

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 69 OF 2003

Trimbak Nivruttirao Murkute
Age : 47 yrs, occ : contractor
R/o Sirsam, Taluka Gangakhed,
District Parbhani

Appellant

Versus

1. Arun Nilkanthrao Nandapurkar
(Appeal is dismissed against
respondent No.1).
2. United India Insurance Company
Through its present Branch
Manager, Guru Complex, G.G.
Road, Nanded.

Respondents

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Mr. G.D. Kale, Advocate for the appellant.
Mr. A.B. Gatne, Advocate for respondent No.2.

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 19.07.2023

Judgment pronounced on : 26.07.2023

Judgment :

1. The appellant, who was the original claimant in M.A.C.P. No.20/1992, has challenged the judgment and award dated 03.07.2001 passed by the learned District Judge as Ex-Officio Member of Motor Accident Claims Tribunal, Nanded (hereinafter referred to as "the learned Tribunal") in the aforesaid claim petition.

2. Brief facts giving rise to this appeal are as under :

On 21.07.1991 the appellant alongwith his maternal uncle was going to Snehnagar from Shivajinar on Bullet Enfield motorcycle bearing registration No.BOH-3810. At that time, the present respondent No.1 alongwith his wife was coming from opposite direction on Vespa Scooter bearing registration No. MFV-432 and since respondent No.1 took sudden turn, the accident between the aforesaid two vehicles took place. Due to said accident, the appellant sustained severe injuries and immediately fell unconscious. He was admitted in the hospital and treated there for about 3/4 months. However, in the meantime, respondent No.1 lodged complaint. Thereafter on 08.01.1992 the appellant filed the aforesaid claim petition for getting compensation of Rs. 2,00,000/-. However, the learned Tribunal, under the impugned judgment and award, dismissed the claim petition. Hence, this appeal.

3. Learned Counsel for the appellant submits that the appellant was not at all negligent, but since respondent No.1 was acting as a Civil Judge (Junior Division), offence was wrongly registered against the appellant. Further, the learned

Tribunal found the appellant negligent in the accident only because of his conviction in the criminal case arising out of the said accident. He also pointed out that the appellant immediately fell unconscious after the accident and was taken to the hospital, and therefore, complaint lodged by respondent No.1 was registered against him without giving him any opportunity to explain as to how the accident had in fact taken place due to negligence of respondent No.1.

4. On the contrary, learned Counsel for respondent No.2-Insurance Company strongly opposed the submissions made on behalf of the appellant and pointed out that the accident had in fact taken place due to fault of the appellant only, since he had overtaken the cycle rickshaw in front of his Bullet from its left side and gave dash to the Scooter of respondent No.1, who was rightly turning towards west side by taking due care i.e. by showing signal by waving his hand and by turning on the indicators of the Scooter. He also submitted that the learned Tribunal did not solely rely upon the conviction of the appellant to determine his negligence, but also considered the factual position on the spot. As such, he prayed for dismissal of the appeal.

5. On the other hand, the appeal stood dismissed against respondent No.2 under order dated 27.06.2006 for want of steps.

6. Occurrence of accident is not disputed. It is significant to note that the offence in respect of the accident was registered against the present appellant and he was convicted by the trial Court for negligence in driving the motorcycle at the time of accident. Further, it is not disputed that there was accident between the two vehicles. It appears from the record that the appellant is blaming respondent No.1 for the negligence in causing accident and on the contrary respondent No.1 is blaming the appellant for the same. Therefore, it is necessary to ascertain as to who in fact was at fault.

7. It is extremely important to note that in fact three claim petitions were filed in respect of the same accident. Two were filed by respondent No.1 and his wife against the present appellant and one by this appellant against the present respondent No.1. It is to be noted here that the learned Tribunal has in fact decided all the three claim petitions by the impugned judgment and award and the claim petitions filed by respondent No.1 and his wife bearing M.A.C.P.

No.17/1992 and M.A.C.P. No. 18/1992 were allowed and the present appellant was directed to pay the compensation to respondent No.1 and his wife. It is also significant to note that the learned Tribunal, under the impugned judgment, has exonerated the Insurance Companies of the Bullet as well as Vespa Scooter involved in the accident from the liability to pay the compensation. Thus, the learned Tribunal has found only the appellant being negligent in the occurrence of the accident in all these claim petitions. It is also to be noted that the appellant has not challenged the impugned judgment to the extent of holding him negligent and thereby directing him to pay the compensation in other two claim petitions filed by respondent No.1 and his wife. As such, the finding against him in those claim petitions remained as it is. He has challenged only dismissal of his claim petition on account of his own negligence.

8. Be that as it may, considering the evidence on record, it has to be ascertained as to who was at fault. The First Information Report (Exh.79) indicates that it was the contention of respondent No.1 that on the day of accident, he was returning from local market alongwith his wife on Vespa Scooter and near the square of Snehnagar locality he was

taking turn towards Snehnagar road by giving signal with his hand. Moreover, he had also given indicator to that effect. But when he turned his Scooter, the appellant suddenly came in high speed from the front side by overtaking cycle rickshaw in front of him from the left hand side and gave dash to the left side of his Scooter. Nothing adverse in his cross-examination has come on record to substantiate the claim of appellant that respondent No.1 had taken sharp turn without giving any signal. It appears that the said F.I.R. was immediately lodged by respondent No.1 by mentioning that how the appellant himself was at fault.

9. Though in his evidence the appellant claims that the Scooter was being driven in high speed, but he admitted that he was convicted for the offence of rash and negligent driving in respect of the said accident. It is to be noted here that the appellant had in fact tried to contend that the Bullet motorcycle was in fact being driven by somebody else and he was the pillion rider. However, no corroborative evidence for this fact is on record.

10. Thus, both the parties are blaming each other for such negligence in causing the accident. But for that purpose the spot panchnama at Exh.50 is important to

ascertain the negligence. The said panchnama indicates that the motorcycle had given dash to the Scooter by its left hand side. Thus, the version of respondent No.1 that he was taking turn to Snehnagar and at that time appellant on his motorcycle came from left side of the cycle rickshaw in front of him suddenly and gave dash to his Scooter, appears more probable. It is significant to note that had the appellant overtaken the said cycle rickshaw from right side, then the accident would not have taken place, since by that time the respondent No.1 could have completed his turn towards Snehnagar road. Thus, the act of the appellant of overtaking the cycle rickshaw in front of him from its left hand side, had in fact resulted into causing the accident. Therefore, the negligence and rashness on the part of the appellant is apparent from the facts described in the spot panchnama itself.

11. Further, the learned Tribunal did not solely rely upon conviction of the appellant in the criminal case, but observed that it was the only one of the indications of negligence on the part of the appellant. Even otherwise also, the finding of criminal court is not relevant while deciding the claim petition arising out of the accident and it has to be ascertained from the facts on record. On perusal of the

impugned judgment, it reveals that the learned Tribunal has rightly believed the evidence of respondent No.1 that he had taken all the necessary care before turning to Snehnagar road, but the appellant himself drove his Bullet motorcycle in rash and negligent manner and by overtaking the cycle rickshaw in front of him from wrong side, gave dash to the Scooter of respondent No.1. Thus, I do not find any perversity in the aforesaid finding of the learned Tribunal as regards the negligence of appellant himself in the accident.

12. It is extremely important to note that the appellant is not entitled to claim compensation in respect of the accidental injuries which in fact sustained by his own negligence. Moreover, it is also important to note that the learned Tribunal, by holding that the appellant was negligent, only directed him to pay the compensation to respondent No.1 and his wife in the claim petitions filed by them. Moreover, the Insurance Companies of both the vehicles are also exonerated from the liability of paying compensation by dismissing the claim petition against them. Therefore, I do not find any substance in the appeal and it stands dismissed.

(SANDIPKUMAR C. MORE, J.)