

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

First Appeal No.1361/2019
Sangita Thombare and Ors. Vs. Vilas Kakade and Another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.P. Pawar, Advocate for appellants

CORAM : MANISH PITALE, J.

DATED : OCTOBER 11, 2019

On 20/09/2019, this Court had passed the following order :

“The Record shows that respondents have been served. But there is no representation on their behalf in this Court when the appeal is called out for hearing today. Hence, list on 11th October 2019 as a matter of last chance for the respondents to appear before this Court.”

2. When the appeal is called out for hearing today, the learned counsel for the appellants appeared to argue on merits while there is no representation on behalf of the respondents. In view of above order dated 20/09/2019, this Court has taken up this appeal for hearing on merits.

3. The learned counsel for the appellants submits that the Motor Accident Claims Tribunal, Buldhana, in the present case committed grave error in rejecting the claim application filed on behalf of the

appellants only on the ground that the involvement of offending vehicle in the present case, owned by respondent No.1, was not proved. It was submitted that there were documents in the form of FIR, spot panchanama and the evidence of the appellants themselves to support the fact about involvement of offending vehicle in the present case. It was submitted that the Tribunal reached conclusions against the appellants in a casual manner and against settled law in that regard. Reliance was placed on judgment of this Court in the case of **Ashabai w/o Kalyan Kothi and others Vs. Baban s/o Santosh Bidgar and others** reported in **2016(4) Mh.L.J. 696**.

4. In the aforesaid judgment, it has been held in the context of standard of proof required in cases like the present one, wherein it has been held as follows.

“It is thus clear that in proceedings under the MV Act, where procedure is a summary procedure, there is no need to go by strict rules of pleading or evidence. Document having some probative value, the genuineness of which is not in doubt can be looked into by the Tribunal for getting preponderance of probable versions. As such, it is by now well settled that even FIR or Police papers, when made part of claim petition can be looked into for giving a finding in respect of happening of the accident and for reaching conclusion about negligence. In other words, evidence of claimants is required to be examined in broader probabilities of their case, in order to achieve object of social welfare legislation. As held in the matter of *Bimla Devi and others (supra)*, preponderance of probabilities is the

touchstone for arriving at a conclusion regarding rashness and negligence as well as mode and manner of happening of the accident.”

5. Applying the said position of law, it will have to be examined as to whether the appellants in the present case have placed on record cogent evidence to show involvement of the offending vehicle.

6. The accident in the present case took place on 24/09/2010, when the husband of the appellant No.1 suffered injuries as the tractor allegedly belonging to respondent No.1 dashed him while he was pulling his motorcycle on the road, which was punctured. An FIR was registered against the said tractor i.e. offending vehicle belonging to respondent No.1, on the basis of oral report lodged by the appellant No.1. In pursuance of FIR being registered, the spot panchanama was prepared wherein it was found that broken glass pieces of the tractor were recovered from the spot. The appellant no.1 submitted her evidence and supported the fact regarding involvement of the offending vehicle.

7. The Tribunal in the impugned order at paragraph No.12 gave a finding against the appellant No.1 to the effect that involvement of offending vehicle was not proved because the appellant No.1 had stated that one Gajanan Shankar Waghmare had told her

about involvement of the said tractor and that in the absence of the said person being examined, it could not be said that the said vehicle was indeed involved in the accident. The approach adopted by the Tribunal does not appear to be in consonance with law laid down by this Court in the above quoted judgment. In all such cases of accident, it cannot be accepted that claimant would necessarily be an eye witness and there does not appear to be any reason to doubt the version placed on record by the appellant No.1 regarding the manner in which she received information about involvement of the offending vehicle. Thus, the approach of the Tribunal appears to be hyper-technical in the present case. A perusal of the reply filed on behalf of the respondent No.1 before the Tribunal shows that other than a bald denial on his behalf, there is no other material placed on record. In any case, in the very same reply, it is also stated that the said tractor was being driven in a very slow and moderate speed as per driving norms. This would also indicate that the involvement of the offending vehicle was not completely denied by the respondent no.1 in the present case.

8. Taking into consideration the aforesaid material and the fact that the said material deserves to be examined in broader probabilities, it becomes clear that the Tribunal in the present case committed an error in holding against the appellants, only on the

ground that involvement of the offending vehicle was not proved.

9. In view of above, the appeal is allowed. The impugned judgment and order passed by the Tribunal is quashed and set aside.

10. But, since the Tribunal did not enter into an enquiry as regards the quantum of compensation that would be payable to the appellants, it is necessary to remand the matter back to the Tribunal for enquiry in that regard.

11. Hence, the matter is remanded to the Motor Accident Claims Tribunal, Buldhana, for fresh consideration on the aspect of quantum of compensation payable to the appellants and liability of the respondents in that regard. The appellants shall appear before the Tribunal on **04/11/2019**.

JUDGE