

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.51 OF 2015

1. Ramchandra Narayan Lad	}	
2. Radhabai Ramchandra Lad	}	
Both R/at Vidya Nagar,	}	
Near Ganpati Temple, Shelgi, Solapur	}	...Appellants

Versus

1. Mallikarjun Tipanna Hatte	}	
R/o Gholasgaon, Taluka-Akkalkot	}	
District-Solapur.	}	
2. United India Insurance Co. Ltd.	}	
Thr. Its Divisional Manager,	}	
Goldinch Peth, Solapur.	}	...Respondents

Mr.R.S. Alange, for the Appellant.
Mrs.Varsha Chavan, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 18 APRIL 2023

JUDGMENT :-

1. This Appeal is preferred by the Appellant-Claimants against the dismissal of the Claim Petition.

2. The learned counsel for the Appellant-Claimants submits that deceased died in the accident when he was returning

home on his bicycle. The offence was registered against the offending car after two months of the accident. There was no cross-examination to the witness by the Claimant on the issue of false involvement of the vehicle. While dismissing the Claim Petition the Tribunal has erroneously held that there is absolutely no satisfactory evidence in respect of the involvement of the Indica Car bearing No.MH-13/AC-3023 in the accident. The Tribunal has held that Petitioners are not entitled for the compensation from the opponent.

3. The learned counsel further submits that when there was evidence on record, an offence was registered against the driver of Indica Car. There was eye witness of the incident but Tribunal has not considered his evidence and has passed the impugned order. Hence, requested to allow the Appeal or remand the matter before the Tribunal for fresh hearing.

4. The learned counsel for the Respondent-Insurance Company vehemently submits that the FIR was registered after two months of the accident on the basis of complaint of one person who allegedly said that he witnessed the accident. The brother of the deceased Prakash Lad was present at the time of the accident but he could not identified the offending vehicle. It shows that there was false involvement of the offending vehicle.

5. The learned counsel further submits that no witness was examined by the Claimants to prove the involvement of the vehicle. There is no reference of Appellants in their Appeal Memo about remand of the matter. The order passed by the Tribunal is legal and valid. No interference is required in it.

6. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Solapur (for short 'the Tribunal').

7. Admittedly, after two months of the accident the FIR was lodged against the driver of offending car.

8. While dismissing the Claim Petition the Tribunal has observed that there is absolutely no satisfactory evidence in respect of involvement of the Indica Car bearing registration No. MH-13/AC-3023 in the accident dated 27 April 2010. The Petitioners are not entitled to claim any compensation from the opponents and dismissed the Claim Petition.

9. In my view, the Tribunal has framed issues at Exhibit-18. In the said issues the Tribunal has mentioned whether accident was caused because of rash and negligent driving of driver of Indica Car. Whether the deceased had contributed to an accident without giving any reasons. About

these issues the Tribunal has observed that the Indica car was not involved in the accident. It is not proper. Moreover, the owner of the vehicle did not file written statement denying false involvement of the vehicle. The Insurance company has examined owner of the vehicle as DW-1 Mr.Mallikarjun Hatte at Exhibit-29. This witness has recorded examination-in-chief and thereafter he did not turned up for cross-examination. It appears from the record that the Tribunal has passed the order dated 12 March 2014 directing that the matter be proceeded without his cross-examination. The Tribunal has not considered evidence on record and has passed order mechanically.

12. It is contention of the learned counsel for the Insurance Company that Sachin Sankalli and brother of deceased was present at the time of the accident, but they did not inform the police nor identified the car.

13. In my view, to see if the car was involved or not in the accident, it is necessary to examine the evidence of owner of the offending car. In examination-in-chief, he has stated that his car was not involved in the accident. But he was not available for cross-examination. The Tribunal ought to have secured his presence for cross-examination, but without doing so the Tribunal has passed the order. Considering the above reasons, in my view, it is fit case for remand the matter for fresh hearing on

its own merit and I pass following order.

ORDER

- (i) The Appeal is partly allowed.
- (ii) The order passed by the Motor Accident Claims Tribunal, Solapur is hereby quashed and set aside.
- (iii) The matter is remanded back to the Motor Accident Claims Tribunal, Solapur for fresh hearing.
- (iv) The Tribunal shall decide the Claim Petition on its own merit without influencing the observations of this Court.
- (v) The Claimants shall pay cost of Rs.5,000/- to the Respondent No.2.
- (vi) If the Claimants succeeds in the Claim Petition, they shall not be entitled for the interest on compensation amount from 28 March 2014 till today.
- (vii) All Contention of all the parties are kept open.
- (viii) All pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)