

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

FIRST APPEAL NO.399 of 2023

ICICI Lombard General Insurance Co. Ltd.,
Through its authorized representative
Rupesh Chavan,
2nd Floor, Adventure tower, Opp. Oberoi hotel,
Sevadi Road, Ahmednagar-400 001.
Having its office at 2nd Floor, Office No. 203,
Meher House, No. 15, Cawasji Patel Street,
Opposite Akbarallys Furniture, Fort,
Mumbai-400001.

... Appellant

Vs.

1. Smt. Maya Govind Patel,
Age-48 Years, Occ- Household

2. Mr. Atul Govind Patil
Age-29 Years, Occ- Private Service,

3. Chandresh Govind Patil,
Age-25 Years, Occ- Private Service
All R/o Flat No. 11, Dream Heritage-B,
Matoshree Nagar, Upnagar, Nashik Road,
Nashik-422 101.

4. M/s Shree Ganesh Tours and Travels
through Prop. Ashok Laxman Sonawane
Age: Adult, Occ: Vehicle Owner,
R/o 19, Shelargaon Shelarphata,
Bhiwandi, Tal.: Bhiwandi,
Dist. Nashik-421 202

... Respondents

Mr. Rajesh Kanojia with Ms. Deepika Prabhala i/b RES Juris for Appellant.
Ms. Amita Chaware, Advocate for the Respondents.

CORAM	:	ABHAY AHUJA, J.
RESERVED ON	:	19th AUGUST, 2023
PRONOUNCED ON	:	05th DECEMBER, 2023

JUDGMENT :

1. This Appeal has been filed under section 173 of the Motor Vehicles Act, 1988 (the “M.V. Act”) challenging the judgment and award dated 30th April, 2019 passed by the Motor Accident Claims Tribunal, Nashik (the “Tribunal”) in Motor Accident Claim Petition No.1077 of 2013 partly allowing the Claim Petition of the Respondents No. 1 to 3 and awarding compensation of an amount of Rs.31,29,856/- including amount of 'no-fault' liability against the Appellant and Respondent No.4 who were held to be jointly and severally liable to pay the compensation amount with interest at the rate of 7% from the date of the petition till realization of the entire amount. The Tribunal further held that out of the total compensation, 80% of the amount to be paid to Respondent No.1 being the wife of the deceased, and 10% each to be paid to Respondents No. 2 and 3 being sons of the deceased with proportionate interest. Out of the share of Respondent No.1, the amount of 50% was directed to be invested with any nationalized bank of her choice for a period of five years with liberty to withdraw the interest quarterly and balance to be paid to the wife by account payee cheque.

2. By an order dated 20th March, 2023, this Court has condoned the delay of 150 days in filing the appeal. By a further order dated 7th August, 2023 this Court held that the interests of justice would be served if the appeal is finally heard at the stage of admission and accordingly the matter is listed the matter for final disposal.

3. The brief facts in this matter are as follows. That on 15th November, 2012, Govind Prabhu Patil, being the husband of the Respondent No.1 and the father of Respondents No. 2 and 3, was proceeding by his Scooty Pep bearing Registration No. MH-15-CP-5373 from Sinnar to Pandhurli road, at that time, the driver of the luxury bus bearing Registration No. MH-04-FK-857 dashed the Scooty Pep in which Govind Prabhu Patil sustained serious injuries and succumbed to his injuries.

4. An offence was registered against the driver of the luxury bus bearing Registration No. MH-04-FK-857 (the “offending vehicle”) by Sinnar Police Station, Nashik. The said vehicle was owned by Respondent No.4 and driven by his driver and insured with the Appellant for a period of one year from 17th July, 2012 to 16th July, 2013. It is not therefore in dispute that the offending vehicle was insured by the Appellant on the date of the accident.

5. The Respondents No. 1 to 3, being the legal heirs of the deceased Govind Prabhu Patil who was aged about 56 years at the time of the accident and was earning Rs.50,745/- per month from his service as Commercial Inspector GR 4, Central Railway, Mumbai C.S.T. Mumbai, preferred their claim application before the Tribunal for a compensation of Rs. 40 lacs.

6. Respondent No.4 failed to appear before the Tribunal although served and the claim proceeded ex-parte against the Respondent No.4 vide order dated 17th July, 2015.

7. The Appellant filed its Written Statement wherein it *inter alia* denied the claim of the Respondents No. 1 to 3. The Appellant submitted that the accident took place due to the rash and negligent driving of the Scooty Pep bearing Registration No. MH-15-CP-5373 and that there was no negligence on the part of the driver of the offending vehicle viz. luxury bus bearing Registration No. MH-04-FK-857 and therefore the Appellant was not liable to pay compensation. The Appellant further raised statutory defences stating that there was breach of the terms and conditions of the

insurance policy such as want of confirmation of insurance policy, unauthorized passengers, the driver not holding a valid and effective motor driving license at the time of the accident to deny its liability to pay compensation. The Appellant therefore prayed for dismissal of the Claim Petition with costs. The Appellant did not examine any witness in support of its defence.

8. The Tribunal examined the report and printed FIR, spot panchnama, *ferista*, chargesheet, arrest panchnama, postmortem report and Inquest panchnama on the issue of whether when Govind Prabhu Patil was proceeding on his Scooty Pep bearing Registration No. MH-15-CP-5373 towards Pandhurli at that time at Sinnar Ghoti Highway, the driver of offending vehicle luxury bus bearing Registration No. MH04-FK-857 drove it in a rash and negligent manner and dashed the motorcycle of the deceased, Govind Prabhu Patil in which he succumbed to his injuries.

9. The Tribunal observed that from the Report and FIR it was clear that the crime was registered on November 16, 2012 against luxury bus for offence punishable under Sections 279, 304-A, 338, 427 of the Indian

Penal Code and Sections 184, 134(a)(b)/177 of the Motor Vehicles Act with Sinnar Police Station, Nashik in respect whereof a chargesheet was filed on 24th March, 2013 and that deceased Govind Prabhu Patil sustained injuries and succumbed to it. The Tribunal held that the postmortem report and the Inquest panchnama were sufficient to prove that the deceased Govind Prabhu Patil died in a road accident caused by rash and negligent driving of the offending vehicle. The Tribunal held that although the Appellant in its defence stated that the luxury bus was falsely implicated, however, neither the Respondent No.4 nor the driver of the luxury bus was examined to prove the negligence of the deceased or the non-involvement of the offending vehicle. The Tribunal recorded that except the suggestion of non-involvement of the luxury bus, nothing was brought on record to prove the defence of the Appellant.

10. The Tribunal further referred to the examination by Respondent No.1 of CW-3 Tulshiram Shriram Chowdhary, being Police Havildar attached with Sinnar Police Station who deposed that on November 15, 2012, he received telephonic information that around 8:30 or 9:00 p.m., at Pandhurli Square the Luxury Bus bearing No. MH-04-FK-857 dashed to Scooty No. MH-15-CP-5373 and the driver of the luxury bus fled from

there. Subsequently the bus was intercepted and the driver was arrested and charegsheeted. The Tribunal held that from this evidence it clearly appears that the accident was caused due to the negligence of the driver of the offending vehicle luxury bus. The Tribunal reiterated that neither Respondent No.4 nor his driver entered into the witness box to prove the negligence of the deceased and thus there was no evidence to disbelieve the version of Respondent No.1.

11. The Tribunal recorded that the Appellant submitted that the offending vehicle was not involved in the accident and that the number of the vehicle was implicated by delaying the FIR and also in the FIR the vehicle number is not mentioned and that the Investigation Officer did not appear in the Court despite Show Cause Notice. The Tribunal after examining the matter held that the Appellant did not lead any evidence to prove that the claim is based on fabricated document or evidence. The Tribunal held that mere delay in lodging the FIR cannot be construed that the claim is false particularly when the chargesheet is filed against the driver of the offending vehicle after the investigation of the involvement of the vehicle in the accident. The Tribunal therefore held that in the facts and circumstances of the case and evidence brought on record, it was

proved that the accident was caused due to rash and negligent driving of offending luxury bus bearing Registration No. MH-04-FK-857 resulting in the death of deceased Govind Prabhu Patil and the Appellant failed to prove that the claim is false or frivolous.

12. The Tribunal held that the Appellant did not examine any witness or place on record any document to prove breach of condition of insurance policy. The Tribunal further held that Respondent No. 4 was the owner of the offending luxury bus and the vehicle was insured with the Appellant at the time of the accident and therefore both Respondent No.4 and Appellant were jointly and severally liable to pay compensation to the Respondents No. 1 to 3.

13. Accordingly, the Tribunal awarded compensation of an amount of Rs.31,29,856/- including amount of 'no-fault' liability from the Appellant, partly allowing the Claim Petition of the Respondents No. 1 to 3 and holding the Appellant as well as Respondent No.4 to be jointly and severally liable to pay the compensation amount with interest at the rate of 7% from the date of the petition till realization of the entire amount. The Claimants accepted the compensation awarded by the Tribunal and

did not challenge the award.

14. However, being aggrieved and dissatisfied by the Impugned Judgment and Award partly allowing the Claim Petition of the Respondents No. 1 to 3 and awarding a sum of Rs.31,29,856/- including amount of 'no-fault' liability from the Appellant and Respondent No.4 who were held to be jointly and severally liable to pay the compensation amount with interest at the rate of 7% from the date of the petition till realization of the entire amount, the Appellant – Insurance Company has preferred this Appeal.

15. Mr. Rajesh Kanojia, the learned counsel for the Appellant submits that while awarding compensation the Tribunal failed to observe that there was a delay in lodging the FIR and no vehicle number was mentioned in the FIR and that the Respondents No. 1 to 3 have utterly failed to substantiate the delay in filing the FIR. Mr. Kanojia submitted that the Investigating Officer was not examined as to why and how he had filed a chargesheet against the driver of the offending vehicle and in the absence of such a crucial witness, the statement of CW-3, Mr. Chowdhary cannot be taken as relevant as he was not the Investigating Officer in the

said case. Mr. Kanojia therefore submitted that the possibility of fraudulently involving the vehicle in the accident cannot be ruled out as there is no eye witness nor any documentary evidence to prove the involvement of the vehicle.

16. Mr. Kanojia, relied upon the decision of this Court in the case of ***Bajaj Allianz General Insurance Co. Ltd. v. Meera***¹ in support of his arguments. In this case the Court held that the involvement of the vehicle itself was under cloud and question mark, as claimants failed to establish involvement of vehicle insured with appellant. The appellant Insurance Company could not have been branded to face responsibility to answer the claim. He also relied on the statement given by the driver of the offending vehicle before the police that he was not involved in the accident. Learned Counsel, therefore, submitted that not even a *prima facie* case has not been made out by the Respondents No. 1 to 3.

17. Ms. Amita Chaware, learned counsel for Respondents No. 1 to 3 opposed the submissions made on behalf of the Appellant. Ms. Chaware submitted that though served with notice, Respondent No.4 failed to appear throughout the proceedings nor was evidence filed on behalf of the

¹ First Appeal No. 1921 of 2013 decided on 17.02.2014.

Appellant and the Respondent No. 4 before the Tribunal. She further submits that no documentary evidence was filed by the Appellant that the luxury bus was falsely implicated nor was Respondent No.4 nor the driver of the offending vehicle examined to prove any negligence of the deceased or non-involvement of the offending vehicle. She submits that except the suggestion of the non-involvement of the luxury bus, nothing is brought on record to prove the defence of the Appellant.

18. Ms. Chaware submits that the Respondents No. 1 to 3 have examined CW3 who is the police Havildar attached with the Sinnar Police Station and who on the basis of the telephonic information conveyed the same to Ghoti Police Station and the luxury bus and the driver were apprehended. She submits that the chargesheet stands to the testimony of CW3 and from this it is clearly proved that the accident was caused by the negligence of the driver of the offending vehicle against whom the offence was immediately registered. Ms. Chaware submitted that the Appellant or the Respondent No.4 did not lead any evidence to prove that the claim is based on fabricated document or evidence and then reliance of the Appellant on the delay in lodging is just an excuse to avoid the liability.

19. Ms. Chaware submits that the offending vehicle was validly insured with the Appellant and hence the Appellant cannot deny this liability. She points out that the Written Statement filed by the Appellant does not have a single pleading suggesting the non-involvement of the offending vehicle. She submitted that the findings of the Tribunal were very clear that although the Appellant came with the defence that the luxury bus was not involved, however, neither the Respondent No.4 nor the driver of the luxury bus were examined to prove negligence of the deceased or non-involvement of the offending vehicle. She submits that the reasoning and the findings given by the Tribunal have been correctly appreciated and applied to the case of the Respondents No. 1 to 3 and the only ground of challenge raised by the Appellant is not sustainable in the eyes of the law.

20. I have heard Mr. Kanojia, learned counsel for the Appellant and Ms. Chaware, learned counsel for Respondents No. 1 to 3 and with their able assistance, I have perused the papers and proceedings in the matter and considered the rival submissions.

21. In this Appeal, the Appellant's primary ground of challenge is with respect to the involvement of the offending vehicle. That the offending

luxury bus was not involved in the accident as (i) there was no vehicle number mentioned in the FIR, (ii) there was delay in filing the FIR, (iii) there was no eye witness or documentary evidence to prove the involvement of the offending vehicle, (iv) there is an undated statement of the driver that he did not cause the accident, (v) the statement of CW3 should be ignored as he was not the Investigating Officer in the matter and finally (vi) the Investigating Officer in the matter was not examined as he did not attend the Tribunal despite being issued notice. Learned counsel for the Appellant has relied on the decision in the case of ***Bajaj Allianz General Insurance Co. Ltd. v. Meera (supra)*** in support of his contentions.

22. This Court has examined the decision of the Tribunal, the FIR, the spot panchnama, the chargesheet, the post-mortem report, the Affidavit in Examination-in-chief of Respondent No.1 and Cross Examination, the Affidavit in Examination-in-chief of CW3 and CW2 and their Cross-Examination as well as the compilation of documents filed on behalf of the Appellant in this matter.

23. It is clear from the decision of the Tribunal that the Respondent No.4, the owner of the bus, failed to appear though served with notice and therefore the matter proceeded against him ex-parte vide order dated July 17, 2015. The Appellant thereafter filed its Written Statement before the Tribunal on July 29, 2015. In the Written Statement the Appellant submitted that the accident was caused due to the rash and negligent driving of the deceased. However, the Appellant denied that the luxury bus was insured with it due to want of confirmation under Section 64 VB of the Insurance Act. The Appellant also raised other statutory defences to deny its liability including that there were unauthorized passengers, the driver was not holding a valid and effective license, etc.

24. The Tribunal has correctly relied on the post mortem report and the inquest panchnama and observed that these are sufficient to prove that the deceased died in a road accident caused by the rash and negligent driving of the offending vehicle. That neither the Respondent No.4 nor the driver of the luxury bus were examined to prove the negligence of the deceased or the non- involvement of the offending vehicle and except for suggestion of non-involvement of the luxury bus, nothing was brought on record to prove the defence of the Appellant. The Tribunal has also

correctly held that the copy of the chargesheet stands to the testimony of CW3, the police havildar attached with Sinnar Police Station. Therefore the Tribunal held that it is proved that the accident was caused due to the rash and negligent driving of the driver of the offending luxury bus bearing Registration No. MH04-FK-857 which resulted in the death of the deceased and that the Appellant had failed to prove that the claim is false or frivolous.

25. In my view, since the Respondents No. 1 to 3 have examined CW3 who received the phone call regarding the accident caused by the offending vehicle on the basis of which the luxury bus and driver were apprehended and chargesheeted, it is for the Appellant to prove its claim that the offending vehicle was fraudulently implicated. As is rightly observed by the Tribunal, merely a submission by the Appellant that the offending luxury bus was not involved in the accident is not enough as nothing was brought on record to corroborate the same. Despite opportunities to do so, the Appellant did not examine the driver of the offending luxury bus nor Respondent No.4. Reliance of the Appellant on an undated statement of the driver claiming that he was not involved in the accident is not sufficient. The Appellant has not been able to prove that the accident was not caused by the offending vehicle.

26. It is settled law that when a party to a proceeding makes a statement or claim it must be supported by cogent evidence. In this particular case, the Appellant has not been able to prove that the accident was not caused by the offending luxury bus.

27. I have also examined the decision in the case of ***Bajaj Allianz General Insurance Co. Ltd. v. Meera (supra)***, relied upon by the learned Counsel for the Appellants. This was a case filed by the insurance company with whom the offending vehicle was insured. There was an accident pursuant to which a motorcycle rider and his pillion were knocked down and FIR was registered against an unknown vehicle. Initial investigation was carried out by one P.S., but later a PI claimed that on the basis of oral directions of the SP, the investigation was assigned to him and the PI filed a report against an owner of the offending vehicle, a Maruti Zen, based on discreet sources about the involvement of the vehicle. In the facts of this case the Court held that the involvement of the vehicle was under cloud and question mark and therefore held that the Claimants failed to establish involvement of vehicle.

28. However, the facts of the present case are distinguishable in as much as the police havildar CW-3 received a call at the Police Station about the accident on the basis of which the luxury bus and the driver were apprehended and chargesheeted. The Appellant did not examine the driver of the luxury bus nor the Respondent No.4 to prove its claim of non-involvement of the offending vehicle insured with it. Merely making a statement or claim of non-involvement is not enough. The same must be supported with cogent evidence.

29. Except making submissions, the Appellant has not been able to prove that the accident took place due to the rash and negligent driving of the Scooty Pep nor has been able to prove any of the statutory defences including breach of the terms and conditions of the insurance policy, claim of unauthorized passengers, driver not holding valid and effective licence, etc to deny its liability to pay compensation. There is also no challenge to the quantum of compensation awarded to the Claimants.

30. It would be relevant before parting to refer to the decision of the Hon'ble Supreme Court in the case of *N.K.V. Bros (P) Ltd. v. M. Karumai Ammal and others*² wherein it has been held that Accident Claim Tribunals

² 1980 A.C.J. 435

must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes.

31. In view of the above discussion, I do not find any error or illegality or perversity in the findings and the decision of the Tribunal. There is no merit in the appeal. The Appeal deserves to be dismissed and is hereby dismissed. Interim order stands vacated. No order as to costs.

32. The Respondent is entitled to total compensation of Rs. Rs.31,29,856/- from the Appellant and Respondent No.4 who are jointly and severally liable to pay the compensation amount along with interest at the rate of 7% and the Respondents No. 1 to 3 are permitted to withdraw the claim amount less the amount already withdrawn, with proportionate accrued interest at the above rate, and in the manner and proportion mentioned by the Tribunal in its judgment and award dated 30th April, 2019.

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signed by
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GADGIL
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(ABHAY AHUJA, J.)