement of Motorcycle bearing registration No. MH-20/BD-4387 and role of respondent No. 2 in the alleged accident dated 04/01/2008.

13. Although the appellant has denied in his cross examination that Abdul Quadar i.e. R – 2 is his relative and running motorcycle repairing garage in partnership with his son, but through the testimony of Ratan Singane [D.W.1], the Investigating Officer examined by respondent No. 3, it has been brought on record that respondent No. 2 was running two wheeler repairing garage in Begumpura locality of Aurangabad city. So also, the son of appellant also run two wheeler repairing garage In that view, the possibility of complaint being lodged in due deliberation and consultation with respondent No. 2 can not be ruled out under the facts and circumstances of the case.

14. In the facts and circumstances of the case, the delay of more than 3 months in lodging the complaint showing involvement of motorcycle bearing registration No. MH-20/BD-4387 assumes great significance. The story as put-forth after lodging of complaint after 3 months of alleged accident in contrast with the story of accident disclosed first in time attaches importance in the light of overall facts of the instant case. The decision in the case of *National Insurance Company Ltd. Vs. Smt. Vimla & Ors.* [supra] referred and relied upon by the

learned counsel for appellant have no bearing upon the facts of the present case. In the present case, the delay in lodging F.I.R. is not the sole basis to dismiss the petition filed by the appellant. The petition has been dismissed on due consideration of overall evidence adduced in the case. The delay in lodging F.I.R.. was one of such consideration to reach to the conclusion that appellant has failed to prove involvement of vehicle in the alleged accident dated 04/01/2008.

15. Thus, in the light of overall evidence adduced in the case on the part of appellant – claimant giving different versions of the incident and inconsistency between the oral and documentary evidence, the Tribunal has rightly held that the appellant has failed to prove the involvement of motorcycle bearing No. MH-20/BD-4387 owned by respondent No. 1 and insured with respondent No. 3 in the accident dated 04/01/2008. The explanation given as to the delay in lodging the complaint can not be accepted as the appellant was discharged from the hospital on 08/01/2008 i.e. after 4 days of the alleged accident. If really such incident had occurred in the manner stated by the appellant, then certainly the complaint could have been lodged immediately after the

incident or at least within a reasonable time after discharge from the hospital. If we consider the disclosure made first in time of alleged accident, then it completely rules out the involvement of motorcycle bearing No. MH-20/BD-4387 in the accident. The appellant disclosed that he do not want to lodge police complaint itself sufficient to draw inference that no such accident occurred involving third person. In the back-ground of overall facts of the case and the evidence brought on record that the son of the appellant as well as respondent No. 2 runs two wheeler repairing garage, the possibility of the complaint with improved version of the accident being filed in connivance with respondent No. 2 can not be ruled out in the facts and circumstances of the case. In that view, the reasons and findings recorded by the Tribunal can not be said to be perverse and contrary to the evidence on record. There is absolutely no perversity in any of the reasons and findings recorded by the Tribunal.

16. Thus, on due appreciation of submissions advanced in the light of scrutiny of the evidence adduced in the case, I am of the view the appeal is devoid of merit and liable to be dismissed. Accordingly, the Appeal is

dismissed with no order as to costs.

[V.I.ACHLIYA]
JUDGE

KNP.

