

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

First Appeal No. 0186 of 2019

District : Ahmednagar

1. Kavita Ratnakar Ghodke,
Age : 46 years,
Occupation : Nil.
2. Nilam Ratnakar Ghodke,
Age : 28 years,
Occupation : Education.
3. Ganesh Ratnakar Ghodke,
Age : 25 years,
Occupation : Education.

All R/o. House No. F-46/16,
N-7, CIDCO, Ayodhyanagar,
Aurangabad.

.. Appellants
(Original
claimants)

versus

1. Sandip Sarjerao Jadhav,
Age : Major,
Occupation : Driver,
R/o. Ahilyanagar,
Newasa Kd.,
Taluka Newasa,
Dist. Ahmednagar.
2. Nilesh Nandkumar Vyavhare,
Age : Major,
Occupation : Agriculture,
R/o. Chaudhari Chal, Kukana,
Taluka Newasa,
Dist. Ahmednagar.
3. The Manager (Legal),
IFFCO Tokiyo General Insurance
Co. Ltd.,
A.F.L. House, 2nd Floor,

Lokbharati Complex,
Marol Maroshi Road,
Andheri (West),
Mumbai - 400 059.

.. Respondents
(Original
respondents)

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Ms. Mangal V. Manal, Advocate, for the appellants.

*Mr. Krushna D. Mote, Advocate, for respondents
no.01 and 02.*

*Mr. Vinayak N. Upadhye, Advocate, for respondent
no.03.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15TH JULY 2019

ORAL ORDER :

01. Present appeal has been filed by the original claimants, challenging the dismissal of their claim petition under Section 166 of the Motor Vehicles Act, 1988, by learned Member of the Motor Accident Claims Tribunal, Newasa, District Ahmednagar, in Motor Accident Claim Petition No. 22 of 2016, on 27-04-2018. *[Parties are addressed by their nomenclature before the Tribunal.]*

02. The claimants are the legal heirs i.e. widow and children of Ratnakar Dattatraya Ghodke. Ratnakar was 52 years old industrial worker and also a businessman running grocery shop having income from all sources around Rs. 15,000/- per month. He was proceeding with claimant no.03 on 29-03-2014 on their motorcycle bearing no. MH-17/M-4726 to village

Wakadi, Taluka Shrirampur, District Ahmednagar. They were proceeding from Pravara Sangam. At that point, another motorcycle came from back side, gave dash to their motorcycle which the deceased was driving; as a result of which, deceased as well as claimant no.03 fell down and became unconscious. They were shifted to hospital by unknown persons. Deceased was seriously injured and, therefore, thereafter he was referred to City Care Hospital, Ahmednagar. Ultimately, he succumbed to his injuries on 04-04-2014. It has been stated that the another vehicle, which was involved in the accident, was belonging to respondent no.02, bearing no. MH-17/AY-9996. It was driven by respondent no.01. It is the contention of the claimants, that due to the negligence on the part of respondent no.01, the said accident had taken place. The fact of death of deceased was reported to police. Respondent no.01 has been prosecuted. The said vehicle was insured with respondent no.03 and therefore, from all the respondents, the claimants have claimed compensation of Rs. 10,00,000/- together with interest jointly and severally.

03. Respondents no.01 and 02 filed their common written statement at Exhibit 22, whereas respondent no.03 filed its own written statement at Exhibit 23. All of them have denied age, occupation and income of the deceased. They have clearly denied that any such accident, as narrated in the petition, had ever taken

place. The allegation in respect of accident occurred due to the rashness and negligence on the part of respondent no.01 has been denied specifically. Alternatively, the Insurance Company has taken statutory defences.

04. Taking into consideration the rival contentions, issues were framed. The claimants as well as the Insurance Company has led evidence. Taking into consideration the evidence as well as proved documents on record, the learned Tribunal has come to the conclusion that the claimants have proved that Ratnakar died due to the accidental injuries in the accident which had taken place at about 04.30 p.m. on 29-03-2014. However, the learned Tribunal has held that the claimants have failed to prove that the motorcycle driven by respondent no.01, owned by respondent no.02 and insured with respondent no.03, was involved in the accident. The claim petition has been, therefore, dismissed. Hence, the present first appeal by the original claimants.

05. Heard learned Advocate Ms. M.V. Manal appearing for the appellants. Heard learned Advocate Mr. K.D. Mote appearing for respondents no.01 and 02. So also, heard learned Advocate Mr. V.N. Upadhye appearing for respondent no.03.

06. Learned Advocate appearing for the

appellants has submitted that the learned Tribunal has not considered the evidence on record properly. Though it has been held that deceased Ratnakar died due to accidental injuries, the claim petition has been dismissed on the ground of non-involvement of the motor vehicle owned by respondent no.02. Claimant no.03 Ganesh has examined himself. He was also deceased with the deceased at the relevant time and had received injuries. He has given the first information report. The fact is that he was only 22 years old at the relevant time and the fact that after the accident, he had also become unconscious. He had not lodged the report immediately. However, after death of Ratnakar, when the FIR has been lodged, further investigation has been carried out by the police. Statement of respondent no.01 was recorded by police in which he has clearly admitted that he had given dash to the vehicle driven by deceased. He has admitted that he himself also fell down from his vehicle and had received injuries. The injury certificate of respondent no.01 was produced on record, which clearly showed that he had received those injuries in road traffic accident. He was examined on the same day of accident i.e. 29-03-2014. This was the connecting evidence to hold that respondent no.01 had caused the said accident. The other police papers were also on record on the basis of which learned Tribunal ought to have come to the conclusion that the motorcycle belonging to

respondent no.02, driven by respondent no.01 and insured with respondent no.03, was involved in the accident. Under those circumstances, taking into consideration that the Motor Vehicles Act is a beneficial legislation, the petition ought to have been allowed.

07. Per contra, learned Advocates representing the respondents supported the reasons given by the learned Tribunal and submitted that ample opportunity was available to the claimants to prove the accident as they have narrated in the petition. However, that opportunity has not been utilized properly. All the papers were before the Tribunal and, therefore, the Tribunal has come to correct conclusion based on the documents which were before it.

08. The fact is not disputed that Ratnakar died on 04-04-2014 due to accidental injuries caused to him on 29-03-2014 at about 04.30 p.m. on Pravara Sangam road. The point in dispute was the involvement of motorcycle bearing no. MH-17/AY-9996 owned by respondent no.02, insured with respondent no.03. It was contended by the claimants that the said vehicle was driven by respondent no.01 at the relevant time. Therefore, taking into consideration the scope of the first appeal, following points arise for determination. Findings and reasons for the same are as follows :-

(I) Whether the claimants have proved that Ratnakar had received accidental injuries due to the dash given by motorcycle bearing no. MH-17/AY-9996 ?

(II) Whether the claimants were entitled to get compensation ? If yes, what would be the quantum ?

09. Learned Advocate appearing for the appellants - claimants has relied on the police papers, especially the statement of respondent no.01 and the injury certificate of respondent no.01. It will not be out of place to mention here, that in order to prove injury certificate or in support of that injury certificate, surprisingly the Insurance Company has led evidence and examined the Medical Officer Dr. Vijay Gade from Rural Hospital, Newasa. He has proved the contents of the injury certificate. In fact, when the injury certificate was the certified copy issued by police, it could have been directly read in evidence considering it as a public document for a limited purpose while considering motor accident claim petition. Even if we consider the contents of the injury certificate, at the most, the fact which can be revealed is that respondent no.01 was examined at about 06.00 p.m. on 29-03-2014 for the injuries which he had sustained in a road traffic accident. Except this finding, there cannot

be any different finding based only on this document. No further details are recorded in that injury certificate regarding the fact of accident. Even the said witness Dr. Vijay Gade would not have told anything else than the contents of the injury certificate.

10. In order to prove the involvement of the vehicle belonging to respondent no.02, the claimants have examined claimant no.03 only. His examination in chief is nothing but replica of his petition. But in cross examination, he has admitted that his father was admitted in the hospital for about 08 days and thereafter he expired and, therefore, there was delay in lodging the FIR. Thus, it is tried to be extracted from him, as to why there was delay in lodging the FIR. However, the fact further to be considered is, the accident had taken place on 29-03-2014, Ratnakar expired on 04-04-2014, yet, FIR has been lodged on 23-04-2014. It cannot be stated that this delay was only on the count, that the father had received injuries and then expired. Interestingly, he gives statement in his cross, that in the hospital, it was not disclosed that the injuries have been sustained due to another motorcycle. But then he has denied the suggestion that as the vehicle driven by his father slipped, they had sustained injuries. In cross examination, he has clearly admitted that since he had received minor injuries,

he had no physical inability to give FIR and since in the police papers it has been transpired that the respondent no.01 was involved in the accident, he is saying so. That means, when as per his own contention, after the alleged dash, he as well as his father fell down and became unconscious. There was no occasion for him to note down the number of the vehicle. To a limited extent, the fact can be considered that since in the accidents as they occur in fraction of seconds, it is impossible to note down the number of the vehicle. But then subsequent conduct of the parties is required to be considered in order to assess the involvement of that vehicle. The FIR was lodged in this case on 23-04-2014 and then his supplementary statement has been recorded on 07-07-2014. In his supplementary statement, he has stated that he had made enquiry with Newasa Rural Hospital and came to know about the injuries and MLC case papers of respondent no.01, that he had sustained injuries in accident and, therefore, he says that the said accident was caused by respondent no.01.

11. The claimants are also relying on statement of respondent no.01 dated 10-07-2014 recorded by police. The said statement appears to be part of charge-sheet of which certified copy had been produced. The said statement has been taken as statement of the accused and therefore, for criminal

case, it may not be admissible in evidence. As regards civil case is concerned, no doubt, the question arises as to whether in absence of examination of the person who had recorded it, whether it can be read in evidence, that too, without deciding whether certified copy of such statement can be read in evidence. It appears that from this angle, submissions were not made before the Tribunal. Even if for the sake of arguments, we take the said statement as it is, in which it was stated by respondent no.01, that due to the dash of his motorcycle to the motorcycle driven by deceased, deceased as well as his pillion rider fell down; statement is made that after they had sustained injuries, he immediately asked Ratnakar and Ganesh, as to what is their name and then came to know about their names and then he had called some other persons and made arrangements for medical help. That means, he intended to say that Ratnakar as well as Ganesh were conscious when he made enquiries with them. This is contrary to what has been stated in the FIR. In the FIR, it is stated that after they fell down from the motorcycle after the dash, they had raised hue and cry; however, motorcycle rider did not stop and fled away. Under such circumstance, how the claimants can rely on his statement, is a question, rather it gives an example as to how the vehicle belonging to respondent no.02 has been involved in the case. Ultimately, respondent no.01 says that he

will not be able to say how the accident took place and who was at fault. Therefore, the alleged connection between the medical examination of respondent no.01 and the accidental injuries caused due to the accident, cannot be said to have been established merely by producing the injury certificate as well as statement of respondent no.01 taken by police. The police head-constable who had taken his statement, has not been examined by the claimants for the reasons best known to them.

12. The charge-sheet also contains statement of respondent no.02 which is alleged to have been taken on 07-07-2014, who has echoed thereafter with claimant no.03 Ganesh and then has stated that respondent no.01 had carried out repairs to his motorcycle and then handed it over to respondent no.02. Again, at the cost of repetition, it can be said that without examining the said police constable who had recorded statement of respondent no.02, his statement cannot be considered. This is with the fact, that in their written statement, respondents no.01 and 02 have clearly denied involvement of the motorcycle bearing no. MH-17/AY-9996 in the said accident.

13. Again, coming to the point regarding delay in lodging the FIR, it can be seen that the fact of death of Ratnakar was informed to police and

thereafter enquiry under Section 174 of the Code of Criminal Procedure was conducted wherein the inquest *panchanama* was carried out and then the dead body was sent for post mortem. Important point to be noted is that when on that day i.e. on the day when inquest *panchanama* was prepared, there was an opportunity to the claimants or on behalf of them, FIR could have been lodged against unknown vehicle. Same has not been done. Whatever FIR has been lodged on 23-04-2014, is also against unknown person. Therefore, this clear delay in lodging the FIR and then not examining the police constable who had recorded the statements of respondents no.01 and 02 or the Investigation Officer, is required to be viewed against the claimants.

14. No doubt, Motor Vehicles Act, 1988, is a beneficial legislation; but then liberal interpretations and benefit can be given when the accident is proved. When accident itself is not proved, though the burden was on the claimants; then question of liberal interpretation does not arise. The point no. I is, therefore, answered in the negative.

15. As regards point no.II, in view of the fact that the claimants had failed to prove negligence on the part of respondent no.01, thereby involvement of the vehicle motorcycle belonging to respondent no.02

and insured with respondent no.03, claimants are not entitled to get compensation.

16. There is no error either on facts or on the point of law by the learned Tribunal in assessing the evidence on record. There is no merit in the present appeal. Hence, the first appeal is hereby dismissed. There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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