

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

FIRST APPEAL NO. 1054 OF 2018

The Oriental Insurance Co. Ltd.,
Branch Office at Yavatmal,
Through its T.P. Hub Incharge,
AD Complex, Mount Road Extension,
Sadar, Nagpur.

..... Appellant

.....Vs.....

1. Smt. Surekha wd/o Shankarrao Ankatwar,
Aged about 42 years, Occ. Household,
2. Ku. Dipali d/o Shankarrao Ankatwar,
Aged about 22 years, Occ. Education,
3. Sandip s/o Shankarrao Ankatwar,
Aged about 20 years, Occ. Nil,
4. Ramaji s/o Kristanna Ankatwar,
Aged about 70 years, Occ. Nil,

All r/o Savangi Perka, Tq. Ralegaon,
District Yavatmal.

5. Nandkumar s/o Pandurang Atram,
Aged about 33 years, Occ. Driver,
R/o Jamankar Nagar, Adivasi Society,
Yavatmal, Tq. & Dist. Yavatmal.
6. Udaysingh s/o Kisaningh Rathod,
Occ. Owner of Maruti Omni Van,
R/o Karegaon, Tq. & Dist. Yavatmal.
7. Sau Jayshree w/o Amol Jiddewar,
Aged about 24 years, Occ. Household
R/o Waradh. Tq. Ralegaon,
Dist. Yavatmal.

..... Respondents

Shri A. V Joshi, Advocate for the appellant.
Shri Vivek Awchat, Advocate for respondent nos. 1 to 4 and 7
None for respondent nos. 5 and 6.

CORAM : M. G. GIRATKAR, J.

DATED : 08/08/2019

ORAL JUDGMENT

1] Heard learned Counsel Shri Joshi for the appellant. The present appeal is against the judgment passed by Motor Accident Claims Tribunal, Yavatmal (hereinafter referred to as the "Tribunal" for the sake of brevity) in M.A.C.P. No. 75 of 2016 dated 24.10.2017.

2] On 08.03.2016 at about 7.00 to 7.30 p.m. on Wardha by-pass road deceased Shankarrao was coming to Ralegoan by walk. One Maruti Omni Van bearing no MH-29-R-5216 driven by the N.A. No. 1 (Nandkumar P. Atram as referred in the claim petition) in a highly rash and negligent manner and gave dash to Shankarrao. The deceased Shankarrao sustained grievous injuries and some multiple fractures. He was admitted in the Hospital on 18.03.2016 for medical treatment. The accident was reported to Police Station, Ralegaon who registered Crime No. 89 of 2016 for the offences punishable under Sections 279, 304-A of IPC and 134/187 of M.V. Act, 1988. Deceased died due to the injuries sustained in the accident and, therefore, the claimants/legal heirs of the deceased filed the claim petition for grant of compensation.

3] The respondents appeared. The appellant-Oriental Insurance Company filed their written statement at Exh. 21 and admitted that the offending vehicle was insured at the time of accident.

4] After framing the issues, the claimants have adduced their evidence. The appellant, owner and driver not examined themselves. Their evidences was closed on 28.07.2017. After hearing both the sides the Tribunal allowed the petition and granted compensation of Rs.8,83,400/- alongwith interest at the rate of 9% per annum.

5] Heard learned Counsel Shri Joshi for the appellant. He has submitted that there is no evidence to show that deceased sustained injuries in the accident. Post Mortem Report shows that the deceased died due to cardiac arrest. He has submitted that accident took place on 08.03.2016 and report was lodged on 18.03.2016, therefore, creates doubt about the accident caused by the offending vehicle. He has also submitted that the deceased not died due to accident and, therefore, Insurance Company is not liable to pay the compensation.

6] None appeared for respondent nos. 6 and 7.

7] Heard learned Counsel Shri Awchat for respondent nos. 1 to 4 and 7. He has submitted that the deceased was admitted in Shri Vasantrao Naik Government Medical College, Yavatmal on 09.03.2016 and thereafter, he was treated by Dr. Phadke who is the renowned

Orthopedic Surgeon at Yavatmal. As per the evidence of eye-witness, the accident took place due to rash and negligent driving of driver of offending vehicle. There is no dispute about the Insurance Policy. The cause of death, though is heart attack, but it is caused due to the injuries sustained by deceased in accident. He has strongly supported the impugned judgment.

8] The procedure for deciding the case under Sections 140, 163, 163-A and 166 of Motor Vehicles Act, 1988 is of a summary proceedings. In a summary proceedings, strict proof is not required. The preponderance of the probability is to be taken into consideration. Keeping this principle in mind, the Tribunal has to decide the dispute before him.

9] In the present case, as per the contention of the learned Counsel for the appellant, the deceased not died due to the accident. The Post Mortem Report relied by the appellant itself shows that there were injuries on the dead body. The cause of death is shown as cardiac arrest. The deceased died on 18.03.2016. Dr. Phadke examined by the claimants before the Tribunal at Exh. 58. His evidence shows that on 16.03.2016 deceased was brought to him and on examination, he found that deceased had a fracture of left greater trochanter of femure. This evidence clearly shows that deceased had sustained injuries. The learned Counsel for the appellant has pointed out the OPD Card of V.N.G.M.C.,

Yavatmal (Shri Vasantrao Naik Government Medical College, Yavatmal). Contents of Exh. 38 i.e. OPD Card show that the deceased sustained injuries in the road traffic accident on 08.03.2016. On examination, it was found that deceased has sustained blunt Trauma over left shoulder, blunt Trauma over right side of hip and chest. Abrasion over left wrist and ankle with pain during movement. This OPD Card is at Exh. 38, clearly shows that deceased had sustained the injuries. The description of injuries shows that those injuries must have been caused in the accident. There was injuries on the chest and therefore, the deceased died due to cardiac arrest. The death of the deceased is due to the accidental injuries which resulted in cardiac arrest.

10] Evidence of Dr. Amit Phadke and OPD Card Exh. 38 clearly show that deceased had sustained injuries. More particularly, OPD Card shows that deceased had sustained injuries on his chest. Evidence of eye-witness, namely, Pravin Kalidas Batulwar was examined at Exh. 47, itself shows that on 08.03.2016 at about 07.00 -7.30 p.m., he alongwith deceased Shankarrao were standing by the side of Wardha by-pass road near the Pan Shop of Pandurang Bachake. The deceased was to go at the house, therefore, he proceeded towards Ralegaon. This witness was standing by the side of Pan Shop. He witnessed that the offending vehicle i.e. Maruti Omni Van no MH-29-R-5216 came from Ralegaon side in a high speed in a rash and negligent manner and gave dash to the

deceased. The deceased Shankarrao fell down. He went to the spot and tried to stop the vehicle but the driver of the vehicle taken the vehicle in a high speed. Due to the accident Shankarrao sustained injuries on his leg, shoulder, chest and other parts of the body. One police vehicle was passing, therefore, he was taken by that vehicle to Rural Hospital, Ralegaon. Thereafter, he was admitted in the V.N.G.M.C., Yavatmal. This evidence of eye-witness clearly shows that accident took place due to offending vehicle. Though, the FIR was lodged on 18.03.2016 that does not mean that it was false report. After investigation, the charge-sheet for the offences punishable under Section 279, 304-A of IPC was filed against the driver of offending vehicle.

11] The evidence of eye-witness Pravin K. Batulwar shows that accident took place due to the offending vehicle. There is no dispute that the offending vehicle was insured by the appellant/Insurance Company. Hence, the impugned order passed by the Tribunal against the appellant is perfectly legal and correct. There is no merit in the appeal.

12] Accordingly, the appeal is **dismissed** with no order as to costs.

CIVIL APPLICATION (CAF) NO. 3065 OF 2018

Heard learned Counsel Shri Awchat for respondent nos. 1 to 4 and 7. The amount of compensation of Rs.10,53,962/- is deposited before this Court. The applicants/Respondent nos. 1 to 4 and 7 are

permitted to withdraw the amount alongwith accrued interest, if any, as per the order of Motor Accidents Claims Tribunal, Yavatmal dated 24.10.2017.

Accordingly, the application is also disposed of.

JUDGE

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