IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.41 OF 2011

Bajaj Allianz General Insurance Co. Ltd.,
Through its Branch Manager,
2nd Floor, Adalat Road, Aurangabad.

... **Appellant**.

... **Versus** ...

1 Malekabi w/o Mohd. Ayyub,
Age 31 yrs., Occ. Household,
R/o Degloor Naka, Nanded,
Dist. Nanded.

2 Mohd. Nisar s/o Mohd. Ayyub,
Age 15 yrs., Occ. Education,

3 Reshma d/o Mohd. Ayyub,
Age 13 yrs., Occ. Education,

4 Gouse s/o Mohd. Ayyub,
Age 11 yrs., Occ. Education,

5 Heena d/o Mohd. Ayyub,
Age 10 yrs., Occ. Education,

6 Sabiha d/o Mohd. Ayyub,
Age 8 yrs., Occ. Education,

Respondent Nos.2 to 6 are minor
under guardianship of their real
mother respondent No.1.

7 Hashamatbi w/o Mohd. Hanif,
Age 60 yrs., Occ. Household,
R/o as above.

8 Mohd. Hanif s/o Mohd. Shahmad Saheb,
Age 65 yrs., Occ. Nil,
R/o as above.

9 Saleem Khan s/o Lateef Khan,
Age : major, Occ. Business,
R/o Degloor Naka, near and behind
Sony Video, Hyderbagh road, Nanded.

… **Respondents**.

...

Mr. S.S. Dargad, Advocate h/f Mr. S.G. Chapalgaonkar, Advocate for the appellant

Mr. R.R. Shaikh, Advocate for the respondent Nos.1 to 8

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04th JULY, 2019

J U D G M E N T :

1 Present appeal has been filed by the original respondent No.2 challenging the order below Exh.5 in M.A.C.P. No.389/2009 dated 16.10.2010, whereby the said application under Section 140 of Motor Vehicles Act, 1988 came to be allowed against the insurance company.

2 The original claimants contended that they are the legal heirs of one Mohd. Ayyub Mohd. Hanif who was aged 35 years butcher earning Rs.10,000/- per month. Deceased Mohd. Ayyub was coming from village

Umra to Usman Nagar on bicycle on 14.12.2005 at about 7.00 p.m.. When he was near Mahadeo Khandi in Shiradhon village, Tq. Kandhar, Dist. Nanded, it is stated that he was dashed by motorcycle bearing No.MH 26/P-9068 from back side. As a result of which, he sustained head injury, became unconscious and thereafter shifted to Government Hospital. He expired on 16.12.2005. According to the claimants, the accident had taken place due to the negligence on the part of driver of motorcycle i.e. respondent No.1. He is also the owner of said vehicle. It is stated that the said vehicle was insured with respondent No.2 on the date of accident. After filing petition under Section 166 of M.V. Act the claimants have claimed compensation under No Fault Liability.

3 Respondent No.1 filed written statement at Exh.20 and denied all the averments in the petition including the fact of accident and allegations about negligence on his part. The insurance company has filed separate written statement at Exh.21 and it has also denied all the averments in petition. Involvement of the vehicle itself in the accident is denied and the statutory defences have been taken.

4 After hearing both sides the learned Member, Motor Accident Claims Tribunal allowed the application and thereby directed respondent Nos.1 and 2 to pay compensation of Rs.50,000/- jointly and severally to the

claimants on or before 16.12.2010 and it was directed that the interest to be paid, in case the said amount is not deposited before the said date. This order is under challenge in this appeal.

5 Heard learned Advocate Mr. S.S. Dargad holding for learned Advocate Mr. S.G. Chapalgaonkar appearing for the appellant. Though respondents were served and they appeared through Advocate the learned Advocate is absent when the matter was taken up for final hearing. It has been vehemently submitted that from the record of the case itself it ought to have been concluded by the Member, Motor Accident Claims Tribunal that the said motorcycle belonging to respondent No.1 has been falsely impleaded at a very late point of time. In fact, the accident had taken place on 14.12.2005. Deceased expired on 16.12.2005. His father lodged FIR against unknown person on 17.12.2005. However, statement of the father of the deceased i.e. original claimant No.8 was taken by police on 16.02.2008 stating that an application received by police station on 16.02.2008 was read over to him. So also he has heard the statement of respondent No.1 recorded by police on 15.02.2008, wherein he has admitted that while he was riding the motorcycle he had given dash to Ayyub, but due to fear and as there was nobody to witness, he had fled away from the place. Thereafter, when this supplementary statement of the father of deceased was taken, the offence has

been registered against respondent No.1. The learned Advocate appearing for the appellant has pointed out, that this is a clear involvement of the vehicle, which was insured with respondent No.2, by police at a very late point of time and therefore, when the involvement itself is not proved or suspicious, the said application ought not to have been allowed by the Tribunal.

6 Taking into consideration the submissions made, following point arise for determination. Findings and reasons for the same are as follows.

> "Whether the learned Tribunal was justified in allowing application under Section 140 of the Motor Vehicles Act ?"

7 At the outset, it can be said that while considering the application under Section 140 of the Motor Vehicles Act, which is for the No Fault Liability, only prima facie things are required to be considered viz. whether there is death or injury in a vehicular accident; the vehicle involved in the accident is duly insured or not. Point of negligence cannot be considered while considering such applications. Therefore, on the basis of the documents, which were produced on record, the learned Tribunal ought to have considered as to whether prima facie case has been made out regarding involvement of the vehicle. At the outset, it can be further said

that a very cryptic order has been passed by the Member, Motor Accident Claims Tribunal. When in fact, both the respondents were denying the fact of accident as well as involvement of the vehicle, the documents ought to have been perused minutely. Apparently it can be seen that though the accident had taken place on 14.12.2005 it was not reported immediately to the police. Deceased expired on 16.12.2005 and then on 17.12.2005 the father of deceased had lodged report against unknown vehicle. But then the police papers, which have been produced on record, would show that it was on 16.02.2008 i.e. after about two and half years. The fact is stated to have been revealed that the motorcycle bearing No.MH 26/P-9068 is involved in the accident. It is not in dispute that the basic accident appears to have been reported on 14.12.2005 itself. That means, without making allegations or as per the provisions there was no crime registered against any person including unknown person. Under such circumstance, the panchnama was prepared at the spot and then after death of Ayyub the inquest panchnama was prepared, Post Mortem was done and later on report was collected. But as regards the involvement of vehicle is considered, the certified copy of the statement of respondent No.1 taken by police and which was produced on record ought to have been considered by the learned Member. Interestingly it does not bear the date. It also does not show that whether suo moto he had come before police to reveal the fact of accident and the manner in which it took place.

He claims that he has friendly relations with one Mohd. Mustaq Mohd. Sarvar. Said Mohd. Mustaq had taken his motorcycle for his work on 14.12.2005 and thereafter the vehicle was returned to him on 15.12.2005. After some days Mustaq told respondent No.1 Saleem, that he had given dash to a person proceeding on motorcycle but due to fear he had not disclosed it to anybody. This statement does not give the date on which Mustaq informed the said fact to Saleem and even thereafter why Saleem kept quiet for a long period. This is especially on the background that his statement does not bear any date. How he revealed, that the person, to whom the dash was given, was the son of present claimant No.8 is also an interesting fact and thereafter it appears that the police have prepared supplementary statement of claimant No.8 on 16.02.2008. All these facts clearly show that the involvement of the vehicle i.e. motorcycle bearing No.MH 26/P-9068 appears to be suspicious. It cannot be stated that there is prima facie involvement of the said vehicle in the accident, in which Ayyub expired. Therefore, the said application ought not to have been allowed by the Member, Motor Accident Claims Tribunal. At the costs of repetition, it can be said, that in any other claim petition all these facts would not have been considered and the points which are basically required to consider application under Section 140 of Motor Vehicle Act would have been considered, but taking into consideration the facts and the circumstances, under which the police have investigated the matter in this case and the statements have been recorded, leaves no room to this Court to take note of all these background in order to come to a conclusion that the involvement of the motorcycle insured with respondent No.2 appears to be suspicious. Under such circumstance, the order passed below Exh.5 by the learned Member cannot be allowed to sustain. Point is answered accordingly. Hence, following order.

ORDER

1 Appeal is hereby allowed.

2 The order passed by Member, Motor Accident Claims Tribunal, Nanded in M.A.C.P. No.389/2009 below Exh.5 on 16.10.2010 is hereby set aside.

3 The said application Exh.5 stands rejected.

4 Record and Proceedings be sent back.

5 Civil Application No.354 of 2011 stands disposed of.

6 The statutory amount is deposited by the appellant in this Court. In view of the fact that the appeal is allowed the said amount deposited in this Court be returned to the appellant.

(Smt. Vibha Kankanwadi, J.)

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