IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1748 OF 2019

New India Insurance Company Ltd.,
Through its Divisional Manager/Authorized Signatory,
Mahesh Auto Compound,
Adalat Road, Aurangabad,
Dist. Aurangabad … **Appellant**
(Original Respondent No.1)

Versus

1. Vaishali Wd/o Shriram Rathod
Age: 25 years, Occu. Household

2. Divya D/o Shriram Rathod
Age: 5 years, Occu: Education

(Being Minor U/g of her mother
i.e. respondent No.1)

3. Gayabai W/o Maharu Rathod
Age: 58 years, Occu. Nil,

4. Maharu s/o Zabba Rathod
Age: 60 years, Occu. Nil

All R/o Mohdi Tanda, Tq. Kannad,
District Aurangabad

5. Avinash s/o Baban Pawar
Age: Major, Occu. Business,
R/o. Borgaon, Tq. Khultabad,
Dist. Aurangabad … **Respondents**
(Respdt.Nos. 1 to 4 – Org.Claimants
Respdt No.5 – Org. Respdt.No.1)

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Mr. S. G. Chapalgaonkar, Advocate for appellant
Mr. P. C. Mayure, Advocate for respondent Nos. 1 to 4
Mr. S. M. Kshirsagar, Advocate for respondent No.5

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 18th NOVEMBER, 2021
PRONOUNCED ON : 08th FEBRUARY, 2022

JUDGMENT :-

. This is Insurance Company's appeal, taking exception to the judgment and award dated 01.12.2018, passed by the Member, Motor Accident Claims Tribunal, Aurangabad, in Motor Accident Claim Petition No.44/2016, granting compensation of Rs.14,20,000/- on account of death in vehicular accident.

2. Facts giving rise to the present appeal are as under:

Motorcycle No. MH-20-DQ-9472, met with the accident on 06.07.2015. It so happened that the deceased Shriram and his friend Rameshwar had been to Khultabad for labour work. They were returning from Khultabad on the motorcycle. The deceased was riding the same. At about 8.30 p.m., they were passing by Akhatwadya Phata, a motorcycle No. MH-20-DQ-6011 was approaching from behind. It was being driven in rash and negligent manner. The said motorcycle dashed the motorcycle ridden by the deceased from behind and fled. As a result of the accident, both, the deceased and his friend suffered multiple injuries. They were admitted to a hospital. Shriram, however, unfortunately, succumbed to the injuries. His widow, minor daughter and parents, therefore preferred petition for compensation contending that the deceased was serving as Supervisor with a construction company at a monthly pay of Rs.20,000/-.

3. The owner of the offending motorcycle was proceeded exparte before the Tribunal. The appellant – Insurance Company resisted the claim petition on the ground of there being a collusion between the owner of the offending vehicle and the respondents – claimants. It was stated in the report of the accident lodged first in point of time that one unknown motorcycle gave dash to the motorcycle being plied by the deceased. There is delay in lodging First Information Report (FIR).

4. The Tribunal, after appreciating the evidence, allowed the claim granting compensation as stated above.

5. Learned Advocate for the appellant – Insurance Company would submit that the scene of the accident panchanama undoubtedly indicates that the motorcycle skidded. It has been stated in the report of the accident that an unknown vehicle dashed.

No particulars as to date and time have been given. The FIR came to be registered late. The claimants joined hands with the Investigating Officer and the owner of the offending vehicle, as well. It is also submitted that rider of the offending vehicle did not hold valid and effective licence. The same is evident from the fact that he was charged with an offence punishable under Section 3 read with 181 of the Motor Vehicles Act. The learned Advocate urged for allowing the appeal.

6. Learned Advocate for the respondents – claimants would, on the other hand, submit that the Tribunal has rightly appreciated the evidence and arrived at a finding of fact. The owner of the offending motorcycle did not file his written statement. His motorcycle was seized in connection with the crime registered against the motorcycle rider. He did not raise any objection regarding prosecution of the rider of his motorcycle. The learned Advocate would further submit that the appellant – Insurance Company has relied on the police papers of the investigation. The crime was registered against the rider of the offending motorcycle. The appellant – Insurance Company, therefore, cannot be allowed to partially resile from the police papers which do indicate involvement

of the offending bike in the accident in question. The learned Advocate has relied on the following authorities.

(i) Oriental Insurance Co. Ltd. Vs. Premlata Shukla & Ors – (2007)13 SCC 476;

(ii) Saroj and others Vs. Het Lal and others – (2011) 1 SCC 388;

(iii) Ravi Vs. Badrinarayan and others – 2011(4) Mh.L.J. 514.

7. Learned Advocate for the owner of the offending motorcycle, supports the impugned judgment and order.

8. Considered the submissions advanced. Perused the impugned judgment and award. Also perused the evidence relied on.

9. The Tribunal gave following finding on the question of involvement of the offending vehicle.

> "*10] Heard Advocate for claimants as well as advocate of respondent no.1. The claimants have examined claim no.1 Vaishali Shriram Rathod, wife of deceased Shriram as PW-1 at Exh.31. Coies of FIR Exh-25, Spot Panchanama Exh-26, Inquest Panchanama Exh-27, Postmortem Report is at Exh-28, Insurance Cover Note of offending vehicle at Exh-29, copy of application u/s. 457 of Cr.P.C. by respondent no.1 for release of offending motorcycle No.MH-20-DQ-6011 Exh-34, Seizure Panchanama of offending vehicle Exh-35, Suprudnama Exh-36, Statement of Rameshwar Bhillu Rathod to Police Station Khultabad Exh-37, Supplementary Statement of Rameshwar Exh-38, Report filed by Head Constable G.H. Kathar is at Exh-39 and Muddemal Receipt of seizure of offending vehicle Exh-40.*

11] I have gone through entire oral as well as documentary evidence on record. Death of Shriram Maharu Rathod occurred on 11.7.2015 in motor accident (Inquest Panchanama Exh.27 and Postmortem Report Exh-28) is not in dispute. Copies of Insurance Cover Note of offending vehicle at Exh-29, application u/s. 457 of Cr.P.C. by respondent no.1 for release of offending motorcycle Exh-34, Seizure Panchanama of offending vehicle Exh-35, Supurdnama Exh-36 show, said motorcycle No.MH-20-DQ-6011 is standing in the name of respondent no.2 and as per Insurance Cover Note Exh-29, it was insured from 11.5.2015 to 15.5.2016 with respondent no.1. Alleged accident took-placed on 11.7.2015. It means, on the day of alleged accident said motorcycle was insured with respondent no.1 Insurance Company. Insurance Policy Cover Note of Offending Vehicle i.e. motorcycle No.MH-20-DQ-6011 filed on record at Exh-29 shows name of respondent no.2 Avinash Baban Pawar as Insured.

12] Therefore, point in dispute remains only because of whose negligence alleged accident took-place."

10. The accident is the question of fact. Rash or negligence on the part of rider of offending vehicle is another fact. The same is to be proved on adducing evidence in that regard. An issue of fact has to be decided on the basis of evidence obtainable in the very case. True, the same is to be proved on preponderance of probabilities. Police papers of the accident may be looked into. In the case in hand, the accident took place on 06.07.2015. It was said to be between two motorbikes. The offending motorbike is said to have fled soon after the impact. The report of the accident was lodged

immediately. It has been stated therein (Exh.25) that one unknown motorbike came from behind. It dashed the motorbike ridden by the deceased and then fled. The owner of the motorbike did not file written statement. The facts of ***Saroj and others*** case (supra), indicate that owner of the offending vehicle therein had filed the written statement and admitted involvement of the vehicle in accident. True, on investigation of the crime, the charge-sheet has been laid against rider of the alleged offending motorbike. It is also true that some of the police papers have been placed on record by the appellant – Insurance Company itself. Those are in the nature of application moved by the owner of the offending motorbike for return thereof to him. The pillion rider – Rameshwar gave supplementary statement (Exh.38) after over 40 days, wherein he stated to have learnt from his relations and others that the offending motorbike was bearing registration No. MH-20-DQ-6011. The Investigating Officer was not examined. Even there is no police statement of person claiming to have had seen the accident and therefore, named the offending motorbike.

11. This Court is very much conscious of the fact that Section 166 of the Motor Vehicles Act is a beneficial provision. The

Court should have a liberal approach. The procedure prescribed for inquiring the claim petition is summary in nature. The Apex Court, in **Mangla Ram Vs. Oriental Insurance Co. Ltd. and others, [2018 AIR (Supreme Court) 1900]**, held :-

> "*The evidence of these witnesses to the extent they have consistently stated that when the appellant was riding on his motorcycle bearing No.RJ-19-6636 at the relevant time, going to Basni from Panwara Phanta and when he reached near Siviya Nada, a green jeep coming at a high speed from Salawas side, hit the motorcycle from back side, as a result of which the appellant fell down and suffered severe injuries including to his right leg which was eventually amputated from above the knee level, has not been doubted. Pertinently, besides mentioning the description of the offending vehicle as a "jeep" they have also spoken about its colour (green) and that it was displaying the Congress Party flags and banners on the side of the jeep. In other words, their version limited to having noted the jeep number, has not been accepted. Besides, the Tribunal relied upon the evidence of respondent No.2 Chail Singh (DW-1) and Bhanwar Singh (DW-2) who had stated that the jeep was deployed in the election campaign of Sarpanch of Somdar Village on the Salawas Road and thus denied the involvement of the vehicle in the accident in question.*"

12. Facts would indicate that, in the said case, there were eye witnesses to the accident. They had given description of the offending vehicle. On the basis of the same, the claim petition was allowed. It is reiterated that, each case has to be decided on its facts and circumstances.

13. Close scrutiny of the documentary evidence on record would suggest that there is no slightest of material to indicate the involvement of the offending vehicle in question. It is not known as to on what basis and material the Investigating Officer has filed the charge-sheet against the rider of the alleged offending motorbike. In view of this Court, the Tribunal ought not to have granted the claim merely relying on the factum of filing of the charge-sheet. It is reiterated that there is no slightest of evidence to suggest the involvement of the offending motorbike, the fact that the owner thereof had not filed written statement would be of no avail for the respondents – claimants, since he is not the person who has to pay the amount of compensation as his vehicle stood insured with the appellant – Insurance Company. In the circumstances, the Tribunal ought to have allowed the petition merely on the ground of factum of filing of the charge-sheet. This Court is not at one with the finding recorded by the Tribunal in that regard. Since there being no evidence to infer the involvement of the alleged offending vehicle in the accident in question, the claim petition is liable to be dismissed.

14. The appeal, therefore, succeeds. The same is allowed .

15. The award dated 01.12.2018, passed by Member, Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No. 44 of 2016 is hereby set aside. Motor Accident Claim Petition No.44 of 2016 is dismissed.

16. The amount in deposit be paid back to the appellant Insurance Company along with interest accrued thereon after a period of three months from the date of this order.

17. Pending civil application Nos. 6739 of 2019, 11690 of 2019 and 10406 of 2021, stand disposed of.

[R. G. AVACHAT, J.]

SMS