

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

FIRST APPEAL NO. 1944 OF 2018

Maharudra s/o. Dhulayya Swami, .. Appellant
Age. 42 years, Occ. Nil, [original
R/o. Kumbhar Galli, Ausa, claimant]
Tq. Ausa, Dist. Latur.

Versus

1. Santosh s/o. Sahadeo Chavan .. Respondents
Age. 42 years, Occ. Business,
Driver & Owner of Jeep (Taxi)
No. MH-24-F-3534
R/o. Jay Nagar, Tq. Ausa,
Dist. Latur.
2. General Manager,
The New India Assurance Co. Ltd.
Gayatri Krupa, Chandra Nagar,
Ukka Marg, Latur – 413 512.

Mr.B.R. Kedar, Advocate for the appellant.
Mr.A.B. Kadethankar, Advocate for respondent No.2.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 20.10.2023
PRONOUNCED ON : 07.12.2023

J U D G M E N T :-

01. The original claimant has filed this appeal
challenging dismissal of his claim petition by Ex-Officio

Member, Motor Accident Claims Tribunal, Latur, by judgment and order dated 12.01.2018. The claimant had filed MACP No. 246 of 2013. Respondent No.1/opponent No.1 is driver and owner of vehicle No. MH-24-F-3534. Respondent No.2 is original opponent – The New India Assurance Co. Ltd., through its General Manager. For the sake of convenience, the parties are referred to as per their original status in the claim petition.

02. In short, the case of the claimant is that on 07.07.2013 while he was going on his motor cycle bearing No.MH-24-P-962 from Latur to Ausa, he met with an accident near Rest House, Ausa. The offending vehicle was being driven by respondent No.1 in rash and negligent manner. The offending vehicle came from backside and gave dash to the motor-cycle of the claimant. Because of the dash, the claimant fell down with his motor-cycle. In the accident, he received multiple injuries to his head and other parts of the body. The offence was also registered against the vehicle owner.

03. The claimant's case further is that he is an agriculturist and was also running a grocery shop at Ausa. His income was Rs.3 lakhs per annum from the agricultural land and from grocery shop he was earning Rs.9000/- per month. Because of the accident, he became permanently disabled. He cannot cultivate his land and is also not in a position to run grocery shop. Though it is case that he is entitled to receive Rs.94,91,000/-, he has restricted his claimant Rs.10 lakhs, as he was not in a position to pay the Court fees.

04. In the Trial, respondent No.1 did not appear. Respondent No.2 appeared and resisted the petition by filing written statement. All the allegations and the averments as regards accident are denied. It is specific case of respondent No.2 that the alleged offending vehicle was not at all involved in the accident. The respondent further stated in the written statement that the claimant has not given exact time of the accident and

the particulars of place where accident took place. It is alleged that the story of the accident is concocted and imaginary. The complaint was lodged after about one month's delay. In the hospital record, it is recorded that the claimant himself fallen down from the motor-cycle as he slipped on the road. This history was given by brother of the claimant himself, who had taken the claimant to hospital. The insurance cover of the taxi jeep is also denied for want of confirmation. Against respondent No.1 it is alleged that there was breach of terms and conditions of the policy.

05. The learned Member recorded finding in affirmative to the extent of permanent disability suffered by the claimant. However, as regards involvement of the vehicle, the finding is recorded in the negative. On the issue of breach of policy the finding is in the negative. The issue of involvement to receive compensation is also answered in the negative. Since the claim is denied, the claimant has approached this Court.

06. Learned Advocate Mr. B.R.Kedar vehemently argued that when the Tribunal has accepted case of the claimant about injury and permanent disability, still has held that the claimant is not entitled to receive compensation. About involvement of vehicle, the wife of claimant has clearly deposed before the Court and still her evidence is not accepted. The learned Member ought to have considered that the claimant was entitled to receive compensation under beneficial legislation. No strict proof is expected in such cases. The claimant has no reason to falsely implicate the offending vehicle. The Tribunal ought to have accepted evidence of eye witness – Rajendra Dhumal (CW-4). The Tribunal, however, has ignored this material evidence. The Tribunal ought to have considered that the claimant could not come to the Tribunal to depose in support of his claim, because he lost his speech. He submits that, however, his wife Anupama (CW-1) has given evidence by filing affidavit of examination-in-chief, in which she has clearly stated

that the claimant is unable to speak and give evidence as he was not in a position to take oath. He submitted that thus the evidence of CW-1 ought to have been accepted by the Tribunal. Learned Advocate Mr.Kedar relied upon following judgments, in support of his case :-

- i) National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., 2017 AIR (SC) 5157.
- ii) Ravi Vs. Narayan & Ors., 2011 AIR (SC) 1226.
- iii) Divisional Controller, Maharashtra State Road Transport Corporation Vs. Kiran Laxman Chabukswar, F.A. No.4134 of 2016 (Bombay High Court, Aurangabad Bench)
- iv) New India Assurance Co. Ltd. Vs. Pazhanimmal, LAWS (KER)-2011-7-245 (Kerala High Court).

07. The learned Advocate for the respondent vehemently opposes the appeal stating that the learned Tribunal has rightly dismissed the petition. It is submitted that in the medical history itself it is stated that the claimant received injury as his motor-cycle slipped on the road. The claimant was taken to hospital by his brother. At the time of admission in the hospital itself, he could have stated that he met with an

accident. So far as lodging of the FIR is concerned, he submits that the FIR was lodged after about one month. Looking at all the attending circumstances, he submits, that the entire story about the accident is doubtful. Mere mentioning the vehicle is not sufficient to show involvement of the offending vehicle. The owner or the driver has not come forward to give any evidence.

08. This Court, thus, has to first see as to whether the claim is rightly rejected and then to consider if at all as to just and reasonable compensation.

09. This Court has gone through record and proceedings of the Trial Court and the same is perused by this Court with the assistance of learned Advocates for the parties. First piece of evidence is in the nature of document is FIR dated 06.08.2013 lodged by wife Anupama. No reason is coming forward as to why there was so much of delay in lodging the FIR. From the contents of the FIR, it appears that the claimant was taken to hospital.

He was admitted to ICU. Since she herself was in panic mood, she could not get any information about the accident. After some time, she collected information about the accident and thereafter lodged the FIR dated 06.08.2013. The time of accident is given as 8.30 p.m. Second documentary evidence is Exh.27 – a letter issued to Police Station dated 15.07.2013 from Shivaji Nagar Police Station, Latur. In the said letter also it is written that the claimant had fallen because of slipping of the motor-cycle and MLC was sent.

10. From the evidence of CW-1 wife Anupama it is seen that in the cross-examination she stated that the accident was reported to Doctor at Ashvini Hospital. She accepted that she lodged complaint in the police station after one month of the accident. As the husband was in the ICU, she could not lodge the complaint. She received information from one Rajendra Dhumal about the accident that one yellow and black coloured taxi had given dash. On that, she collected information and found that it is

the offending vehicle involved in the accident. She stated that police did not record statement of her husband as he was discharged when police had been to hospital. However, from the evidence of the police officer-CW-6, it is seen that statement of Maharudra was very much recorded. Thus, evidence of Anumapa is negatived. Even in the evidence of CW-3 Dr. Sudhir Chandrakant Fattepurkar, he stated that the information about the accident was given by the relatives of the patient, wherein it was informed that he slipped from the motor-cycle. In the cross-examination, he specifically stated that the claimant can speak mixed speech dyspesia. He could not tell with certainty as to whether claimant can give statement to police or not. From Exh.48 MLC, it is seen that the history recorded was that the patient slipped from the motor-cycle and received injury to his seat.

11. One Rajendra Dhumal is examined as CW-4. In his deposition, he stated that he saw the accident. Many

persons assembled on seeing the accident. In the cross-examination, he stated that on the date of accident, he only stated to the police that the dash was given by one black yellow jeep. He also informed to the relatives that one black yellow jeep dashed Maharudra. This is contrary to the evidence of CW-5 ASI-Guruling Wadkar, who conducted investigation. In his deposition CW-5 stated that he conducted spot panchanama. He did not find any eye witness to the said accident.

12. Thus, considering all the evidence, this Court finds that the involvement of the vehicle is not at all proved. The police could not find single eye witness to the incident. Though CW-4 Rajendra Dhumal stated that he saw the incident, he could not give number of vehicle. There is nothing as to why statement of this witness is not recorded by the police. This Court finds that even reason given for non-examination of the injured is also found to be doubtful, as the police person deposed that he recorded statement of Maharudra. The Doctor also

stated that Maharudra can speak with mixed speech dyspesia, whereas wife Anupama stated that the claimant/injured is not in a position to speak. This creates doubt about story of the claimant about the accident and involvement of the vehicle.

13. In the case of Pranay Sethi (Supra), the Hon'ble Apex Court has considered various aspects, mainly about compensation to be paid and method of calculation of compensation. There is no dispute about the same.

. So far as judgment in the case of Ravi (Supra) is concerned, said judgment is on the point of delay and latches in lodging the FIR. In the said case AW-1 Suresh Kumar, the owner of the vehicle in the statement had accepted that the truck was being driver by driver at the time of accident. The Court considered that there was admission by owner of the vehicle to prove that he was aware of the accident and that his truck met with an accident. In such case the Court has taken that the delay in lodging FIR will not be a circumstance to deny

the claim. In case in hand it is seen that CW-4 though stated in the evidence that he saw the accident and even informed to the relatives immediately, still he has not come forward to record his statement before police as from the evidence of ASI, it has come that he did not find any eye witness to the incident. As such, there is no proof about involvement of the vehicle and the accident.

. So far as judgment in the case of Divisional Controller, MSRTC (Supra) is concerned, this Court has held that evidence should not be scrutinized in the manner as is done in civil suit or criminal proceeding. In the said case the claimant himself had come to the Tribunal and explained the circumstances in which the accident occurred by categorically describing the incident. In this case, there is no such details to come to conclusion, firstly there was accident and secondly that involvement of the same vehicle which is alleged to have been dashed the motor cycle. There is also no evidence in respect of damage caused to the motor-cycle.

Thus, in absence of above evidence, it is hard to believe that the vehicle was involved in the accident.

. So far as judgment in the case of Pazhaniammal (Supra) is concerned, Kerala High Court considered that the Tribunal should play the dynamic role expected of them under a welfare legislation in a socialist republic effectively and expeditiously translate the compassion of the legislature in to tangible benefits to the victim. This Court does not find the facts of this case similar to the case in hand.

14. Since the claim is not accepted on the ground of involvement of vehicle, this Court considered the said aspect. About other aspects, the finding already recorded by the learned Member of the Tribunal is not under challenge. This Court, therefore, need not look into all the evidence. Even otherwise the learned Member of the Tribunal has accepted evidence about injury and disability. This Court finds that the learned Member of the Tribunal has rightly considered the evidence and the

case is properly appreciated. No interference is required in the findings arrived at and the conclusion drawn by the learned Member. This Court finds that the appeal deserves to be dismissed and the same is hereby dismissed.

[KISHORE C. SANT, J.]