

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1154 OF 2017

Sakharam s/o Suryabhan Jadhav,
Age 26 years, Occupation Labour
and Education, R/o Khadki Devla,
Tq. Wadwani Dist. Beed.

...Appellant.
(Orig.Claimant)

VERSUS

1. Popat s/o Shahurao Ghadge,
Age Major, Occupation L.I.C.Agent,
R/o Gandhi Nagar, Beed,
Tq. Dist. Beed.
2. Suryabhan s/o Dadarao Jadhav,
Age Major, Occupation L.I.C.Agent,
R/o Khadki Devla Tq. Wadwani
Dist. Beed.
3. Branch Manager,
Bajaj Allianz General Insurance Company,
Branch Office Near LIC Office, Adalat
Road, Aurangabad Tq. Dist. Aurangabad. ..Respondents.
(Orig.Respds.)

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Mr. S. R. Shirsat, Advocate, for Appellant.
Mr. S. G. Chapalgaonkar, Advocate, for Respondent No.3.
Respondent No.1 and 2 served.

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Judgment :
25-06-2019**

**Date of Pronouncing The Judgment :
13-08-2019**

ORDER :

1. Present appeal has been filed by the original claimant challenging the rejection of his claim petition under Section 166 of Motor Accident Act, bearing Motor Accident Claim Petition No. 66 of

2013, by learned Member Motor Accident Claims Tribunal, Beed on 02-05-2015.

2. The factual matrix leading to the appeal are that, the claimant was 24 years old labour and also taking education, earning Rs.6000/- per month, was proceeding as a pillion rider on motorcycle bearing No. MH-44/ AF-7197, at about 19 hours on 17-01-2011. The said vehicle was driven by respondent No.1 and it belong to the father of the claimant i.e. respondent No.2. When the motorcycle was on Telgaon Road near Bakarwadi Phata, at that time the lights of the opposite vehicle fell on the eyes of the motorcycle rider and at that time the motorcycle was in high speed; respondent No.1 could not control his motorcycle, as a result of which the motorcycle went into the ditch by the side of the road. Both the riders of the motorcycle fell down and claimant received severe injuries to his head and stomach. He was immediately shifted to Deep Hospital, Beed. As his condition became serious, he was then shifted to Seth Nandlal Dhoot Hospital, Aurangabad. He underwent operation for the stomach. It is stated that, though treatment given the injuries have rendered him permanently disabled. Respondent No.1 was responsible for the said accident. The said accident had occurred due to the sole negligence and rashness on the part of him. Respondent No.1 had given the statement to police on 18-01-2011 and only accident was reported vide AD No.04 of 2011. The

claimant had claimed in all amount of Rs.4,00,000/- as compensation from all the respondents. Respondent No.3 is the Insurance Company of the motorcycle owned by respondent No.2.

3. Respondents No.1 and 2 have given common written statement at Exhibit 19. It was admitted that, the respondent No.2 is the owner and respondent No.3 is the Insurance company of the motorcycle. As regards rest of the contents of the petition are concerned, they have claimed ignorance. It was stated that, the respondent No.1 was holding valid and effective driving licence on the date of the accident and he was riding the motorcycle carefully but he could not avoid the accident. Surprisingly the father of the claimant has contended that, claimant has not sustained any permanent physical disability. It was denied that, the said accident taken place due to the negligence on the part of the respondent No.1.

4. Respondent No.3, the Insurance Company, denied all the averments in the claim petition. Age, occupation and income of the claimant is denied. It has been admitted that, respondent No.2 had insured the said motorcycle with it for the period 02-08-2010 to 01-08-2011. It is stated that, since the claimant is the son of respondent No.2, he is stepping into the shoes of the owner, and therefore, he cannot be stated as 'third party'. It is stated that, the

claim petition is not maintainable under Section 166 of the Motor Vehicles Act. Respondent No.1 though reported the fact to the police yet complaint was not lodged by anybody in respect of the accident. If anybody was negligent then FIR ought to have been filed. There is breach of terms of policy and on all these counts, the Insurance Company claimed dismissal of the petition.

5. After the issues were framed, claimant alone has adduced oral as well as documentary evidence. Taking into consideration the evidence on record as well as hearing both sides, the learned Tribunal has come to the conclusion that, claimant has failed to prove that he sustained injuries in an accident dated 17-01-2011 due to rash and negligent driving on the part of the motorcycle rider, and therefore, it is stated that the claimant is not entitled to get compensation. Hence, this appeal by the claimant.

6. Heard learned advocate Mr. S. R. Shirsat for appellant and learned advocate Mr. S. G. Chapalgaonkar for respondent No.3. Respondents No.1 and 2 though served, remained absent. It has been vehemently submitted on behalf of the appellant that, the learned Tribunal failed to consider that the accident was reported to the police but if no action has been taken further by the police then the claimant is not responsible for the same. Independently the Tribunal ought to have come to the conclusion on the basis of

evidence led before it as to whether the respondent No.1 was negligent or not and whether he was responsible for the accident or not. Fact of accident is not denied by respondents No.1 and 2, and therefore, the question was only in respect of negligence. Claimant had led the evidence and there was nothing in the cross to deny his testimony. Therefore, it ought to have been considered by the learned Tribunal that, claimant suffered injuries and then those injuries have turned into permanent physical disablement for him. The Insurance Company tried to avoid the liability to pay compensation on the ground that the risk of the pillion rider is not covered. He relied on the decision of this Court in First Appeal No.2057 of 2010, decided on 11th August 2011, wherein after taking note of the decision of Delhi High Court in *M.C.A. Application No.176 of 2009 in Yashpal Luthra and Another Vs. United India Insurance Co. Ltd. and Another*, various circulars issued by Insurance Regulatory and Development Authority ('IRDA') and other Insurance Companies, it was observed that,

“16. Thus, there can be a little doubt as regards limits of liability under the comprehensive / package policy to compensate in the event of occurrence of death or sustenance of injury of a pillion rider on the two -wheeler or occupant in a private car. It is stated in clear terms that there are no limits on the liability and the Insurance Companies are liable to reimburse the claim in its entirety.”

He therefore, prayed for setting aside the findings given by the learned Tribunal and then assessing the compensation on the basis of evidence led by the claimant.

7. Per contra, the learned advocate appearing for the respondent No.3 submitted that, the claim petition was filed under Section 166 of the Motor Vehicles Act and not under Section 163-A of the said Act. By relying on the decision in *Surinder Kumar Arora and Anr. Vs. Dr. Manoj Bisla and Ors.*, reported in *2012 AIR SCW 2241*, wherein it has been held that,

“When claim for compensation is filed under Section 166 of the Motor Vehicles Act, the onus to prove act of rash and negligent driving by driver of vehicle was on claimants. If after considering the evidence there is failure to discharge the said burden then the rejection of the claim filed under Section 166 of the Motor Vehicles Act was proper.”

It was also submitted that, when the claimant intended to rely on the statement of respondent No.1 taken by Police, then it will have to be read as a whole and it cannot be read for the purpose the claimant wants to canvass, and therefore, reliance has been placed on the decision in, *Oriental Insurance Company Limited Vs. Premlata Shukla and Others*, reported in *(2007) 13 Supreme Court Cases 476*, wherein it has been held that,

“Where a parts of a document have been relied on by both the parties, the Claims Tribunal may rely on the

same irrespective of whether the contents of the document have been proved or not.”

8. Learned advocate for respondent No.2 by pointing out Exhibit 25, Statement of respondent No.1, submitted that, he has posed that it was not his negligence. He also pointed out the statement given by the claimant on 02-03-2011 before police wherein he also tried to submit that the motorcycle was going at its correct side. However, since the headlights of the opposite vehicle fell on the eyes of respondent No.1, he could not see the road ahead of him. As a result of which, the motorcycle fell down in the ditch. He had not blamed respondent No.1 for the accident, therefore now the claimant cannot say that, respondent No.1 was negligent. The learned Tribunal has correctly assess the evidence, and therefore, no question of granting compensation under Section 166 of the Motor Accident Act would arise in this case.

9. At the outset it can be said that, when the claim petition was filed under Section 166 of the Motor Vehicles Act, in view of the decision in case of *Surinder Kumar Arora (Supra)*, the onus was on the claimant to prove that the accident took place due to the negligence of respondent No.1. The accident had taken place on 17-01-2011. The statement of the claimant was recorded by police on 02-03-2011, yet he had not filed any complaint against respondent No.1. On this point he has been cross examined at length. He was

unable to tell that, as there was no negligence on the part of respondent No.1, offence was not registered against respondent No.1 but then he was not certain on the point that he has not taken any criminal action against respondent No.1. It also appears from the police papers that, though the accident was reported by respondent No.1 himself on the next day of the accident and the spot panchanama was carried out yet ultimately no criminal action has been taken against the respondent No.1. No doubt the Tribunal was duty bound to assess the evidence that has been adduced before it in order to come to a conclusion that there was negligence of a particular party to the accident. In such circumstance, there may not be a criminal action or even if there would have been a criminal action yet neither the decision by the police to prosecute a particular person for the accident or the acquittal of an accused who has been charged for rash and negligent driving is not binding on the Tribunal. In other words, the Tribunal is required to come to its own conclusion on the basis of evidence adduced as to whether the claimant has proved that the respondent rider was rash or negligent or not. Here in this case, now except the bare words of the claimant there is nothing. There is no proper explanation on behalf of the claimant as to why he had not taken any criminal action against respondent No.1. The spot panchanama does not show any such situation which would allow the Courts to draw doctrine of *res ipsa*

loquitur. The statement of respondent No.1 as well as the claimant before the police gives a picture that, when the motorcycle was going by its side, one vehicle came from the opposite direction, the headlights of the said vehicle fell on the eyes of respondent No.1 and it appears that due to the darkness created for a temporary period, the motorcycle went into the ditch. As regards the allegation that the respondent No.1 was in high speed is concerned, it appears to be a afterthought addition by the claimant. Neither the respondent No.1 nor the claimant has tried to give any indication as to which was the vehicle which had come from the opposite direction. They do not want to blame in any manner the driver of that vehicle which had come from opposite direction. Under such circumstance from the story that has been given and the evidence that has been led it cannot be concluded that, respondent No.1 was rash or negligent in driving the motorcycle. If we want to go further into the details, it can be seen that as per the spot panchanama, the width of the road is 22 feet. There was a breach on the road and the ditch appears to be on the Northern extreme side of the road that too after the side margin. The testimony of the claimant is silent as to from which side that is whether from the middle or from the extreme left of their side they were proceeding. It does not appear to be the case from the statement of both of them that the opposite side vehicle had come to its opposite direction, that means mere the motorcycle

when the headlights falls on eyes of respondent No.1. Under such circumstance, from all angles if we consider the story given in the petition as well as before the police, it is hard to believe that the claimant has proved that, respondent No.1 was rash or negligent in driving the motorcycle.

10. When the claimant has failed to discharge the onus of proving negligence and / or rashness of the respondent No.1, the learned Tribunal was justified in rejecting the claim petition.

11. Since the claim petition deserves to be rejected, there is no necessity to discuss as to whether it was a contributory negligence or a composite negligence or whether the risk of the pillion rider was covered under the policy or not. At the cost of repetition it can be said that, since petition was not filed under Section 163 of the Motor Vehicles Act, proof of negligence or rashness by the claimant was mandatory. Hence, no illegality or error can be found with the Judgment and award passed by the learned Tribunal. There is no merit in the present appeal, it deserves to be dismissed and accordingly it dismissed. No order as to costs.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.