

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

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CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1361 OF 2005

Municipal Corporation for Greater Mumbai Appellant
VERSUS
Smt.Mangal Dharma Sonavane & Ors. Respondents

ALONGWITH
CIVIL APPLICATION NO. 3214 OF 2006
IN
FIRST APPEAL NO. 1361 OF 2005

Smt.Mangal Dharma Sonavane & Ors. Applicants
VERSUS
Municipal Corporation for Greater Mumbai Respondent

Mr.Santosh Parad for the Appellant - MCGM.

Ms.Kiran Yadav i/b. Mr.A.M.Gokhale for the Respondent Nos. 1 to 4.

CORAM: RAJESH S. PATIL, J.

DATE : 30th OCTOBER, 2023

P.C. :-

This First Appeal is filed under section 173 of the Motor Vehicle Act challenging the judgment and award dated 7th December, 2004 passed by the M.A.C.T., Mumbai in M.A.C.T. Application No. 1815 of 2003.

2. On 13th May, 2003, at about 9.30 a.m., near Junction of Zakhir Hussain Nagar one Mr.Dharma Ramchandra Sonavane while crossing

the road, met with an accident with Municipal Truck No. MH-03-N-2304. The said Mr.Dharma Ramchandra Sonavane died on the same day i.e. on 13th May, 2003 due to the injuries sustained by him in the accident.

3. On 16th July, 2003, the legal heirs of the deceased Mr.Dharma Ramchandra Sonavane i.e. his wife and children filed a Motor Accident Claim Application No. 1815 of 2003, before the M.A.C.T., Mumbai claiming a sum of Rs.3 lacs under section 166 of the Motor Vehicle Act, on account of the death of Mr.Dharma Ramchandra Sonavane due to injuries suffered in accident. The respondent Municipal Corporation, who was the owner of the offending truck filed their written statement to the motor accident claim application, and denied the contentions of the applicant.

4. On behalf of the claimant, they examined claimant no.1, i.e. the widow of the deceased Mr.Dharma Ramchandra Sonavane, and also examined as Witness No.2, the Police Sub-Inspector by name Mr.Bhagwan Shamrao Palve. The opponent/appellant herein examined the driver of the offending truck Mr.Sudam Baburao Sasane. The

documents were produced in evidence in the form of copy of the FIR, Panchnama, death certificate.

5. The Tribunal framed five issues and the same were answered as follows :-

1. Do petitioners prove that death of deceased Dharma was caused due to a rash and negligent driving on the part of the driver of BMC on 13th May, 2000 on Ghatkopar Mankhurd Link Road Junction, Govandi, Mumbai?

Findings – Proved

2. Do petitioners prove that deceased Dharma was earning Rs. 3,000/- p.m. at the time of his death?

Finding – The deceased Dharma was earning Rs.2,600/- p.m. at the time of his death.

3. Do petitioners prove that deceased Dharma was 55 years old at the time of his death?

Finding – Proved.

4. Whether the petitioners are entitled to claim compensation to the extent of Rs. 3 Lakhs from the opponent, BMC?

Finding – The petitioners are entitled to claim compensation of Rs. 2,41,256/- after deducting amount of Rs. 50,000/- which the petitioners have already received

u/s. 140 of M.V.Act, from the Opponent, BMC.

5. What Order? **As per final order.**

6. After the parties were heard on merits by its judgment and award dated 7th December, 2004, the claim petition was partly allowed, to the extent of Rs.2,41,456/- minus Rs.50,000/- received towards No Fault liability, therefore, the claimants were entitled to claim Rs.1,91,256/- along with 9% interest from the date of filing Claim Petition.

7. Being aggrieved by the judgment and award dated 7th December, 2004, the Municipal Corporation (the owner of the offending vehicle) has filed the present First Appeal under section 173 of the Motor Vehicle Act.

8. The First Appeal, by order dated 3rd August, 2005 was 'admitted'. Further, by order dated 3rd May, 2007, the appellant Corporation was directed to deposit the entire amount of the award in the Court. The Corporation deposited a cheque of Rs.2,05,117/- in M.A.C.T., Mumbai on 24th September, 2007. The claimants withdrew certain amount. Total amount of Rs.83,541/- is invested in Bank on 23rd

July, 2008.

9. Mr.Santosh Parad, learned advocate for the appellant canvassed his submissions before this Court as under :-

(i) The deceased Mr.Dharma Ramchandra Sonavane had not died due to rash and negligent driving of the Municipal Truck by the driver, working for Municipal Corporation.

(ii) At the time of accident, the deceased Mr.Dharma Ramchandra Sonavane came running, to cross the road and his leg slipped and he dashed against the rear left side of the offending vehicle. Therefore, there is no negligence on the part of the driver, working for Municipal Corporation.

(iii) The fact that the accident had occurred at the rear left side of the subject vehicle that itself, shows that there was no negligence on the part of the Municipal driver and hence the Municipal Corporation as owners were not liable to compensate the claimants.

(iii) The claimants had not examined any Panch witness to prove the nature of the accidental injuries.

(iv) The claimants have not examined any eye witness

to establish that the negligence was on the part of the Municipal driver.

(v) The claimants have not proved that the deceased Mr.Dharma Ramchandra Sonavane was earning Rs.150/- per day. Therefore, the proof of income of the deceased has not been established.

(vi) The claimants have also not proved the age of the deceased at the time of accident in order to claim the amount as prayed in the motor accident petition.

10. Ms. Kiran Yadav, learned advocate for the respondent made her submissions for original claimant. She submitted that the claimant had examined herself, i.e. the widow of the deceased Mr.Dharma Ramchandra Sonavane, and also examined Witness No.2, the Police Sub-Inspector by name Mr.Bhagwan Shamrao Palve. The documents were produced in evidence in the form of copy of the FIR, Panchnama, death certificate and the same were duly proved. She further submitted that there is no merit in the submission of Appellant. Therefore, the Appeal be dismissed.

11. I have heard both the sides and I have also gone through the

documents.

12. The first point for determination would be whether the deceased Mr.Dharma Ramchandra Sonavane died due to rash and negligent driving on the part of the driver of the Municipal Corporation.

13. In order to prove the death certificate of the deceased, Witness No.1 (the widow of the deceased) was examined. So also the Police Sub-Inspector Mr.Bhagwan Shamrao Palve was examined as Witness No.2. The Witness No.2 Police Officer, in his evidence has stated that he has recorded the dying declaration of the deceased Mr.Dharma Ramchandra Sonavane. The dying declaration of the deceased has specific mention that he had sustained injuries due to rash and negligent driving of the driver of the offending vehicle. Apart from dying declaration of the deceased, it will also be necessary to check the contents of the written statement of the Municipal Corporation. It is the case of the Municipal Corporation in the written statement that the deceased Mr.Dharma Ramchandra Sonavane while crossing the road, has slipped and hence he had dashed at the rear side of the subject vehicle. However, the Corporation has examined only one witness i.e.

the driver Mr.Sudam Baburao Sasane of the offending vehicle who has not stated anything about the deceased being slipped while crossing the road. Therefore, the Corporation has changed their version in the evidence so also it is the Witness No.2 Police Sub-Inspector who has stated in his evidence that the driver of the offending vehicle was taken to the police station by the public who had gathered at the time of accident. The Panchnama recorded also shows that the accident had occurred due to the negligence and rash driving of the driver of the offending vehicle. An FIR to that effect had also been filed with the police station under section 304A of the Indian Penal Code.

14. The contention of the Corporation that the driver came to know that the deceased Mr.Dharma Ramchandra Sonavane had slipped at the rear side of the vehicle, seems improbable as for a person who is driving the vehicle it is very difficult for him to know as to what had happened on the rear side. Such of contention was raised only in the written statement that is not stated in the evidence. Therefore, the point about the rash and negligent driving on the part of the driver of the Municipal Corporation is proved. No fault is found in the findings recorded by the M.A.C.T.

15. Secondly, with respect to the earning of the deceased at the time of his death, the M.A.C.T. has recorded that even though the claim of the claimant that the deceased was earning Rs.150/- per day, the M.A.C.T. has recorded that the claimant must be earning Rs.100/- per day and minus, four Sundays, the monthly income is taken as Rs.2,600/- per month, at the time of death of the deceased. According to me the said finding is not perverse.

16. As regards the age of the deceased, the claimants have claimed that the deceased was 55 years old at the time of the death. The medical certificate of the deceased proves that the deceased must be around 55 years of age. Therefore, even though the birth certificate is not brought on record, the death certificate and the medical certificate shown by the doctor can be believed. Therefore, the age of the deceased considered by the M.A.C.T. as 55 years.

17. Taking into consideration the above points for determination, the advocate for the Municipal Corporation was not able to show any perversity in the impugned award under challenge in the First Appeal. There is no merit in the First Appeal.

18. First Appeal is dismissed. No costs.
19. The balance amount lying with the M.A.C.T., Mumbai, along with accrued interest be transferred to the bank account of the original claimants.
20. In view of the dismissal of the First Appeal, Civil Application also stands dismissed.
21. All concerned to act on the authenticated copy of this order.

[RAJESH S. PATIL, J.]