

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

FIRST APPEAL NO.1602 OF 2021 WITH
CIVIL APPLICATION NO.8967 OF 2021

The United India Insurance Company
Limited, through its Divisional Manager,
Sant Krupa Market, G.G. Road,
Nanded, District Nanded,
through its Authorized Signatory,
Divisional Office No.1, H.No.5/5/76,
V.P. Chowk, Osmanpura, Aurangabad
Aurangabad – 431 001

... APPELLANT

VERSUS

1. Dattarao s/o Madhavrao Deshmukh,
Since died, his L.Rs.
- 1A) Vijayabai wd/o Dattarao Deshmukh,
Age 63 years, Occu. Household,
- 1B) Santosh s/o Dattarao Deshmukh,
Age 44 years, Occu. Agriculture
- 1C) Satish s/o Dattarao Deshmukh,
Age 41 years, Occu. Private Service,

All R/o Near Hanuman Gadh Kaman,
Nanded, Taluka and District Nanded
presently r/o Vasant Nagar, Nanded,
Behind Vatsal Super Market,
Anand Nagar Road, Nanded,
Taluka and District Nanded
- 1D) Archana w/o Prashant Mane,
Age 42 years, Occu. Household,
R/o Mane Complex,
Vidya Nagar (West), Beed,
Taluka and District Beed.

2. Bapurao s/o Balaji Shinde,
Age major, Occu. Business/ Agri.,
R/o Kasarkheda, Tq. Ardhapur,
District Nanded ... **RESPONDENTS**

.....
Shri Mohit R. Deshmukh, Advocate for appellant
Mr. Sachin S. Deshmukh, Advocate for respondents No.1A to 1D
.....

CORAM : R. G. AVACHAT, J.

DATED : 17th December, 2021

J U D G M E N T :

Heard. With the consent of learned counsel for the parties, this appeal is taken up for final hearing at the stage of admission.

2. This is Insurance Company's appeal, taking exception to the judgment and award, granting compensation of Rs.4,69,661/- with interest @ 7.5% p.a. on account of injuries and permanent disability suffered in a vehicular accident.

3. The original respondent No.1 (deceased) was on his way home on foot. It was 6.30 p.m. of 29/3/2019. He was proceeding along left side of the road. While he was near Hanuman Gadh Kaman at Nanded, a bullet motorcycle No.MH-26-AL-1919 knocked him down from behind and fled. The

passers by rushed him to the hospital. The injured suffered multiple injuries. He was not conscious for some days. After having regained consciousness, he lodged report with the police, informing to have been knocked down by motorcycle bearing No.MH-26-AL-1919. He had learnt about involvement of the said motorcycle from his son. A crime, therefore, came to be registered and investigated. On due investigation, the motorcycle rider was proceeded against by filing a charge sheet. The injured, on the other hand, filed the petition for compensation, contending that he was serving as a Loan Recovery Agent for Co-operative Bank. He would draw Rs.15,000/- monthly salary. It is his case that, he was operated upon. He had to spend a lot on medical treatment.

4. On appreciation of the evidence in the petition, the Tribunal granted the compensation under various heads, totaling Rs.4,69,661/-. It was the case of the appellant Insurance Company that the bullet motorcycle No.MH-26-AL-1919 has been falsely implicated in the matter only with a view to earn compensation. The learned counsel for the appellant Insurance Company took this Court through its pleadings and relevant evidence to ultimately point out as to how the vehicle has been falsely implicated.

5. The learned counsel for the legal representatives of the injured would, on the other hand, submit that, on due investigation, the motorcycle rider was proceeded against. The appellant Insurance Company did not lead any evidence in proof of its claim. The investigating officer was not examined. The owner of the motorcycle admitted involvement of the motorcycle in the accident. Such admission is nothing short of a confession. According to learned counsel, no person would make a statement against his own interest, which may even implicate him in a criminal offence. According to learned counsel, a holistic view is required to be taken in such matters. The injured was unconscious for a few days. The accident took place at a crowded place in the evening. It was witnessed by number of persons. Their statements have been recorded by the investigating officer. An eye witness was examined in proof of the factum of accident. It was for the investigating officer to explain the delay in recording the statement of the eye witness examined before the Tribunal. The appellant Insurance Company did not summon the investigating officer to subject him to cross-examine. According to him, the Tribunal, on appreciation of the evidence in the matter, has rightly found the involvement of the motorcycle in question

and granted the compensation. He, therefore, urged for dismissal of the appeal.

6. Following point arises for determination :

Whether the involvement of the bullet motorcycle No.MH-26-AL-1919 in the accident was proved ?

7. The accident took place by 6.30 p.m. on 29/3/2019. The original claimant (injured) was on his way home on foot. He was said to have have been keeping left. The bullet motorcycle No.MH-26-AL-1919 is alleged to have knocked him down from behind and fled. The record indicates that the injured was rushed to Nirmal Neurocare and Super Speciality Centre and District Hospital, Nanded. He was indoor patient there for little over three weeks. It was his case that, he was not conscious for over couple of weeks and, therefore, could not report about the accident immediately.

8. It is true that, in the medical papers, the history of the accident has been given indicating involvement of a motorcycle. Description and registration number of the vehicle has not been mentioned therein. The same indicates that, the person who gave the history was not knowing the type of the vehicle and its number when he gave the history

to the Medical Officer.

9. Although the accident took place on 29/3/2019, the report thereof was lodged with the concerned police station on 21/4/2019 i.e. after 21 days of the accident. There is no evidence to indicate the injured to have been unconscious during the said period. One Santosh Annapurne was examined as an eye witness to the accident. His statement has been recorded by the investigating officer after 11 months of the accident. He is admittedly a good friend of son of the injured. It is in his police statement and in the evidence before the Court as well that he was present in the vicinity of the accident. He saw the motorcyclist knocked down the injured and fled. He claimed to have had noticed the registration number of the motorcycle involved in the accident. It is also his claim to have had visited the injured in the hospital many a time. He claimed to have had informed the injured's son the motorcycle number. He also claimed to have had accompanied the injured to the hospital along with his son. Had these facts really been true, there would not have been reason to lodge a report of the accident 21 days thereafter. The witness Santosh could have volunteered to give his statement to the police within a day or two of the accident.

10. It is found that the injured was economical with truth. It is his case in the petition and in examination-in-chief that he was in private employment. He was the only earning member in the family. Whereas in the cross-examination, he has unequivocally admitted to have been a retired Manager of a Land Development Bank. Post retirement, he did not do any job. His both sons look after him. The Tribunal also found the injured to have produced a disability certificate issued by medical practitioner, who had issued little over 90% of disability certificates produced in the claim petitions dealt with by the learned Member of the Tribunal. In proof of medical expenditure and even the disability certificate, no witness was examined. Be that as it may. The fact remains, had the bullet motorcycle No.MH-26-AL-1919 really been involved in the accident, the witness Santosh or the son of the injured would have spent no time in reporting the concerned police station about the accident. It is true that the owner of the motorcycle admits its involvement in the accident. The motorcycle had an insurance cover. He is, therefore, not liable to pay any amount of compensation from his own pocket. The eye witness account is such that the rider of the motorcycle could not be specifically identified or even if he is identified before the Criminal Court, the material is such that

in no case he would be held to have been criminally liable. Needless to state that, the police statements recorded under Section 161 of the Code of Criminal Procedure did not bear signatures of the persons giving the statements.

11. The Tribunal simply relied on the factum of filing of the charge sheet against the so called rider of the motorcycle, and relied on the eye witness account to hold involvement of bullet motorcycle No.MH-26-AL-1919 have been proved. It is reiterated that, there is no reliable and convincing evidence to suggest the involvement of the bullet motorcycle in the accident in question. This Court is, therefore, of the view that, the injured claimant miserably failed to prove to have suffered the injuries and permanent disability in a vehicular accident involving the bullet motorcycle No.MH-26-AL-1919. The point is, therefore, answered in the negative.

12. Nothing substantial has been argued on the question of quantum of compensation. No findings are, therefore, recorded in that regard.

13. For the reasons given hereinabove, the appeal succeeds. Hence the order :

ORDER

- (i) The appeal is allowed.
- (ii) The award dated 5/3/2021, passed by the Extra Jt. District Judge & EMO, of Motor Accident Claims Tribunal, Nanded is hereby set aside. Motor Accident Claim Petition No.246/2019 is dismissed.
- (iii) The amount in deposit with this Court be returned to the appellant Insurance Company along with interest accrued thereon.

**(R. G. AVACHAT)
JUDGE**

fmp/-