

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.376 OF 2020

APPELLANT:

Ori. Claimants
on R.A

1. Sonu Wd/o Ganesh Buchunde,
Aged about: 32 years, Occupation: Household,
2. Soham S/o Ganesh Buchunde,
Aged about: 6 years, Occupation: NIL,
Since minor through natural guardian
i.e. mother the Appellant No.1,
Both R/o:- Parwa, Tq. & Dist. Yavatmal.

... Versus ...

RESPONDENTS:

Ori. Non-Applicants
on R.A

1. Mohd. Mustque S/o Mohd. Ishaque,
Aged about: 69 Years, Occupation: Driver,
R/o: Wadgaon (Mothe) Near,
Masjid, Arni Road, Yavatmal, Taluka
and District: Yavatmal.
2. Abdul Zakir S/o Abdul Karim,
Aged: Major, Occupation Trick Owner,
R/o: Vankatesh Society, Bhosa Road,
Yavatmal, Taluka and District: Yavatmal.
3. The New India Assurance Co. Ltd.,
through its Branch Manager, Yerawar
Building, 1st Floor, Datta Chowak,
Yavatmal, Taluka and District: Yavatmal.
4. Mala Bhagwan Buchunde,
Aged about: 49 Years, Occupation: Household,
R/o Parwa, Taluka and District: Yavatmal.

Shri Vivek Awchat, Advocate for the Appellants.
Shri S.C. Bhalerao, Advocate for Respondent Nos.1 and 2.
Shri A.W. Paunikar, Advocate for Respondent No.3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE OF JUDGMENT : 22nd FEBRUARY, 2021

ORAL JUDGMENT:-

The Appellants, have assailed the judgment dated 13/02/2020 passed by the Claims Tribunal, Yavatmal in M.A.C.P. No.200/2016. By the impugned judgment, the Claims Tribunal has dismissed the claim petition solely on the ground that involvement of the offending vehicle in the accident was not proved.

02] I have perused the records and considered the submissions advanced by learned Counsel for the respective parties. The short point falling for my consideration is whether the Appellants/Claimants had proved that the Truck bearing No.MH-31/AP-3191 was involved in the accident, resulting in the death of Ganesh.

03] The Appellants were the Claimants in the Claim Petition filed under Section 166 of the Motor Vehicles Act, 1988 and shall be hereinafter to referred to as the Claimants.

04] The Claimant No.1 is the widow and the Claimant No.2 is the minor son of Ganesh Buchunde who died in a Motor Vehicular accident. The case of the Claimants was that while said Ganesh was proceeding on his

motor cycle from Yavatmal to Darwha, the offending vehicle i.e. Truck No. MH-31/AP-3191 dashed against his motor cycle and he died as a result of the injuries sustained in the accident. The Claimants alleged that the accident was caused due to rash and negligent driving by the driver of the said Truck. The Claimants therefore claimed compensation of Rs.15,00,000/- under different heads.

05] The Truck bearing No.MH-31/AP-3191 was owned by Respondent No.2. In the written statement, the Respondent No.2 had not specifically denied involvement of the Truck in the said accident. On the contrary, it was averred that the accident was caused, as the deceased had tried to overtake the Truck from the wrong side. The Respondent No.2 had asserted that the accident was caused due to rash and negligent driving by the deceased – Ganesh.

06] It is further to be noted that the witness No.3 – Manish had specifically deposed that he had witnessed the accident. He had given the number of the Truck involved in the accident and stated that the accident was caused due to rash and negligent driving by the driver of the Truck. This witness was not cross-examined by Respondent No.2 i.e. Owner of the Truck. The Tribunal has discarded evidence of this witness on the ground of delay in recording the statement under Section 161 of the Code of Criminal

Procedure, 1971 and for not taking the deceased to the hospital. Needless to state that the delay in recording the statement is *per se* not a ground to disbelieve the testimony of the witness since the witness can have plausible reason for not reporting the accident or for giving a prompt statement. It is to be noted that the witness had explained that he had informed the relatives of the deceased about the accident and that he could not personally report the the accident due to some urgent work. This witness was not cross-examined on the point of delay in recording his statement. The witness was not afforded an opportunity to offer an explanation. As a consequence, the respondent cannot gain any advantage from the delayed examination.

07] The Tribunal has observed that in the statement under Section 161 Cr.P.C. the witness had stated that the Truck had overtaken his motor cycle whereas in his evidence before the Court, he had stated that he was proceeding from Darda Nagar to Ambika Nagar. This has been considered as a material contradiction to discredit the witness. The Tribunal has considered minor variation as irreconcilable discrepancy by ignoring the well-settled principle that every inconsistency, insignificant embellishment or minor contradiction is no ground to doubt credibility of the witness or to discard his evidence.

08] It is pertinent to note that there was no material omission or

contradiction in the evidence of this witness as regards the involvement of the vehicle. The Tribunal was, therefore, not justified in discarding the evidence of this witness in view of some minor omission or contradiction in his statement. The records further indicate that the driver of the offending vehicle has been charge-sheeted for driving the vehicle in rash and negligent manner. Neither the driver nor the owner had stepped in the witness box to rebut the evidence adduced by the Claimants or to prove false implication by the police. The Tribunal while rejecting the evidence of the Claimants has applied the standard of proof beyond all reasonable doubt by ignoring that the Claimants are required to establish their case on the touchstone of preponderance of probability.

09] Under the facts and circumstances, the Tribunal was not justified in recording a finding that the Claimants had not proved the involvement of the vehicle. Consequently, the finding on the issue of involvement of the vehicle or negligence of the driver cannot be sustained. Since, the Tribunal has not decided the other issues particularly issue relating to the quantum of compensation, the matter needs to be remanded to the Tribunal. Hence the following order:-

- i. The appeal is allowed.
- ii. The impugned judgment is set aside.

- iii. The matter is remanded to the Tribunal with directions to hear the parties afresh on the issue of quantum of compensation and to dispose of the application under Section 166 of the M.V. Act, as expeditiously as possible, in any event within a period of six months from the date of uploading of the order.
- iv. The records and proceedings be returned.
- v. Parties to appear before the Tribunal on 8th March, 2021.

(SMT. ANUJA PRABHUDESSAI, J.)

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