IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2978 OF 2019

THE RELIANCE GENERAL INSURANCE COMPANY, AURANGABAD
VERSUS
SHOBHABAI DEVIDAS PADAR AND OTHERS

...
Advocate for Appellant : Mr. S. G. Chapalgaonkar
Advocate for Respondents No. 1 to 3 : Mr. Pramod C. Mayure
...

CORAM : ANIL S. KILOR, J.

DATE : 21st APRIL, 2021

ORAL ORDER :-

This is an Appeal preferred by the appellant- Insurance Company challenging the Judgment and Award, dated 17-10-2013 passed by the Motor Accident Claims Tribunal, Vaijapur, District Aurangabad, in Motor Accident Claim Petition No. 268 of 2012 (Old MACP No. 952 of 2011), partly allowing the claim and thereby held the appellant Insurance company, the owner and the driver of the truck involved in the accident, jointly and severally liable to pay amount of compensation to the tune of Rs.21,72,500/- (including the amount of compensation under Section 140 of Motor Vehicles Act, 1988) with interest @ 7.5 % per annum from the date of petition till realization of the entire amount.

2. I have heard the learned counsels for the respective parties.

3. Brief facts of the present case are that, on 3-11-2010 at about 8.00 p.m. the deceased Devidas was going to Gangapur from Bhendala on motorcycle bearing registration No. MH-20-Z-7389. When he reached near Surbhi Hotel on Aurangabad to Ahmednagar road in the vicinity of village Bhendala at that time one Truck bearing No. MH-06-AC-5760 was parked rashly and negligently on the middle of the road without any signal. All lights including indicator of the said tuck were switched off. Due to that, the motorcycle of deceased dashed against that truck from backside and deceased sustained severe injuries and succumbed to it during medical treatment, on 6-11-2011. The widow of deceased Devidas and his two sons filed claim petition, claiming compensation against the insurance company as well as owner and driver of the truck. The claim of petition was partly allowed by the impugned Judgment and Award dated 17-10-2013, which is under challenge in the present appeal.

4. The learned counsel for the appellant Insurance company submits that from the record it is not clear whether the truck was moving or it was parked and, therefore, according to him, the findings given by the learned Tribunal that the truck was parked and because of it the deceased Devidas gave dashed from the backside of the truck, cannot be

accepted.

5. It is submitted that from the spot panchnama, it cannot be said that the truck involved in the accident was not having indicator or reflector and the same is resulted into accident and in absence of any such evidence, it cannot be said that the driver of the truck is solely responsible for this accident.

6. He further submits that it was four lane road and even though where the truck was allegedly parked on the road, beside that there was sufficient space available for the deceased Devidas; and, the said fact is sufficient to hold that the deceased had also contributed negligence in this matter.

7. It is further submitted that the First Information Report (FIR) was lodged by one Babasaheb, who is not entered into witness box to prove the contents of FIR, whereas, the widow who entered into witness box, she is not the eye witness, and therefore, the story narrated in the FIR or in the claim petition as regards negligence on the part of driver of the truck cannot be accepted in absence of any independent witness. He, therefore, submits that in absence of sufficient evidence to show that the driver was solely responsible for this accident, the learned tribunal ought to have looked into the other circumstances and held that the deceased Devidas had contributed negligence in this matter. In

support of his contention on contributory negligence, Mr. Chapalgaonkar, learned counsel for the appellant has placed reliance on the Judgments, viz – (1) ***Andhra Pradesh State Road Transport Corporation and another***[1], (2) ***Raj Rani and others Versus Oriental Insurance Company Limited and others***[2]***,*** and (3) ***Nishan Singh and others Versus Oriental Insurance Company Limited***[3].

8. On the other hand, Mr. Mayure, learned counsel appearing for the respondents-claimants supports the Judgment and Award impugned in the present Appeal and states that this is a beneficial legislation and strict principles of evidence and standards of proof like in a criminal trial are inapplicable, but standard of proof must be of preponderance of probabilities.

9. To consider the rival contentions of the parties, I have perused the record and proceeding and also the Judgment and Award impugned in the present Appeal.

10. The Hon'ble Supreme Court of India in the case of Sunita and others Vs.. Rajasthan State Road Transport Corporation and others[4] after considering various judgments of the Apex Court has held thus,

> "22. It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role

1 (2008) 6 Supreme Court Cases 767
2 (2009) 13 Supreme Court Cases 654
3 (2018) 6 Supreme Court Cases 765
4 2012 (5) Bom. C. R. 285

> would be to calculate the quantum of just compensation if the accident has taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases."

11. The record shows that one Babasaheb lodged a report after the accident, wherein he has specifically stated that the truck bearing No. MH-06-AC-5760 was parked rashly and negligently on the middle of road without any signal and all lights, indicator and reflector were switched off.

12. The oral evidence of claimant No.1 - widow of Devidas is also on the same line. As against this, after going through the cross-examination, it is revealed that though while arguing the matter insurance company has urged that in the spot panchanama, there is no mention that no reflector or indicator was found, no suggestion to that effect was put to the witness in the cross-examination. There is nothing brought in the cross-examination by the insurance company from where this Court can come to the conclusion that the truck had indicators and reflectors which are necessary to easily locate the parked vehicle in the night time. Thus, the submission of the learned counsel for appellant - Insurance company, that the truck was having indicator or reflector cannot be accepted.

13. Further more, it is notable that on contributory negligence, the insurance company has not led any evidence, which the insurance company could have led by examining the driver of the truck. Merely because, the widow was not the eye witness, the oral evidence of the claimant cannot be discarded.

14. Similarly, the contention of the learned counsel for the appellant since that the informant Shri. Babasaheb did not entere into witness box, therefore, the contents of the FIR are not proved, cannot be accepted in view of the recent Judgment of the Hon'ble Supreme Court of India, in the case of - ***Anita Sharma and others Versus New India Assurance Company Limited and another***[5], wherein, it has been held by the Hon'ble Apex Court that, one needs to be mindful that the approach and role of courts while examining evidence in accident claim cases ought not be to find fault with non examination of some best eye witnesses, as may happen in a criminal trial, but instead should be only to analyse the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.

15. As regards the contention of the learned counsel for the appellant-insurance company that the road was four lane and though the truck was standing in the middle of the road, still there was lot of space available for the deceased Devidas, this cannot be accepted as usually

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the driver of the two wheeler drives his vehicle from extreme left side of the road and not from right side of the road which is meant for heavy vehicle or four wheel vehicles. Thus, the said argument cannot be accepted and the same is rejected.

16. As regards the last argument of the learned counsel for the insurance company that, there is no evidence to show that whether the truck was moving or it was parked. If it is a case of the Insurance Company that the truck was not parked, but it was moving; the burden is on the Insurance Company to prove its case, which admittedly the Insurance Company failed to establish. In that view of the matter, it cannot be said that the truck was not parked, but it was moving.

17. So far as the Judgments cited by the learned counsel for the appellant - Insurance company are concerned, there is no dispute over the law laid down in these Judgments on the point of contributory negligence. The issue of contributory negligence is to be decided taking into consideration the facts and circumstances of each case. In the present matter, having observed as above as regards negligence, the Judgments cited by learned counsel for insurance company are not helpful.

18. In view of the findings recorded above, I do not find any merit in the case, accordingly, the First Appeal is dismissed. No order as to cost.

19. The claimants are permitted to withdraw the amount deposited by the Insurance Company, in this Court.

(ANIL S. KILOR)
JUDGE

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