2023:BHC-AUG:26815

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1130 OF 2017

1. Tarabai Bhausaheb Karanjekar
Age- 47 years, Occ- Household

2. Asha W/o Sandip Sarode
Age- 29 years, Occ- Household

3. Shital Bhausaheb Karanjekar
Age- 26 years, Occ- Education

4. Sandip Bhausaheb Karanjekar
Age- 35 years, Occ- Service
Nos. 1, 3 & 4 R/o Nandur Khandarmal,
Tq. Sangamner, Dist. Ahmednagar.
No. 2 R/o Anandwadi (Chandanpuri)
Tq. Sangamner, Dist. Ahmednagar. ...Appellants
[Ori. Claimants]

VERSUS

1. United India Insurance Co. Ltd.,
Through its Branch Manager,
Near Karam Hotel, Sangamner,
Sangamner, Dist. Ahmednagar.

2. Mahindra & Mahindra Co. Ltd.,
Through its Manager, Automotive Sector
Plot No. 89, M.I.D.C., Area, Satpur,
Nasik- 422 007.

3. Laxman Krushna Munje,
Age- Major, Occ- Driver,
C/o. Manager, Automotive Sector,
Plot No. 89, M.I.D.C., Area, Satpur,
Nasik- 422 007. ...Respondents
[Ori. Opponents]

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Mr. R.L. Kute, Advocate for appellants.
Mr. R.F. Totala, Advocate for respondent No. 1

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON: 12th DECEMBER 2023
PRONOUNCED ON: 20th DECEMBER, 2023

JUDGMENT:

1. This appeal filed by original claimants challenges the dismissal of their claim petition bearing Motor Accident Claim Petition No. 6/2010, filed under section 166 of Motor Vehicles Act, 1988, by learned Member, Motor Accident Claim Tribunal, Sangamner, District- Ahmednagar. [Parties hereinafter shall be referred to as 'Claimants' and 'Insurance Company'].

2. Facts giving rise to this appeal, in short are as follows:

Claimants filed claim petition before the learned Tribunal, under section 166 of Motor Vehicles Act, 1988, for grant of compensation of Rs. 4,00,000/- on account of death of Bhausaheb Karanjekar. It is contended that on 28/10/2009, at about 10.00 am, Bhausaheb Karanjekar, husband of claimant No. 1 and father of claimants No. 2 to 4 was proceeding to Sangamner from Ghargaon on Bajaj CT 100 motorcycle bearing No. MH-41-H-9002. At that time, respondent No. 3 who was driving Mahindra vehicle bearing No. MH-15-TC-528 in rash and negligent manner gave dash to the motorcycle of Bhausaheb from behind. In the said accident, Bhausaheb died on the spot. Crime No. I-290/2009 for offences punishable under section 304-A, 279, 337, 338, 427 of IPC and under section 184, 134 of Motor Vehicles Act was registered against driver/respondent No. 3, and after completion of investigation charge sheet is filed. At the relevant time, Mahindra vehicle was owned by the 2nd respondent and it was insured with respondent No. 1/insurance company.

3. At the time of accident, Bhausaheb was hale and hearty person of 45 years of age. From agriculture and milk business he used to earn Rs. 10,000/- per month and by running juice shop he was earning Rs. 5,000/- per month. All the claimants were solely dependent on deceased, they therefore claimed Rs. 4,00,000/- towards compensation.

4. Respondent Nos. 2 and 3 i.e. owner and driver of the vehicle did not appear and contest the claim. Hence, claim petition proceeded ex-parte against them. Insurance Company contested the claim by filing written statement contending that offending vehicle was not insured, driver/respondent No. 3 did

not have valid license at the time of accident, and conditions of insurance policy were violated and claimed that insurance company is not liable to pay the compensation.

The Tribunal after considering the evidence brought on record and by relying on the decision in ***Meera Kambli and others vs. Viran and others***, III 2005 ACC 821 has held that claimants have failed to prove that the 3rd respondent was driving the offending vehicle in rash and negligent manner, and dismissed the claim.

5. Heard the learned advocate for claimants and learned advocate for insurance company. None appears for respondent Nos. 2 and 3. Perused the record.

6. Claimant No. 1 has examined herself in support of claim. She has brought on record FIR (Exhibit-30), Panchnama (Exhibit-31), Inquest Panchnama (Exhibit-32), Post Mortem Notes (Ehibit-33) and charge sheet (Exhibit-37). The Tribunal upon considering the contents of FIR (Exhibit-30) and panchnama (Exhibit-31) has observed that the accident had taken place on Nashik-Pune Highway No. 50 and when deceased Bhausaheb was going on the motorcycle, Mahindra vehicle gave

dash to the motorcycle of Bhausaheb from behind and in that accident Bhausaheb suffered serious injuries and died on the spot. In spite of this, Tribunal has erroneously proceeded to observe that claimant No. 1 is not an eye witness and therefore she does not know anything about the accident. The Tribunal has further recorded a finding that contention of respondents that Mahindra vehicle was being driven in slow speed and there is no mistake of driver in the accident cannot be accepted as no evidence is led by respondents.

7. Then by relying on the decision in Meera Kambli (supra), the Tribunal has held that negligence is not proved from spot panchnama and FIR and therefore, Tribunal has proceeded to observe that claimants have failed to prove that the 3rd respondent had driven the offending vehicle in rash and negligent manner and caused accident.

8. It is a settled legal position that the burden of proof on claimants in motor accident claim petitions is not as strict as in the civil cases and Motor Vehicles Act is in the nature of social welfare legislation and its provisions make it clear that compensation should be justly determined.

9. In ***Mr. Pukh Raj Bumb vs. Mr. Jagannath Atchut Naik***, [First Appeal No. 32/2013] Division Bench of this Court has held that, " *in claim petitions standard of proof is 'preponderance of probabilities' and not 'beyond reasonable doubt*'."

10. In ***State of Mysore vs. S.S. Makapur***, AIR 1963 SC 375 it is held:

> "*For a correct appreciation of the position, it is necessary to repeat what has often been said that Tribunals exercising quasi-judicial functions are not Courts and that, therefore, they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity, must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts.*
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> *To the same effect is the decision in Engineering Mazdoor Sabha v. Hind Cycles Ltd., Bombay (1963) 1 Supp. S.C.R. 625 at 631, already referred to. There that Court pointed out:*
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> *They (the Tribunals) can compel witnesses to*

appear, they can administer oath, they are required to follow certain rules of procedure; the proceedings before them are required to comply with rules of natural justice, they may not be bound by the strict and technical rules of evidence, but, nevertheless, they must decide on evidence adduced before them; they may not be bound by other technical rules of law, but their decisions must, nevertheless, be consistent with the general principles of law. In other words, they have to act judicially and reach their decisions in an objective manner and they cannot proceed purely administratively or base their conclusions on subjective tests or inclinations."

11. In ***Gurdeep Singh vs. Bhim Singh and others***, (2013) 11 SCC 507, Apex Court held;

"15.It is a matter of common knowledge that in motor road accident's claim cases, it is very difficult to get witness. The eye witness are also not readily available. Even if available, they are not easily ready and willing to come and depose in court of last for many reasons. Thus, we have to go by the oath of the claimant only. From the materials available on record, it is established and crystal clear that the appellant had definitely met with the accident. He was also travelling in the bus, operated by M/s Kataria Tours and Travellers. It is also proved that the accident was between two buses on the intervening night of 28-9-1994 and 29-9-1994."

12. In view of above ratio, Tribunal has erred in recording a finding that claimants have failed to prove rash and negligent driving on the part of respondent No. 3.

13. In ***Oriental Insurance Company Limited vs. Premlata Shukla and others***, (2007) 13 SCC 476, it is held, "*objection as to admissibility of document has to be raised at the time when document is tendered in evidence and is being exhibited. If objection is not raised and document is allowed to be marked, one cannot be permitted to turn round and raise a contention that the contents of the document had not been proved and, thus, should not be relied upon*."

It is further held;

> *"12.In Narbada Devi whereupon reliance has been placed, this Court held that contents of a document are not automatically proved only because the same is marked as an exhibit. There is no dispute with regard to the said legal proposition.*
>
> *13. However, the factum of an accident could also be proved from the first information report. ………."*

14. In the present case, record indicates that no objection as to the admissibility of first information report, panchnama as well as charge sheet was raised when the documents were exhibited. In the light of aforesaid ratio, Tribunal has erred in coming to a conclusion that claimants failed to prove rash and negligent driving on the part of the 3rd respondent. First information report and other documents being

public record are required to be taken into consideration while deciding the claim petition. Admittedly, insurance company has not led any evidence. In this view of the matter, finding recorded by the Tribunal that claimants have failed to prove that at the time of accident, respondent No. 3 was driving vehicle in rash and negligent manner is erroneous. The Tribunal has referred documents at Exhibit-31 to 33 to come to a conclusion that Bhausaheb expired in road accident. The Tribunal has further recorded a finding that insurance company has failed to prove that there was breach of policy and that 3rd respondent was not having valid license. The Tribunal has held that claimants No. 1 to 3 are entitled for compensation of Rs. 7,03,000/- (including no fault liability amount of Rs. 50,000/-). The Tribunal has further held that all the respondents are jointly and severally liable to pay the compensation amount.

15. In Meera Kambli (supra) the factum of accident itself was denied by all respondents. Considering the defence of respondents, learned Single of this Court was of the view that it was obligatory on the part of claimants to led cogent, reliable evidence to establish rash and negligent act of the respondent No. 1 therein, but unfortunately no such evidence was adduced

by claimants.

16. In the present case, owner/respondent No. 2 and driver/respondent No. 3 did not appear and contest the claim. The Insurance Company in the written statement has stated that it has no knowledge regarding facts and circumstances as to the occurrence of accident and driver of jeep was driving vehicle by observing all the traffic rules and regulations and there is no negligence on his part. Formal denial of death of Bhausaheb in road accident is made by insurance company. Since the insurance company has not seriously disputed accidental death of Bhausaheb, the Tribunal by ignoring the documents at Exhibit-30 to 37 placed on record by claimants erred in holding that claimants have failed to prove rash and negligent driving on the part of respondent No. 3.

17. In the light of aforesaid facts, Tribunal has erred in relying on the decision in Meera Kambli (supra) without appreciating the facts in the proper perspective.

18. In the present case, there is sufficient evidence on record to hold that, at the time of accident, respondent No. 3 was driving his vehicle in rash and negligent manner ignoring the

road conditions and has caused accident which has resulted into death of Bhausaheb and therefore, claimants are entitled for compensation.

19. By relying on the decision in ***National Insurance Company Limited vs. Pranay Sethi***, AIR 2017 SC 5157, learned advocate for appellants submitted that since deceased Bhausaheb was 55 years old at the time of accident, 15% income needs to be considered towards future prospects.

The Apex Court while interpreting concept of just compensation has held that, "*future prospects need to be determined by calculating 15% of actual salary if the deceased was aged between 50-60 years*"

20. In the case in hand, the Tribunal has not considered the aforesaid aspect, therefore addition of 15% of income needs to be made towards future prospects. Hence, the following order:-

ORDER

(I) First Appeal is allowed.

(II) Impugned Judgment and award dated 25.01.2017, passed by learned Member, Motor Accident Claims Tribunal, Sangamner, District- Ahmednagar, is hereby quashed and set aside.

(III) Motor Accident Claim Petition No. 6/2010 is allowed.

(IV) Claimants are entitled for compensation of Rs. 8,08,450/- [7,03,000+15%] to be paid by respondents jointly and severally with interest @ 7.5% per annum from the date of claim petition till realization of the amount.

(IV) Award be prepared accordingly.

[NITIN B. SURYAWANSHI, J.]