

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO. 850 OF 2015

1. Smt. Meghavini Sukhdeo Badhe,
Aged about 38 years, Occ. Service,
2. Ku. Arya Sukhdeo Badhe,
Aged about 10 years, Occ. Nil,
3. Ku. Gauri Sukhdeo Badhe,
Aged about 8 years, Occ. Nil

Deleted as per
Court's order
dtd. 03.12.2021
in CAO no.
721/21

4. ~~Smt. Narmadabai Ramrao Badhe,
Aged about 68 years, Occ. Nil.~~

Appellants Nos. 2 and 3
being minors Represented
through natural guardian
mother, Appellant No. 1.

All R/o. C/o. Dr. Prashant Shelke,
Shelke Hospital, Andewadi, Warud,
Dist. Amravati.

..... Appellants
(Ori. Petitioners)

.....Vs.....

1. Saiyyad Bashir Saiyyad Nuru,
Age – Adult, Occupation – Owner,
R/o Pathanpura, Murtizapur,
Tq. Murtizapur, Dist. Akola.

Deleted as per
order dtd.
29/8/2022 in
CAO 720/2021

2. ~~Mohd. Jafar Abdul Rehman,
Age – Major, Occupation – Driver,
R/o Old City, Murtizapur,
Tq. Murtizapur, Dist. Akola.~~

3. The Oriental Insurance Co. Ltd.,
Through its Branch Office,
Amravati, Tq. & Dist. Amravati

..... Respondents

Shri V. A. Kothale, Advocate for the appellants.
Shri A.V. Joshi, Advocate for respondent no. 3

CORAM : M. G. GIRATKAR, J.

DATED : 08/07/2019

ORAL JUDGMENT

1] This is an appeal against the judgment dated 11.12.2014 passed by Motor Accidents Claims Tribunal, Amravati in M.A.C.P. No. 70 of 2008.

2] Facts of the present appeal in short is as follows:

Deceased Sukhdeo Ramrao Badhe was going towards Akola from Palaso (Badhe) on his motorcyle bearomg no. MH-30-N-9796. On 23.01.2007, at about 10.00 p.m., when deceased crossed Dahigaon (Gawande) village, near the field of Shri Baburao Gawande, the offending vehicle No. GJ-06-Z-5050 has given violent dash to the motorcycle of the deceased. The deceased crushed under the wheel of offending vehicle and sustained grievous injuries and died on the spot. The driver of the offending vehicle ran away from the spot. On 24.01.2017, Police Station, Borgaon (Manju) received the information of accident and registered the offence against the unknown vehicle vide Crime no.14/07. During the investigation, it was revealed that accident took place due to rash and negligent driving of driver of vehicle no. GJ-06-Z-5050. After investigation charge-sheet was filed against non-applicant no. 2 (Driver - Mohd. Jafar

Abdul Rehman)

3] Deceased was working as assistant teacher at Shri Shivaji High School, Main Branch, Akola. He was young, dynamic and enthusiastic person. Deceased was aged about 39 years. At the time of accident, the deceased was earning Rs.20,915/- per month.

4] The legal heirs of the deceased filed Claim Petition no. 70 of 2008 before Motor Accident Claims Tribunal, Amravati. Respondent nos. 1 and 2 i.e. owner and driver appeared and filed their respective written statements. Non-applicant no. 3 (The Oriental Insurance Co. Ltd.) appeared and filed written statement at Exh. 24 and denied its liability. Issues were framed vide Exh. 30. Wife of deceased, namely, Smt. Meghavini Sukhdeo Badhe examined herself at Exh. 31 and examined Mohan Gautamrao Sapkal at Exh. 51, Sunil Namdeorao Sontakke at Exh. 71 and Suresh Wasudeorao Danakare at Exh. 79. Respondents have not entered into witness box, not adduced their respective evidence.

5] After hearing both the sides, the Member, Motor Accident Claims Tribunal, Amravati come to the conclusion that accident not took place due to rash and negligent driving of driver of offending vehicle no. GJ-06-Z-5050 and on that ground dismissed the petition.

6] Heard learned Advocate Shri Kothale for the appellants. He has pointed out material documents proved on record i.e. Form Comp. AA, Copy of Charge-sheet etc. He has pointed out evidence of Shri Sontakke and I.O. Shri Danakare.

7] Learned Advocate Shri Kothale has submitted that proceeding under Section 166 of Motor Vehicles Act, 1988 is summary proceeding. It is a civil proceeding and, therefore, strict proof of fact is not necessary. Preponderances of probability is to be seen by the Court while deciding the petition.

8] Learned Advocate Shri Kothale has submitted that documents i.e. Form Comp. AA and copy of charge-sheet (Exh. 32 and 37) show that driver of offending vehicle i.e. non-applicant no. 2 – Mohd. Jafar Abdul Rehman was driving the offending vehicle in a rash and negligent manner and caused accident. Bare admission of witness can not be taken into consideration, the evidence is to be read as a whole.

9] Learned Advocate Shri Kothale has submitted that initially offence was registered against unknown vehicle, but during the investigation, it was found that non-applicant no. 2 – Mohd. Jafar Abdul Rehman was driving the offending vehicle. He has pointed out the findings recorded by the trial Court and submitted that the perverse findings are recorded without any cogent reasons.

10] None appeared for respondent nos. 1 and 2, though served.

11] Heard learned Advocate Shri Joshi for respondent no. 3.

12] In respect of the accident, what is to be collected by the police is the information in respect of accident caused by the vehicle. It is pertinent to note that without filing any petition for compensation, it is the primary duty of the concerned P.S.O. of that area to report the matter to the Court about the accident by filling the requisite information in Form Comp. AA. Form Comp. AA is to be submitted by the I.O. directly to the Claims Tribunal. Therefore, more weightage is given to the Form Comp. AA because this is the First Information received by the Motor Accident Claims Tribunal. Now the procedure in Detailed Accident Report (DAR) is to be adopted. In proceedings of DAR, claimant/legal heirs need not to come forward by filing petition. As soon as, the Tribunal receives Detailed Accident Report (DAR), then it is to be registered in a particular Register and further proceeding is to be started. Therefore, intention of the Act is to be seen while deciding the petition under Section 166 of the Motor Vehicles Act, 1988.

13] From the perusal of impugned judgment, it appears that learned trial Court recorded its findings based on the principle of beyond reasonable doubt. Beyond reasonable doubt theory is not applicable in the proceedings under Section 166 of Motor Vehicles Act, 1988.

14] The wife of the deceased examined herself. She was not present at the time of accident. She has filed documents i.e. Form Comp. AA (Exh. 32) and copy of charge-sheet (Exh. -37). Both these documents show that accident took place due to rash and negligent driving of offending vehicle no. GJ-06-Z-5050. There is no dispute that offending vehicle was owned by respondent no. 1.

15] There is only dispute that at the time of accident, respondent no. 2 was not driving the offending vehicle. In fact, it was not necessary for the claimants to examine much more witnesses, but as a precautionary measures claimants have examined witnesses. Sontakke at Exh. 71 has stated that at the time of accident, he was cleaner on the offending vehicle. Driver of the offending vehicle, namely, Mohd. Jafar Abdul Rehman was driving truck no. GJ-06-Z-5050 in a rash and negligent manner and dashed to the motorcycle of the deceased. The deceased was crushed/pressed under the wheel of truck. They were frightened, therefore, information was not given to the police and they ran away from the spot of accident.

16] PW No. 4 - I.O. Danakare has stated in his evidence that crime was registered against the unknown vehicle, but during the investigation, it was revealed that accused Mohd. Jafar Abdul Rehman was driving the said vehicle.

17] Learned Advocate Shri Joshi for respondent no. 3 has pointed out

particular evidence and submitted that I.O.-Danakare stated different name and, therefore, there is doubt about the investigation. It is pertinent to note that I.O.-Danakare was aged about 63 years, when he was examined before the Court. He was retired servant. He might have not recollected about the document i.e. charge-sheet etc. He himself prepared charge-sheet and filed before the Court. The contents of documents can not change even after lapse of time, but memory may. Document Exh. 37 i.e. charge-sheet prepared by I.O. Shri Danakare clearly shows that respondent no. 2-Mohd. Jafar Abdul Rehman (driver) was driving the offending vehicle at the time of accident. All these evidence is sufficient to show that at the time of accident respondent no. 2 was driving offending vehicle no. GJ-06-Z-5050 in a rash and negligent manner and dashed to the motorcycle of the deceased. There is no dispute that the said vehicle was owned by respondent no. 1 and insured by respondent no. 3. As a vicarious liability, the owner of the vehicle is responsible for the act of his servant/driver. Therefore, respondent nos. 1 and 3 are liable to pay compensation.

18] Learned Advocate Shri Kothale has pointed out Exh. 53. As per his submission, salary was revised after 6th Pay Commission. He has pointed out that deceased - Sukhdeo Ramrao Badhe was working as Assistant Teacher.

19] As per the evidence of Head Master of Shri Shivaji High School, Main Branch, Akola, deceased was getting salary of Rs.20,915/-. Revised

salary certificate is at Exh. 52 and 53. As per his evidence salary of deceased was revised from 01.01.2006 as per 6th Pay Commission.

20] Learned Advocate Shri Joshi has objected about the earning of deceased, he has submitted that Exh. 52 shows that salary of deceased was Rs.16,275/- per month.

21] The evidence of Head Master is very material. He was head of the school. The deceased was working under his supervision as Assistant Teacher. The preparation of bill etc. were the duty of the Head Master. Therefore, he knows about the details of salary of deceased. As per his evidence deceased was earning Rs.20915/-. Exh. 52 is in respect of the salary of the month of January, 2007.

22] Learned Advocate Shri Kothale has submitted that the salary of deceased was revised as per 6th Pay Commission. Exh. 52 and 53 are filed on record. After the revision of 6th Pay Commission, salary of the deceased was as under:

Sr. No.	Particulars	Amount in Rupees
1	Substantive Pay	13,020.00
2	Grade Pay	4,300.00
3	Dearness Allowance	3,002.00
4	House Rent Allowance	518.00
5	Conveyance Allowance	75.00
	Total	20,915.00

23] Particulars of the calculation of compensation is as follows:

Particulars	Amount in Rupees
Per month salary of the deceased	20,915.00
Minus 1/3 deduction from salary	6,791.00
Monthly income after 1/3 deduction	13,944.00
Yearly income (13,944 x 12)	1,67,328.00
Total compensation (1,67,328 x 16) as age of deceased was 39 years (As per Second Schedule of M.V. Act, 1988)	26,77,248.00

The appellants are entitled for compensation of Rs.26,77,248/- including no fault liability under Section 140 of the Motor Vehicles Act, 1988.

24] In that view of the matter, the impugned judgment of Motor Accidents Claims Tribunal, Amravati in M.A.C.P No. 70 of 2008 is hereby quashed and set aside.

25] Appeal is allowed with no order as to costs.

26] Respondent nos. 1 and 3 shall jointly and severally pay the amount of compensation of Rs.39,83,144/- including no fault liability under Section 140 of the Motor Vehicles Act, 1988 alongwith interest at the rate of 7.5% from the date of petition/application till realization of whole amount.

**Modified as
per Court's
order dtd.
05/06/2023**

27] The Civil Applications, if any, are also disposed of.

28] R & P be sent back.

JUDGE

SMGate