

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

FIRST APPEAL NO.401 OF 2015

Appellants

(On R.A.)

- : 1] Smt. Anita wd/o Abaji Meshram,**
Aged about 47 years, Occu. Nil.
- 2] Sachin s/o Abaji Meshram,**
Aged about 29 years, Occu. Labour.
- 3] Ku. Meghana d/o Abaji Meshram,**
Aged about 24 years, Occu. Education.
- 4] Pravin s/o Abaji Meshram,**
Aged about 21 years, Occu. Education.

All r/o Indira Nagar, Mul Road, Chandrapur,
Tahsil & Dist. Chandrapur.

-- Versus --

Respondents

(On. R.A.)

- : 1] Suresh s/o Namdeo Gedam,**
Aged about 20 years, Occ. Driver,
R/o Mohabala, Tah. Warora, Dist. Chandrapur.
- 2] Manvindarsingh s/o Gurumitsingh Sodhi,**
Aged about 82 years, Occ. Business,
R/o Ashok Chowk, Gurunanak Niwas, Nagpur,
Tahsil & Dist. Nagpur.
- 3] National Insurance Company Ltd.,**
Old Bhandara Road, Wardhman Nagar, Nagpur,
through Branch Office, Chandrapur.

=====

Shri B.S. Mandhare, Adv. h/f Shri P.S. Mirache, Adv. for the Appellants
Mrs. Gauri Venkatraman, Advocate for Respondent No.3
None for Respondent Nos.1 & 2

=====

CORAM : **S.M. MODAK, J.**
RESERVED ON : **18th JUNE, 2021.**
PRONOUNCED ON : **1st JULY, 2021.**

J U D G M E N T :-

The issue involved in this appeal is, whether driver of the truck is responsible for the death of cycle rider, who came under rear side of the truck. The Motor Accident Claims Tribunal, Chandrapur (hereinafter referred to as the "Tribunal" for short) gave a verdict in favour of driver, owner and insurance company of the offending truck and that is why the legal representatives of the deceased have come in the appeal. The decision was given on 29/09/2014 in M.A.C.T. No.78/2009 by the Tribunal.

02] The wife, two sons and a daughter of the deceased Abaji Meshram were the claimants, whereas respondent No.1 is the driver, respondent No.2 is the owner and respondent No.3 is the Insurance Company of the truck. Widow Anita only gave evidence before the Tribunal and relied upon the documentary evidence. Deceased Abaji was a pensioner having 58 years of age. When the accident took place on 21/02/2009 at about 10:15 a.m. near Bangali Camp Chowk within the limits of Ramnagar Police Station, the offending truck bearing Registration No.MH-31/CB/6026 was standing at the square, as there was no green signal. After the driver of the offending vehicle got a green signal, he started the vehicle. The deceased on his cycle came from city Ballarshah and he came under rear wheel of the truck while jumping the signal. He died on the spot. There was an offence registered against the truck

driver on 21/02/2009 at Ramnagar Police Station under Section 279, 304-A of the Indian Penal Code and Section 184 of the Motor Vehicles Act.

03] The respondents did not adduce any evidence before the Tribunal. They simply relied upon absence of proof of negligence on the part of the truck driver. Admittedly, widow of the deceased was not an eye-witness. The Tribunal assessed her evidence on the basis of documents on record. The Tribunal has not answered the issue of compensation, as the issue of negligence was answered against the claimants. Learned Counsel Shri Mandhare for the appellants vehemently argued on behalf of the claimants-appellants. He relied upon the following judgments :

- I. Sunita vs. Rajasthan State Transport Corporation - [2019 AIR (SC) 994]*
- II. Mangla Ram vs. Oriental Insurance Co. Ltd. & Ors. - [2018 ACJ 1300]*
- III. Usha Rajkhowa & Ors. vs. M/s. Paramount Industries & Ors.-[2009(2)TAC11 (SC)]*
- IV. Prakash s/o Mahadeorao Nirmal vs. Rajesh Ramfer Yadav & Ors. of this Bench in First Appeal No.423/2005.*
- V. Branch Manger, United India Insurance Company vs. Vijay Vishnupant Karandikar & others [2013(5) MH.L.J. 775]*
- VI. Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors. - [2019(4)Mh.L.J.1]*

04] Learned Advocate Mrs. Venkatraman for respondent No.3 supported the judgment of the Tribunal. According to her, merely proving involvement of the vehicle is not sufficient, but claimants need to prove

negligence of the driver of the offending vehicle. She relied upon the judgments in the cases of Oriental Insurance Co. Ltd. vs. Meena Variyal & others - (2007) 5 SCC 428 and Lachoo Ram & others vs. Himachal Road Transport Corporation - (2014) 13 SCC 254.

05] With the assistance of both the sides, I have gone through the impugned judgment and more particularly the findings of the Tribunal on the point of negligence of the truck driver. After reading the ratios of the judgments cited by both the sides before me, I do not think that there is any scope for interference in the findings recorded by the Tribunal. I will give reasons to follows :

06] On one hand, we have got the oral evidence of wife of the deceased (who is not an eye-witness to the incident) and on the other hand, we have got documentary evidence in the form of F.I.R., Crime Details Form, Postmortem Report. The law on the point of appreciation of evidence in a claim petition is well settled. The test of “proof beyond reasonable doubt”, which is required in a criminal trial is not to be followed in claim petition. The test of “preponderance of probabilities” governs the enquiry of claim petition. So, on the basis of available evidence, we have to consider whether the rashness/negligence of the driver of the offending vehicle is probable. It is true that not in all, but in some cases, the driver of the offending vehicle is also prosecuted for an

offence. There are several contingencies involved in the vehicular accidents. Either, there may be two motor vehicles, which are mechanically propelled vehicles [as per Section 2(28) of the Motor Vehicles Act] or there may be a vehicle on one hand and pedestrian on the other hand. There may be a vehicle and the deceased travelling in that vehicle only. There may be a vehicle on one hand and the vehicle which is not a motor vehicle on the other hand. In the present case, the deceased was riding on a bicycle. It cannot be said to be a motor vehicle as defined under Section 2(28) of the Motor Vehicles Act.

07] As stated earlier, the law on the point of appreciation of the evidence in claim petition is well settled. The only issue is whether on the basis of the evidence adduced, whether it is probable that the driver of the truck was negligent and responsible for the death of the deceased? The judgments relied upon by both the sides will certainly help us in understanding the interpretation of the provisions of law, but ultimately conclusion arrived at in those judgments is on the basis of facts of those cases.

08] There is an emphasis on behalf of learned Advocate Mrs. Venkatraman that the claimants have not examined any eye-witness including the first informant, Police Constable Shri Prabhakar Jogi. In the case of Sunita, as referred above, the Hon'ble Supreme Court felt it

unnecessary to examine the pillion rider. In that case, the deceased was driving a motorcycle with the pillion rider and he collided with an offending bus. One eye-witness was examined. There was an F.I.R. registered against the driver of the bus. The evidence of eye-witness was not believed mainly for the reason that he was not being named in the charge-sheet. The Hon'ble Supreme Court felt sufficiency of the available evidence and accordingly observed that examination of the pillion rider was not necessary. In that case, at least one eye witness was examined. In the case before us, no eye-witness is examined.

09] In Mangla Ram, as referred above, filing of charge-sheet was considered sufficient to show the complicity of driver of the offending jeep. Does it mean to say merely because the driver of the offending vehicle is charge-sheeted, we have to presume about his negligence. There was an evidence of the injured claimant in that case. He was riding his motorcycle. His evidence was discarded and contents of the charge-sheet were believed. The Hon'ble Supreme Court reversed the findings given by the High Court and held the driver of the jeep negligent. In that case also, there was an evidence of motorcycle driver/claimant available.

10] Whereas, in case of Usha Rajkhawa, as referred above, there was an issue about contributory negligence about the car driver. The accident took place in between car and the truck. On facts, contributory

negligence of the car driver was also not proved. This Court in the cases of Prakash Nirmal and Vijay Karandikar, cited *supra*, reiterated the same principle about application of test of preponderance of probabilities and not the proof beyond reasonable doubt. The judgment in the case of Magma General Insurance was on the point of how to grant compensation towards consortium.

11] Whereas, in the case of Lachoo Ram, as referred above, the Hon'ble Supreme Court observed in paragraph 10 as under :

"But simply the involvement of the bus in the accident cannot make the respondent liable to pay compensation unless it can be held on the basis of materials on record that the accident was caused by rash and negligent act of the driver, Respondent 2."

There was an accident in between the bus and motorcycle driver. There was also an F.I.R. against the driver of the bus. Considering the evidence and situation at the spot, it was held that, it was not possible for the bus driver to drive it in a high speed. The claim petition was dismissed. Whereas, in the case of Meena Variyal, the Hon'ble Supreme Court has differentiated in between the nature of claim under Section 163-A on one hand and Section 166 of the Motor Vehicles Act on the other hand. In paragraph 27, it is observed thus :

“27..... Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned”.

12] If we analysis to ratio laid down in all above mentioned judgments, we can find that the enquiry for claim tribunal is a summary enquiry. The Court is neither directly bound by the law of pleadings nor the law relating to proving of documents. The summary enquiry itself contemplates no in depth enquiry. Even when the driver of the offending vehicle is acquitted by the criminal Court, it has no barring on the outcome of enquiry of the claim petition. In other words, the claim petitions have to be decided independently on the basis of evidence adduced before the Tribunal. As stated above, the Tribunal has to face with various contingencies. Many a time, the legal representatives of the deceased have not witnessed the accident. It is but natural. They gave evidence on the basis of information collected and predominantly on the basis of contents of police papers. Some time, the contents of police papers may not support the theory put up by the claimants and when the contents of police papers support the theory put up by the claimants, still the Court have believed that theory even though no eye-witness is examined. It is for the reason that the Motor Vehicles Act is a beneficial piece of legislation so as to protect the interest of victims of the accident.

13] In this case, the widow had given bare minimum details of the accident in her evidence. The following facts are disclosed from her evidence :

- (a) Her husband was going on a bicycle on 21/02/2009 at about 10:00 am to 11:00 am.
- (b) The accident took place at Bengali Camp Chowk at the instance of the truck.
- (c) Deceased died on the spot.
- (d) She has annexed the papers given by the police.

14] She has not reiterated the manner of the accident. It may be due to ignorance or it may be due to contingency not to reiterate the contents of police papers, because they will be damaging her case. Be that as it may, we can certainly read the contents of police papers. The Tribunal has done that exercise too. The F.I.R. [Exh.35], Crime Details Form [Exh.36], Inquest Panchnama [Exh.37] and Postmortem Report [Exh.38] are the necessary police documents. On reading them, the following facts emerge :

- (a) The driver of the offending vehicle started the vehicle after getting signal.
- (b) The person plying the bicycle while jumping the signal came under rear wheel of the truck.

- (c) Cycle rider was coming from Ballarshah and the truck was coming from Mul.
- (d) The location is shown in the map is at Exh.36.
- (e) Head injury coupled with fracture to skull is shown as a cause of death.

15] It seems that, the impact was so eminent that the deceased died on the spot itself. We do find certain shortcomings in these police papers. It is not clear, whether the deceased came under driver or cleaner side at the rear end. It is not clear about the damage, if any, caused to the truck.

16] It is not the case of the claimants that these shortcomings have been kept deliberately by the police to help the truck driver, but we can certainly say that the deceased came under rear side of the truck. The first informant has also mentioned that "cycle rider was about to go ahead by breaking the signal". It speaks for itself. On the basis of above evidence, we can certainly say that the offending truck was involved in the accident, but negligence of the truck driver is not proved. Merely because F.I.R. is registered against the truck driver, this Court cannot conclude about his liability.

17] It is very well true that the claimants at least ought to have examined the witness, who had seen the accident. It may not be

available, but at least they could have examined the first informant Head Constable Shri Prabhakar Jogi. There is a reason to draw an adverse inference against the claimants for non-examination. The ratio laid down in the case of *Sunita* about non-examination of the pillion rider is not helpful to the claimants, as the facts are different. Hence, for the above discussion, this Court does not find any wrong committed by the Tribunal in rejecting the case of the claimants. This Court also does not find any reason to interfere in those findings. In view of that, there is no need to give any finding about the income and quantum of compensation. Hence, there is no merit in the appeal and it is dismissed. The parties to bear their own costs.

(S.M. MODAK, J.)

**sandesh*