

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

FIRST APPEAL NO. 204 OF 2016

The New India Assurance Co. Ltd.,
Through its Manager (Legal Hub),
D.O. No. I, Adalat Road, Aurangabad,
Through its authorized signatory
Avinash Achyut Bugdani
R/o Aurangabad

... **Appellant**
(Orig.Respondent No.2)

Versus

1. Smt. Sakhubai w/o Pramod Lokhande
Age 38 years, Occu: Household,
R/o Khasgaon Tq. Jafrabad
District Jalna
2. Vitthal s/o Pramod Lokhande
Age: 18 years, Occu: Education,
R/o Khasgaon, Tq. Jafrabad,
District Jalna
3. Kum. Bhagyashali d/o Pramod Lokhande
Age 16 years, Occu: Education,
R/o Khasgaon, Tq. Jafrabad,
District Jalna
4. Ku. Rekha d/o Pramod Lokhande,
Age 14 years, Occu: Education,
R/o Khasgaon, Tq. Jafrabad,
District Jalna
5. Vishal s/o Pramod Lokhande
Age 09 years, Occu: Education,
R/o Khasgaon Tq. Jafrabad,
Dist. Jalna
No.3 to 5 are minors U/g of
their mother Respondent No.1
Sakhubai w/o Pramod Lokhande

6. Shaikh Jafer Shaikh Rahim
Age 54 Years, Occu: Business,
R/o Jafrabad, Tq. Jafrabad,
District Jalna

... **Respondents**
(R-1 to 5 Org. Claimants)
(R-2 Org. R-1)

....

Mr. M. M. Ambhore, Advocate for appellant
Mr. R. R. Imale, Advocate for respondent Nos. 1 and 2

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CORAM : R. G. AVACHAT, J.

DATED : 25th AUGUST, 2021

PER COURT :-

. The challenge in this appeal is to the judgment and award dated 21.09.2015, passed by the Member, Motor Accident Claims Tribunal (M.A.C.T.), Jalna, in Motor Accident Claim Petition (M.A.C.P) No.169 of 2011, granting compensation of Rs.6,72,000/- with interest at the rate 7.5% per annum on account of death in vehicular accident.

2. **FACTS:-**

The dead body of deceased Pramod Lokhande was found behind a Pan-Stall in the early morning on 01.08.2011. It was, however, noticed that the footwear of the deceased and blood stains

were found on the tar-road at a very short distance from the Pan-Stall. Sakhubai, the widow of the deceased lodged the First Information Report (F.I.R.), contending that the motor vehicle – Tata Venture MH-21-V-3912 driven in rash and negligent manner, knocked down the deceased and fled.

3. The widow and four minor children of the deceased filed the claim petition for compensation, contending that the deceased was serving as a Water-man with the Grampanchayat, Khasgaon at a monthly pay of Rs.6,000/-. He would also do agriculture. On appreciation of the evidence in the case, the Tribunal allowed the petition, directing the appellant – Insurance Company and the vehicle owner (respondent No.6 herein) to pay the petitioners compensation as stated above.

4. Heard. Shri M. M. Ambhore, learned Advocate for the appellant – Insurance Company would submit that the vehicle has been falsely involved in the accident. There is no witness claiming to have seen the vehicle knocked down the deceased. The dead body of the deceased was found behind the Pan-Stall. Postmortem examination report suggest the deceased died of heart attack. The nature of injuries suffered by the deceased does not indicate it to be

a case of accidental death. The deceased appears to have been killed on the road and his body placed behind the Pan-Stall. The person who informed the widow of the deceased about the involvement of the offending vehicle, has not been examined. The said person did not stand by his so called police statement in a criminal case against the driver. In view of the learned Advocate, the impugned award is based on no evidence and therefore, liable to be set aside. The learned Advocate placed reliance on the following judgments of this Court.

- (i) *Bajaj Allianz General Insurance Co. Ltd. vs. Manisha w/o Lahu Kale and Ors (First Appeal No.2742 of 2015 – Aurangabad Bench);*
- (ii) *New India Assurance Company Ltd. vs. Ashalata Suryakant Patil and Ors (First Appeal No.2829 of 2015 – Aurangabad Bench).*

5. Shri R. R. Imale, learned Advocate for the claimants would, on the other hand, submit that involvement of the vehicle was surfaced within hours of finding of the dead body of the deceased merely denying involvement of the vehicle, no evidence has been produced in disproof of the claim. According to the learned Advocate, the claim petition is to be decided on preponderance of probabilities. The Investigating Officer, on due investigation, charged

the vehicle driver for responsible to the death. He, therefore, urged for dismissal of the appeal.

6. Involvement of the vehicle in the alleged accident is a question of fact. True, the dead body was found behind a Pan-Stall. Footwear of the deceased and blood stains were noticed on the tar-road at a short distance from the Pan-Stall. The postmortem report indicates the deceased died of heart attack. The postmortem, however, further suggest that Cardio respiratory failure occurred due to hemorrhagic shock caused by intracranial hemorrhage due to skull fracture associated with other injuries. In the scene of accident panchanama, it has been observed that after having dashed by a vehicle, the deceased might have walked a few steps away from the actual accident spot. The F.I.R. has been lodged by the widow of the deceased. She has specifically stated therein that on the same day after the funeral, she informed the police about the involvement of the vehicle in question. It has been averred in the F.I.R. that someone had informed her the involvement of the vehicle in the accident. As such, within a few hours of finding the dead body of the deceased, the F.I.R. came to be lodged disclosing the vehicle involved in the accident. On due investigation, the driver of the vehicle has been

prosecuted. True, he might have been acquitted of the criminal charge, the same however would have no relevance in a civil proceeding. In the factual backdrop, the owner of the vehicle owe some explanation to suggest that at the relevant time his vehicle was somewhere else.

7. I have carefully perused the citations relied on by the learned Advocate for the appellant – Insurance Company. The Apex Court's judgment in the case of *Anil & Ors vs. New India Assurance Co. Ltd. & Ors – AIR 2018 SC 612*, it quite distinguishable on facts. In the said case, no postmortem was conducted. The accident was dated 12.01.1995. The F.I.R. was lodged on 15.02.1995. The evidence of the driver was found to be unreliable, etc. So far as regards other judgments relied on, are unconcerned, it is to be stated that what has been observed therein is that the rules of evidence are not strictly applicable. Initial burden always lies on the claimant to establish claim on production of oral or documentary evidence. Proof beyond reasonable doubt is not required. The claimant can discharge his burden on the principle of preponderance of probabilities. It has further been observed that unless there is some substance in the investigation papers to connect the offending vehicle with death of

the deceased, merely on the basis of filing of charge-sheet against the driver of offending vehicle. The Tribunal cannot draw conclusion that the offending vehicle was involved in the accident.

8. In the case of ***Bimla Devi and others vs. Himachal Road Transport Corporation and others*** – (2009) 13 SCC 530, the Hon'ble Apex Court has observed thus:-

“11. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a Tribunal stricto sensu is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis-à-vis the averments made in a claim petition.

12. The deceased was a Constable. Death took place near a police station. The post-mortem report clearly suggests that the deceased died of a brain injury. The place of accident is not far from the police station. It is, therefore, difficult to believe the story of the driver of the bus that he slept in the bus and in the morning found a dead body wrapped in a blanket. If the death of the constable had taken place earlier, it is wholly unlikely that his dead body in a small town like Dharampur would remain undetected throughout the night particularly when it was lying at a bus-stand and near a police station. In such an event, the court can presume that the police

officers themselves should have taken possession of the dead body.

13. The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate the respondents 2 and 3. The claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the first information report had been lodged in relation to an accident could not have been ignored.

14. Some discrepancies in the evidences of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying the burden of proof in terms of the provisions of Section 106 of the Evidence Act, 1872 as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by Respondents 2 and 3.

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

9. It is reiterated that the offending vehicle was named in the F.I.R. within hours of the dead body was found behind a Pan-Stall. On due investigation, the driver of the vehicle has been prosecuted. There is no contra evidence to

indicate the vehicle was somewhere else at the relevant time. Its a claim filed by the widow and four minor children of the deceased, who was serving as Water-man (Peon) at monthly pay considered notionally at Rs.4,000/-. This Court, therefore, finds no reason to interfere with the impugned award.

10. On the question of quantum of compensation, it is to be stated, for want of appeal or cross objection for enhancement of compensation, the amount under the award cannot be enhanced, even though the same appears to have not been worked out, rightly.

11. For the reasons stated herein above, the appeal fails. The same is dismissed.

12. The amount in deposit with this Court be paid to the claimants.

13. Pending Civil Applications, if any, are disposed of.

[R. G. AVACHAT, J.]