IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2533 OF 2017

M/s Shriram General Insurance Company Ltd.,
10003 E-8 RIICO Industrial Area, Sitapura,
Jaipur 302022 through it's Manager (Legal) … **Appellant**
(Orig. 2nd Respondent)

Versus

1. Bhimrao s/o Tulsirao Rakshase
Age 40 years, Occ. Service
R/o Shaktinagar Nanded

2. Gangaram s/o Pandurang Panchlinge
Age major, Occ. Business and
Owner of Tata Age Auto
No.MH-26-H-4159, R/o Fateepur,
Lalwadi Tq and Dist. Nanded … **Respondents**

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Mr. V. N. Upadhye, Advocate for appellant
Mr. G. G. Suryawanshi, Advocate for respondent No.1

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CORAM : R. G. AVACHAT, J.
DATED : 23rd SEPTEMBER, 2021

PER COURT :-

. The appellant – Shriram General Insurance Company Limited has filed this appeal against the judgment and award dated

23.12.2016, passed by the Member, Motor Accident Claims Tribunal (M.A.C.T.), Nanded, in Motor Accident Claim Petition No. 446 of 2012.

2. FACTS:

It so happened that the deceased Pappu, along with his two friends was returning from village Chikala on 10.06.2012. One of them was riding the motorcycle MH-26/Y-5597. When they were passing by village Mugat on Mudkhed to Nanded road, vehicle TATA ACE Auto No. MH-26/H-4159, came from Nanded side. It was being driven in rash and negligent manner. The said vehicle knocked down the motorcyclists. As a result, Pappu died on the spot and other suffered multiple injuries.

3. Initially, First Information Report (FIR) was lodged against an unknown vehicle. Then, TATA ACE vehicle came to be named as one responsible for the death of Pappu.

4. The claimant/injured filed the petition for compensation. On appreciation of the evidence in the case, the Tribunal awarded compensation of Rs. 1,17,990/- with 7.5% interest.

5. Heard.

Shri V. N. Upadhye, learned Advocate for the appellant – Insurance Company, would submit that the FIR was lodged by the widow of the deceased against unknown vehicle. It was alleged in the FIR that the deceased was accompanied with two friends on the motorbike. No description of the offending vehicle was given in the FIR. It is only after 15 days of registration of the FIR, she gave a supplementary statement naming the TATA ACE vehicle to have been involved in the accident. In the scene of offence, panchanama dated 10.06.2012, no description of the vehicle involved, has been given. The claim petition was resisted on very many grounds. The involvement of the vehicle TATA ACE was denied. The accident took place due to exclusive negligence on the part of the motorcycle rider. One of the claimants who was examined as a witness, had not witnessed the accident. Her evidence is therefore hearsay. TATA ACE vehicle was later on falsely implicated only with a view to earn compensation. The Tribunal, simply relied on the statement recorded under Section 161 of the Code of Criminal Procedure, which are not admissible unless corroborated. Learned Advocate would further submit that the TATA ACE vehicle was registered as a commercial vehicle. The driver thereof, therefore, ought to have licence to drive Light Motor Vehicle transport. The licence Exh-33 does not bear endorsement "transport". As such, the driver did not have valid and effective licence. The appellant - Insurance Company has therefore, no liability to pay compensation. Admittedly, there were three persons on the motorcycle. It would be a case of contributory negligence, in proportion of 50 : 50.

6. Learned Advocate for the claimant would on the other hand submit that it was the case of exclusive negligence/rashness on the part of the driver of TATA ACE vehicle. The Tribunal wrongly considered it is a case of contributory negligence. The claimant was riding pillion. For him, it is a case of composite negligence. The Tribunal, therefore, ought not to have granted him 50% of the amount of compensation worked out by the Tribunal at first instance. He, therefore, urged for dismissal of the appeal.

7. It is true that the FIR was lodged against unknown vehicle. The mother of the deceased, who examined herself as a witness, had not seen the accident. Based on the information given

by her son, she later on named the TATA ACE vehicle as one involved in the accident. The charge-sheet was filed after due investigation of the crime. During the investigation, it was surfaced that the offending vehicle was no other than TATA ACE No. MH-26/H-4159. In the rebuttal, no evidence was laid. The tribunal was therefore justified in holding the driver of the said vehicle to be responsible to the accident.

8. Admittedly, the driver of the offending vehicle held the driving licence to drive light motor vehicle. The vehicle involved in the accident was a transport vehicle. A three Judge Bench of the Hon'ble Supreme Court in case of ***Mukund Dewangan vs. Oriental Insurance Company Limited – (2017) 14 SCC 663,*** has held thus:-

> " *"light motor vehicle" would include a transport vehicle as per the weight prescribed in S. 2(21) r/w Ss. 2(15) and 2(48). A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor or a roadroller, "unladen weight" of which does not exceed 7500 kg. Further, holder of a driving licence to drive class of "light motor vehicle" as provided in S. 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or roadroller, the "unladen weight" of which does not exceed 7500 kg. Central Vehicles Rules, 1989, Rr.8, 31 & 34 and Forms 4, 6 & 8* ".

In view of the above, the challenge on the ground of invalid licence, is not sustainable.

9. Due to dash, the petitioner fell down and received serious injuries. He received fracture injury to left condylar with soft tissue swelling and ‘k1 wiring under GA done, fracture to right lower end of radius, fracture right frontal right lateral orbital wall bone right zygomatic bone, cerebral contusion left tempoparital region with subdural hamatoma same region with significant subarchnoid and tentorial hemorrhage with pneumocephalus with crerebral edema, abrasion lateral to right eye, injury to left ear blad and right periorbital edema, operation was performed of petitioner of left knee and doctors done @k’ wiring under GA and other visible and non visible injuries and injuries as per medical papers of petitioner and petitioner became permanently disabled.

10. The Medical Officer assessed disability at 33%. The Tribunal, however, held it to be a case of 20% permanent disability. The claimant was indoor patient for 15 days. There was evidence to indicate him to have incurred medical expenditure amounting to Rs.53,980/-. The Tribunal worked out the amount of compensation

at Rs.2,35,980/-. It, however, granted the claimant 50% thereof, since he was second pillion rider of the motor bike. The Tribunal held it to be a contributory negligence. This Court may not agree with the said findings. However, the Tribunal granted the claimant compensation of Rs.1,17,990/-. 50% of the amount it worked out. Ba that as it may, since the claimant has neither filed appeal nor cross objection for enhancement of amount of compensation, this Court cannot enhance the same.

11. Since the appellant – Insurance Company failed to make out its case that the TATA ACE vehicle is falsely implicated in the accident, the appeal is liable to be dismissed.

12. The appeal is therefore, dismissed.

13. The amount, if any, in deposit with this Court or the Tribunal, be paid to the claimant with interest accrued thereon, immediately.

14. Civil application No.440 of 2019 is disposed of.

[R. G. AVACHAT, J.]

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