

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

FIRST APPEAL NO. 790 OF 2008

Rambhau S/o Kondaji Peharkar
Age : 52 years, Occu : Agril.
R/o N-5-M/16, Bajarang Chowk,
CIDCO, Aurangabad

...Appellant

VERSUS

1. Bugdazbee W/o Qadar Shah,
Age : 42 years, Occu : Household,
R/o : Misarwadi, Aurangabad.

2. Hasinabee W/o Qadar Shah,
Age : 39 years, Occu : Household,
R/o Misarwadi, Aurangabad.

3. Bhikan Shah S/o Qadar Shah
Age : 16 years, Occu : Minor,
U/G of Respondent No. 1.

...Appeal abated against
respondent No. 3 as per
Court's order dated
30.4.2008

4. Sher Banu D/o Qadar Shah,
Age : 13 years, Occu : Minor,
U/G of Respondent No. 1

5. Sultan D/o Qadar Shah
Age : 9 years, Occu : Minor,
U/G of Respondent No. 1

6. Qadir Shah S/o Qadar Shah,
Age : 6 years, Occu : Minor,
U/G of Respondent No. 1

7. Jabbar Shah S/o. Qadar Shah,
Age : 5 years, Occu : Minor,
U/G of Respondent No. 2

8. Gaffar Shah S/o Qadar Shah,
Age : 4 years, Occu : Minor
U/G of Respondent No. 2

9. Nazir Shah Qadar Shah,
Age : 3 years, Occu : Minor,
U/G of Respondent No. 2

10. Ibrahim Shah S/o Allabaqsh Shah,
Age : 65 years, Occu : Nil,
R/o Misarwadi, Aurangabad.

11. Madinabee W/o Ibrahim Shah,
Age : 65 years, Occu : Nil,
R/o Misarwadi, Aurangabad.

12. Balu S/o Dattu Sadgir,
Age : 25 years, Occu : Driver,
R/o Pimpalgaon, Tq. Khultabad,
District : Aurangabad.

...Appeal is dismissed
as against respondent
No. 12 as per Court's
order dated 15.11.2010

...Respondents

...

Mr. M.K.Deshpande, Advocate for Appellant

Mrs. Fatima Kazi holding for Mr. S.S.Kazi, Advocate for
Respondent No. 1, 2, 4 to 11

Respondent No. 3 abated and Respondent No. 12 dismissed.

...

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 27-10-2021

ORAL JUDGMENT :

01. This appeal takes an exception to the impugned judgment and award passed in M.A.C.P. No. 371/2005 by the Chairman, Motor Accident Claims Tribunal at Aurangabad thereby awarding compensation to the original claimants / respondent Nos. 1 to 11 to the tune of Rs. 4,71,543/- inclusive of no fault liability alongwith interest at the rate of 6% per annum from the date of claim petition till realization of the entire amount fastening liability upon the appellant / owner of the vehicle and respondent No. 12

driver of the vehicle jointly and severally.

02. **FACTUAL MATRIX :-**

Motor vehicular accident took place on 21.3.2005 at about 9 A.M. on Jalgaon to Aurangabad Road near Pawannagar within the limits of CIDCO Police Station, Aurangabad. Qadar Shaikh (since deceased) husband of original claimants No. 1 and 2, father of claimant Nos. 3 to 9 and son of claimants No. 10 and 11 was proceeding to his work place by riding a bicycle. One mini door auto rickshaw No. MH-20-Q-271 owned by the appellant and driven by respondent No. 12 came from opposite direction in a high speed and gave dash to the bicycle. The deceased fell down on the road and sustained serious head injuries. He was taken to Apex Hospital at Aurangabad. However, after two and half months Qadar Shaikh (since deceased) succumbed to the injuries sustained in the motor vehicular accident.

03. Learned Chairman, Motor Accident Claims Tribunal at Aurangabad, after appreciating the facts and evidence on record and the police papers was pleased to allow the accident claim partly and directed the appellant and respondent No. 12 (owner and driver) to pay compensation

of Rs. 4,71,543/- to the original claimants alongwith interest @ 6% per annum from the date of filing of the petition till realization of the entire amount and cost as well.

04. Being aggrieved by the impugned judgment and award passed by the Motor Accident Claims Tribunal, Aurangabad, the appellant who is original owner of the vehicle has preferred this appeal mainly on two grounds. (i) On the date of accident he was not the owner of the vehicle involved in the accident. He has placed heavy reliance on an agreement for sale of vehicle. It is his stand that he has sold offending vehicle in favour of the respondent No. 12. He had no concern with the offending vehicle / mini door. The Tribunal has erroneously fastened the liability on his shoulders. (ii) The notional income of the deceased accepted by the Tribunal is on higher side and that too is without any cogent evidence.

05. Heard Mr. M.K. Deshpande, learned counsel for the appellant and Ms. Fatima Kazi, learned counsel holding for Mr. S.S.Kazi, learned counsel for respondent No. 1, 2 and 4 to 11.

06. It is evident from the record that the appeal came to be abated against respondent No. 3 in view of order passed by this Court dated 30.4.2008. Similarly, the appeal came to be dismissed against respondent No. 12 as per order of this Court dated 15.11.2010.

07. Mr. M. K. Deshpande, learned counsel for the appellant strenuously argued that the appellant was not the owner of the mini door vehicle on the date of accident. He invited my attention to the document vide Exh. 49 which is an agreement. He submitted that the appellant has already sold his vehicle to respondent No. 12. The Tribunal has fastened the liability to pay compensation on the appellant by making erroneous observations and discarding the document vide Exh. 49. Mr. Deshpande submits that according to Section 19 of Sale of Goods Act, as soon as sale of a vehicle takes place, the ownership does not remain with the seller. Mr. Deshpande has placed his reliance in the case of **Kishan Pandurang Kagde V/s Baldev Singh Gian Singh and Anr.**, [1977 Mh. L.J. 656] and **Oriental Insurance Co. Ltd. V/s Rajamani and Ors.**, 1992 ACJ 354 (Madras).

08. By taking help of abovesaid two decisions Mr. Deshpande learned counsel for the appellant submitted that on the date of accident, the appellant was not owner of the vehicle. He has already sold the vehicle to respondent No. 12 and the appellant is not liable to pay any compensation. He has further placed his reliance in case of **Virendrakumar J. Handa V/s Dilawarkhan Alij Khan and Ors., 1992 Cri. L.J. 2476 (Bombay)** and **Mathew Thankachan V/s V. G. Manoharan and Ors., AIR 1998 Kerala 128.**

09. Mr. Deshpande submitted that the impugned judgment and award passed by the Chairman, M.A.C.T. at Aurangabad fastening the liability on the appellant to pay compensation needs to be quashed and set aside in view of above stock of citations.

10. Per contra, learned counsel Ms. Fatima Kazi for respondent No. 1, 2 and 4 to 11 supported the judgment and award passed by the Chairman, M.A.C.T. Aurangabad. She submitted that the Tribunal has considered the above points raised on behalf of the appellant and turned down the same with cogent reasons. She submitted that on the date of accident, the appellant was the registered owner

of the vehicle involved in the accident. The appellant cannot deny his responsibility to pay the compensation.

11. Perused the impugned judgment and award passed by the Chairman, M.A.C.T. The accident in question is not much disputed.

12. First I shall deal with the point of income of the deceased in view of argument advanced by Mr. Deshpande learned counsel for the appellant. On going through the impugned judgment, it is revealed that the Tribunal has accepted the notional income of the deceased at Rs. 30,000/- per annum by placing reliance on the citation in the case of **United India Insurance Company Ltd., through Divisional Manager, Haldwani, Nainital V/s Smt. Prem Bisht and Anr. Reported in 2007(2) T.A.C. page 833.** Previously according to the provisions of Section 163-A of Motor Vehicles Act, 1988 Schedule II, the notional income was required to be accepted at Rs. 15,000/- per annum. Due to hike in price index of essential commodities and resultant increase in cost of living, the notional income came to be enhanced from Rs. 15,000/- per annum to Rs. 30,000/- per annum. The Tribunal has rightly considered the changed scenario and accepted the notional income of the deceased

at Rs. 30,000/- per annum and accordingly, deducted 1/3rd towards personal expenses of the deceased and determined net income of the deceased at Rs. 20,000/- per annum. I do not see any legal error on the part of Tribunal while determining the notional income of the deceased. I do not find any merit in the submissions of Mr. Deshpande, learned counsel for the appellant.

13. Now coming to second ground which is highlighted by Mr. Deshpande, learned counsel for the appellant. The appellant has tried to put forth his defence that on the date of accident, he was not the owner of the vehicle involved in the accident. He has sold the offending vehicle earlier to respondent No. 12/driver. He had no concern with offending vehicle on the date of accident.

14. Obviously, it is necessary to see what is the correct position of law. Mr. Deshpande has placed his reliance in case of **Kishan Pandurang Kagde** (Supra) in support of his submissions. The facts of the cited case are quite different from the case in hand. It was a criminal trial and validity of order of custody of the motor vehicle during trial was challenged. The question involved therein was regarding custody of the motor

vehicle. Even though, it is observed in the said case that there is no provision in the Motor Vehicles Act which deals with the transfer of motor vehicle and same is governed by the Sale of Goods Act, it was in different context. There is no need to discuss remaining four citations referred by Mr. Deshpande, learned counsel for the appellant in view of the legal position made clear, in a recent citation of the Hon'ble Supreme Court in case of **Surendrakumar Bhilawe V/s The New India Assurance Company Limited, AIR 2020 Supreme Court 3149**. The Hon'ble Supreme Court by placing reliance in **Naveen Kumar V/s Vijay Kumar and Others** (Hon'ble three Judges Bench of Apex Court) has held as under :

"48. In **Naveen Kumar V/s Vijay Kumar and Others**, a three-Judge Bench of this Court held that in view of the definition of the expression 'owner' in Section 2(30) of the Motor Vehicles Act, 1988, it is the person in whose name the motor vehicle stands registered, who, for the purposes of the said Act, would be treated as the owner of the vehicle. Where the registered owner purports to transfer the vehicle, but continues to be reflected in the records of the Registering Authority as the owner of the vehicle, he would not stand absolved of his liability as owner."

15. Having regard to the observation made by the Supreme Court in case of **Surendrakumar Bhilawe** (Supra), it is the person in whose name the motor vehicle has been registered must be treated as an owner of the vehicle for the purpose of motor vehicle. The registered owner continues to remain owner unless it is transferred in the name of purchaser in the R.T.O. book. The learned Single Judge at principal seat in case of **Hufriz Adi Sonawale V/s Bharat Punamchand Dave and Anr., 2019 DGLS (Bom.) 1819** also held that if a person who has sold his vehicle and he continues to be the registered owner in the concerned R.T.O., he will be liable to pay compensation to the concerned party in case of accident.

16. Having regard to the above legal position made clear by the Hon'ble Supreme Court and this Court (Supra) the defence tried to be put forth on behalf of appellant / registered owner of the vehicle must be thrown in a dust bin, there is no merit.

17. On going through the findings recorded by the Tribunal, it is noticed that the findings are well reasoned and supported by evidence. The Tribunal has also awarded the just and fair compensation having regard to

the facts and circumstances of the case and income of the deceased and his age. I do not see any reason to interfere with the findings recorded by the learned M.A.C.T. at Aurangabad. The impugned judgment and award passed by the Chairman, M.A.C.T., Aurangabad needs to be upheld at my hands in the first appeal without any modification.

ORDER

- I) Appeal stands dismissed with costs.
- II) The impugned judgment and award passed in M.A.C.P. No. 371/2005 by the Chairman, M.A.C.T., Aurangabad is hereby confirmed.
- III) Award be drawn up accordingly.
- IV) Record and Proceedings be sent to the Tribunal.

[SHRIKANT D. KULKARNI]

JUDGE

Dahibhate/-