

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

FIRST APPEAL NO.1342 OF 2021

M/s. Shriram General Insurance Company Ltd. Appellant

Vs.

1. Tilottam w/o. Sandip Sonawane,
 2. Suraj s/o. Sandip Sonawane,
 3. Vaishnavi d/o. Sandip Sonawane,
 4. Rukminibai w/o. Pandit Sonawane
 5. Gangasinha s/o. Vithalrao Kadam
 6. Sanjay s/o. Anantrao Katale
- ..Respondents

Mr.V.N.Upadhye, Advocate for appellant

Mr.R.S.Shinde, Advocate for respondent nos.1 to 4

**CORAM : R.G. AVACHAT, J.
RESERVED ON : DECEMBER 14, 2021
PRONOUNCED ON : JANUARY 31, 2022**

ORDER :-

This is an appeal by the insurance company, taking exception to the judgment and award dated 03.09.2019 passed by the Motor Accident Claims Tribunal, Latur, in Motor Accident Claim Petition No.129 of 2015. Under the impugned judgment and award, the appellant-insurance company along with the driver and owner of the tractor have been directed to pay a sum of Rs.9,93,000/- as compensation with interest at the rate of 9% per annum on account of death in vehicular accident.

2. The facts, giving rise to the present appeal, are as follows:-

Deceased – Sandip would ply a passenger ferrying auto rickshaw to earn his living. He would do agriculture as well. On 12.11.2014, he had been to Renapur in his auto rickshaw. While he was on his way back home, the auto rickshaw met with accident. It was about 09.00 p.m. of 12.11.2014. He was proceeding along Latur-Ambejogai Road. Near Pimpale Phata, a tractor (MH-24-D-3319) driven in rash and negligent manner approached from opposite side. The tractor dashed against the auto rickshaw. As a result thereof, Sandip died on the spot.

3. The widow, two minor children and the mother of the deceased – Sandip filed a petition for compensation against the owner of the tractor (respondent no.5 herein), its driver (respondent no.6 herein) and the insurer of the tractor (appellant herein). The owner and driver of the tractor did not file their written statement in the claim petition. The appellant – insurance company contested the petition on the ground of false involvement of the tractor. The Tribunal allowed the claim petition granting compensation, as stated above. It is also averred that the tractor driver did not have a valid and effective driving licence.

4. Heard learned counsel for the parties.

5. Mr.V.N.Upadhye, learned counsel for the appellant-insurance company, would submit that the accident took place on 12.11.2014. Report of the accident was lodged on the next day. It was lodged against unknown vehicle. It is only after thirty days of occurrence of the accident, one person came forward claiming to have had witnessed the accident. Based on his statement, the tractor in question came to be proceeded against. According to learned counsel, the tractor driver did not hold a valid and effective driving licence. The licence held by him was for driving Light Motor Vehicle (LMV) – non transport. The quantum of compensation has also been taken exception to. Learned counsel has relied on a number of authorities in support of his claim, as under:-

(1) Anil Vs. New India Assurance Co. Ltd. and ors, 2018(2) SCC 482;

(2) Bajaj Allianz General Insurance Company Ltd. Vs. Manisha w/o. Lahu Kale (First Appeal No.2742 of 2015 decided on 04.09.2018);

(3) New India Assurance Company Ltd. Vs. Laxman s/o. Dadarao Karpe and ors., (First Appeal No.2973 of 2013 decided on 28.07.2015);

(4) Shriram General Insurance Company Ltd. Vs. Narayan s/o. Nivrutti Bembde (First Appeal No.1535 of 2013 decided on 23.01.2014);

(5) New India Assurance Company Ltd. Vs. Ashalata S. Patil (First Appeal No.2829 of 2015 decided on 04.10.2018);

(6) National Insurance Company Ltd. Vs. Smt. Sukanyamma,T.K. and ors., 2016 STPL 9875 Karnataka;

(7) Faridabegum Sk. Yousuf ors. Vs. Daulat Khan Sardar Khan and ors., 2015 STPL 11564 Bombay;

(8) Oriental Insurance Co. Ltd. Vs. Premlata Shukla and ors., 2007 STPL 10693 SC;

(9) ICICI Lombard Vs. Janabai wd/o. Dinkarrao Ghorpade, (First Appeal No.3333 of 2015 decided 14.12.2018)

(10) ICICI Lombard Insurance Co. Ltd. Vs. Hajratbee w/o. Abdul Razak and ors., (First Appeal No.1366 of 2012 decided on 20.06.2019);

(11) Kavita Ratnakar Ghodke and ors. Vs. Sandip Sarjerao Jadhav and ors. (First Appeal No.0186 of 2019 decided on 15.07.2019);

(12) Bajaj Allianz General Insurance Co. Ltd. Vs. Vanita w/o. Ganesh Gadakh and ors. (First Appeal No.2968 of 2013 decided on 21.11.2019);

(13) M/s. Shriram General Insurance Co. Ltd. Vs. Chandrakala Atmaram Mohite and ors. (First Appeal No.2757 of 2017 decided on 26.09.2019);

(14) M/s. Shriram Insurance Co. Ltd. Vs. Vanita wd/o. Dhanaji Marekar and ors., (First Appeal No.606 of 2019 decided on 24.09.2019);

(15) Oriental Insurance Co. Ltd. Vs. Kalawati and ors., 2014 STPL 3524 MP;

(16) Manager, National Insurance Company Limited, Bijapur Vs. Somanagouda and ors., 2016 STPC 7470 Karnataka;

(17) M/s. Shriram General Insurance Co. Ltd. Vs. Sunita Gabaji Bhor and ors., (First Appeal No.2349 of 2019 decided on 05.10.2021);

(18) New India Assurance Co. Ltd. Vs. Shaikh Ashiya wd/o. Shaikh Javed and ors. (First Appeal No.130 of 2014 decided on 20.10.2021)

Learned counsel would, ultimately, urge for allowing the appeal.

6. Mr.R.S.Shinde, learned counsel for the respondent-claimants, would, on the other hand, submit that an eye witness was examined in proof of the factum of accident. The appellant-insurance company did not lead any evidence in disproof of the case of the respondent-claimants. The claimants' petition being a civil proceeding, is required to be decided on preponderance of probability. The respondent-claimants discharged their burden of proof by relying on the police papers and even evidence of an eye

witness. According to learned counsel, the Tribunal has rightly allowed the claim petition. According to him, the amount of compensation awarded is inadequate. Learned counsel, therefore, urged for enhancement in the amount of compensation. He has relied on the following authorities:-

(i) National Insurance Company Ltd. Vs. Smt. Sharda w/o. Raju Waghmare and ors., 2017(3) All MR 293;

(ii) Mangla Ram Vs. Oriental Insurance Company Ltd. and ors., (2018)5 SCC 656;

(iii) Bimla Devi and ors. Vs. Himachal Road Transport Corporation and ors., (2009) 13 SCC 530;

(iv) New India Assurance Co. Ltd. Vs. Ujjawala Santosh Gaikwad and ors. 2019 DGLS (Bom.) 845

7. Considered the submissions advanced. Perused the evidence, oral and documentary as well. Gone through the citations relied on.

8. Deceased – Sandip would ply a passenger ferrying auto rickshaw to earn his living, is a fact not in dispute. On the night of 12.11.2014, said auto rickshaw met with an accident on

Latur-Ambejogai road. As a result of the injuries suffered in the said accident, deceased -Sandip breathed his last.

9. The question is, whether it was an accident involving the tractor (MH-24-D-3319). The widow of the deceased gave her evidence on affidavit. Admittedly, she is not an eye witness of the accident. Her evidence as regards the factum of accident is, therefore, of little consequence. On the next day of the accident, the brother of the deceased lodged the FIR (Exh.32), stating therein that some unknown vehicle gave dash to the auto rickshaw. The panchnama (Exh.33) of the scene of accident was drawn on the next day. The recitals therein give no indication of involvement of any other identifying vehicle. It is only after about three weeks of the accident, a person by name, Atul Gade (witness no.2 examined on behalf of the claimants) came forward, claiming to have had witnessed the accident. His statement was, therefore, recorded by the police. He was also examined as witness before the Tribunal. It is in his evidence that on 12.11.2014, he, along with his friend Ganesh, had been to their native place, Renapur, a few days before 12.11.2014. Both of them were on their way back home on 12.11.2014.

They were proceeding to Ambejogai from Renapur on their motorbike. By 9:00 p.m., they were proceeding along Latur-Ambejogai road. One auto rickshaw was proceeding ahead. Suddenly, the tractor came from opposite side and dashed against the auto rickshaw. Both of them got down from the motorbike, went close to the auto rickshaw. The auto rickshaw driver was seriously injured. Some persons had gathered there. The driver of the tractor also got down and told them that he would take the injured to the hospital. Witness Atul and his friend, therefore, left from the spot.

10. In the cross-examination, witness – Atul has stated that he only recalled about the accident on having seen a cut-out (hoarding) displaying picture of the deceased with an obituary message. On having seen the picture on the hoarding, he realised that the person was none other than the auto rickshaw driver seen by him injured in the accident.

11. The Investigating Officer was not examined in the case.

12. There can be no dispute on the proposition that the claim petition is to be decided on preponderance of probabilities.

Strict proof of accident may not be possible to be given by the claimants. It needs no mention that the accident is a fact. Same needs to be proved like any other fact. Each case has its peculiar fact and circumstances. In the case of **Bimla Devi's** case (supra), on appreciation of the factual matrix, it was held to be an accident involving a bus. In **Mangla Ram's** case (supra), it has been held the Tribunal *stricto sensu* is not bound by the pleadings of the parties. Holistic view is required in entire pleading and evidence by applying principle of preponderance of probabilities. The facts of the said case would indicate that the eye witness therein had given description and colour of the jeep involved in the accident. It is only on appreciation of the factual matrix, involvement of the offending vehicle was held to have been proved.

13. In the case of **Smt. Sharda w/o. Raju Waghmare** (supra), it is held that it was necessary for the party interested in denying it to bring some evidence to disprove the same. No evidence was brought on record nor the claim was contested by the insurer that the father was dependent on the deceased.

14. The burden of proof is on the claimants. Same may be discharged on preponderance of probabilities. The insurer may lead independent evidence in disproof of the claim or it may point out that the evidence relied on is inherently improbable and the Tribunal, therefore, ought not to have acted on it.

15. The Tribunal, in the present case, has simply relied on the factum of filing of charge sheet against the tractor driver. Admittedly, the report of the accident was lodged against unknown vehicle. It is only after three weeks a person comes forward claiming to have had witnessed the accident. He recalled of the accident only on having seen the hoarding depicting the picture of the deceased - Sandip. According to the alleged eye witness, some person had gathered on the spot of accident. Had it really been so, involvement of the offending tractor could have come to light immediately, i.e., on the same day of the accident. Same suggests that no person had witnessed the accident. The conduct of the alleged eye witness – Atul Gade in coming forward after three weeks of the accident, is unnatural and does not stand to reason. He was residing at a

nearby village. On having seen such an accident, he left the place without intimating the same to anyone else. Realising to have had witnessed the accident only on having seen the hoarding and picture of the deceased, leads this Court to observe that this person is a got up witness only with a view to earn the compensation. This Court is, therefore, not inclined to rely on the evidence of this witness.

16. There is no other evidence in proof of involvement of the tractor in question. The Tribunal ought not to have allowed the claim petition merely relying on such police papers namely, charge-sheet, seen of accident panchnama and post mortem notes. This Court has, therefore, every reason to interfere with the impugned judgment and award. In view of this Court, the evidence fell short to make out case even on preponderance of probabilities.

17. Needless to mention that there can be no enhancement in the amount of compensation, without there being an appeal or a cross-objection for the same (**Ranjana Prakash and ors. Vs. Divisional Manager and anr., 2012 AIR SCW 848**).

18. In the result, the appeal succeeds. The impugned award dated 03.09.2019 is set aside. The claim petition stands dismissed. The amount deposited by the appellant-insurance company be paid back to it with interest accrued thereon.

[R.G. AVACHAT, J.]

KBP