

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO. 329 OF 2009

Ramesh S/o Baliram Kannake,
Aged about 34 years, Occu. - Driver,
R/o. Pettala, Tah. Chamorshi,
Dist. Gadchiroli.

.... **APPELLANT**

// **VERSUS** //

- 1) Ashutosh S/o Gonendra Mandal,
Aged – Not known,
Occ. Matador owner,
R/o. Kalinagar, Tah. Chamorshi,
Dist. Gadchiroli.
- 2) Divisional Manager,
The Oriental Assurance Company Ltd.,
Pattiwar Building, M.G. Road,
Chandrapur.
(Insurer of Matador Tata 709
bearing No. MH-33/2609)

.... **RESPONDENTS**

Mr. P.P. Pendke, Advocate for the appellant.
Mr. N. R. Bhishikar, Advocate for the respondent No.1.
Mrs. Mrunal Naik, Advocate for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

JUDGMENT RESERVED ON : 12.01.2023.

JUDGMENT DELIVERED ON : 08.02.2023.

1. Present Appeal has been filed by the original claimant challenging the Judgment and Award passed by the Motor Accident Claim Tribunal, Gadchiroli in M.A.C.P. No. 44 of 2005 on 22.10.2008

thereby dismissing the claim petition of the appellant filed under Section 166 of the Motor Vehicle Act, 1988.

2. The facts giving rise to the Appeal are that :-

Original claimant Ramesh S/o Baliram Kannake had come with a case that on 01.11.2004 he was proceeding on his motorcycle bearing No. MZW-8609 from Chamorshi to Pattala, when he reached at about 01.00 km. ahead from Golabai Mandir one Matador bearing No. MH-33/2609 came from opposite direction driven in an excessive speed and in a rash and negligent manner gave dash to his motorcycle. As a result of severe dash, he sustained grievous injury to his right leg and was admitted in the hospital. As per contention of the claimant, due to the severe dash he sustained fracture injury and was treated in the hospital for long time. After prolong treatment the right leg came to be amputated from thigh region. It is further contended by the claimant that alleged accident had taken place due to the rash and negligent driving of Matador driver which is owned by the respondent No.1 and validly insured with the respondent No.2. As the said accident took place due to the rash and negligent driving of Matador driver, crime was registered against him vide Crime No. 170 of 2004 on 05.11.2004. As the said accident took place due to the rash and negligent driving of Matador driver which is owned by the respondent No.1 and validly insured with respondent No.2, both the respondents

are jointly and severally liable to pay the compensation to the appellant.

He further contended that at the time of accident he was working as a driver and earning Rs.3,000/- per month. Due to the accidental injuries, he is permanently disable to the extent of 50% and he had also incurred expenses towards his treatment and surgery. Therefore, he claimed compensation under the pecuniary and non-pecuniary heads.

In response to the notice of the said petition, respondent No.1 resisted the claim petition by filing his reply and denied the contention. As per his contention, he is the owner of Matador bearing No. MH-33/2609 however, he denied on the day of incident his Matador did not travelled on the said road where the alleged accident taken place. The respondent No.2 – Insurance Company had also denied the entire contentions by filing reply and also denied the involvement of the Matador in the alleged accident. The Insurance Company further raised the ground that alleged claim petition is bad in law for non-joinder of necessary party as Insurance Company of the said motorcycle was not made party and prayed for dismissal.

The claimant had adduced the evidence in support of his contention and respondent No.1 had examined himself as owner of the Matador as well as examined driver of Matador namely Bidhan Hemant Haldar.

After recording the evidence, the Tribunal had dismissed the claim by assigning the reason that no evidence is produced on record to establish the link between the vehicle of the respondent No.1 with the alleged accident and the claimant failed to prove the involvement of the vehicle in the alleged accident.

3. Being aggrieved and dis-satisfied with the said Judgment and Award passed by the Tribunal, the present Appeal is preferred by the original claimant by raising the ground that after the alleged accident, the Spot Panchnama was drawn and during the investigation the involvement of the alleged vehicle Matador bearing No. MH-33/2609 was established therefore, the Investigating Officer has submitted charge-sheet against him. It is further submitted that provisions under the Motor Vehicle Act, 1988 are beneficial provisions, strict Rule of evidence is not applicable. *Prima facie*, the material that charge-sheet is filed against the driver of the vehicle Matador is sufficient to show the involvement of the vehicle in the alleged accident. Thus, the learned Tribunal committed error in dismissing the claim petition therefore, the Judgment and Award passed by the Motor Accident Claim Tribunal, Gadchiroli deserves to be set aside.

4. Heard Mr. Pendke, learned Advocate for the appellant, Mr. Bhishikar, learned Advocate for respondent No.1 and Mrs. Mrunal Naik, learned Advocate for respondent No.2.

5. Learned Advocate Mr. Pendke vehemently submitted that the evidence of the claimant supported by the police papers is sufficient to show that the alleged Matador bearing No. MH-33/2609 is involved in the said accident. The Police Station Officer, Chamorshi has registered the offence against the driver of the Matador under the provisions of the Indian Penal Code vide Crime No. 170 of 2004. Accordingly, charge-sheet was filed and the owner of the vehicle had executed a Bond while obtaining the custody from the police. These facts sufficiently prove that the vehicle Matador was involved in the accident. In support of his contention, he placed reliance on the decision of this Court in ***Dilip S/o Jagdish Deshmukh Vs. Chandrakant S/o Mahadeo Shinde***, reported in ***Law Finder Doc Id # 983187*** in First Appeal No. 2538 of 2017, decided on 07.02.2018, wherein it is held that FIR lodged after four months, defence was taken that driver of the Jeep did not have requisite valid licence, delay in lodging FIR not fatal, rejection of the claim petition is not proper. He further relied on the case of ***Vimla Devi and others Vs. National Insurance Company Limited and another***, reported in ***(2019) 2 SCC 186***, wherein it is held that the Act is a beneficial piece of legislation and is designed in a manner, which relieves victims from ensuring strict compliance provided in law. It is further held that if the Court did not exhibit documents at the time of recording evidence then appellants cannot be denied of their right to claim compensation on such ground. Lastly, he relied upon the case of

United India Insurance Co. Ltd. Vs. Sangita Sanjay Tawale and others, reported in ***Law Finder Doc Id # 1344483***, wherein it is held that the certified copy of the FIR clearly indicates that it was filed by Avinash Vishwanath Chavan and it is a part of the pleading of the claimants therefore, the dismissal of the claim petition on the ground of non involvement of the vehicle is not proper. Even the spot panchnama, the registration number of offending vehicle is specifically mentioned therefore, in view of these documentary evidence along with other oral evidence of the claimant, the involvement of the offending vehicle is sufficiently proved.

6. Per contra, the learned Advocate for the Insurance Company Mrs. Mrunal Naik submitted that the claimant has not proved the involvement of the vehicle by examining any other witnesses. Only certified copy of the charge-sheet cannot be cogent and material evidence to prove the said accident. The claim petition rightly dismissed.

In support of her contention she placed reliance on the decision of this Court in ***Kalpna Rajendra Kothari and others Vs. Santosh Arvind Jangam and another***, reported in ***2020(2) Mh.L.J. 561*** and ***First Appeal No. 2829 of 2015***, decided on 04.10.2018 of this Court at Aurangabad Bench.

7. Taking into consideration the rival contentions, the points arise for consideration are as under :-

- (i) Whether the appellant has sufficiently established the involvement of the vehicle in the alleged accident ?
- (ii) Whether the claimant is entitled to get compensation and if yes, to what extent from whom ?
- (iii) Whether the Tribunal was justified in dismissing the claim petition ?

8. At the outset, it is required to be considered that since the claimant has come with the case that the accident had took place in which the vehicle Matador bearing No. MH-33/2609 is involved, to prove the said fact, the claimant entered into the witness box and deposed by filing affidavit of examination-in-chief. He reiterated in his evidence that on the alleged day of incident i.e. on 01.11.2004 at about 08.30 pm. when he was proceeding on his motorcycle bearing No. MZW-8609 from Chamorshi towards Pattala by taking proper care of the driving Rules, at the relevant time one Matador bearing No. MH-33/2609 which is owned by the respondent No.1 and driving by its driver in a high and excessive speed without following the traffic Rules and Regulations gave dash to his motorcycle. Due to the said dash, he sustained grievous injuries to his right leg resulted into several fractures. Regarding the said accident, the crime was registered and

Investigating Officer has drawn the Spot Panchnama and after due investigation charge-sheet was filed. In support of his contention, he submitted true-copy of the Charge-sheet, Spot Panchnama, Accident Report Form, Supratnama, Insurance Policy, Disability Certificate, his Driving Licence and various Medical bills. During his cross examination, it is elicited that he was working as a driver with the respondent No.1 prior to the said accident. It is further elicited that the dispute was arose between them on account of salary. It is further came in his cross examination that he was not registered owner of the motorcycle driven by him. Besides his oral evidence, he placed on record the certified copies of the Charge-sheet, Spot Panchnama and Accident Report Form.

9. The respondent No.1 had also entered into the witness box and recorded his evidence vide Exh.68 and denied the contention of the claimant regarding involvement of the vehicle. He specifically stated that on the day of incident, his vehicle did not proceeded on the road i.e. Chamorshi to Pattala road and his vehicle is not involved in the said accident. During his cross examination, he admitted that his vehicle was seized by the Police during investigation. He also examined the driver of the Matador namely Bidhan Hemant Halder. He reiterated the contention that his vehicle is not involved in the accident on 01.11.2004. He did not drive the said vehicle on the road

where the said accident had taken place. Though he was cross examined by the claimant but, nothing incriminating came on record. Admittedly no evidence is adduced by the Insurance Company.

10. Thus, a crucial question involved in the incident is whether the claimant is succeeded in proving involvement of the vehicle in the alleged accident. The basic principle is that the burden is on the claimant to prove the accident including the involvement of the vehicle. Here in this case, in order to prove his case, vehicle owned by respondent No.1 and insured with respondent No.2, the claimant has relied upon the Spot Panchnama and certified copy of the charge-sheet. Important point to be noted is that the copy of the FIR is admittedly not filed on record. The claimant has not given any reason as to why the copy of the FIR is not filed on record. Mere production of the police papers and exhibiting those documents does not dispense the proof of contents of those documents. Merely on the basis of certified copies of charge-sheet and spot panchnama and other documents, the claimant cannot prove his case. Here in the present case, the claimant has not produced copy of the FIR on record. Rule 254 of the Maharashtra Motor Vehicle Rules, 1989 states that the requirement while filing of the application for compensation arising out of an accident. The Rule 254 of the Maharashtra Motor Vehicle Rules, 1989 is reproduced for the perusal :-

“254. Application for compensation arising out of an accident :

(1) An application for compensation arising out of an accident of the nature specified under this Act shall be made to the Claims Tribunal, having jurisdiction over the area in which the accident occurred, which shall be in Form ‘COMP’ of the First Schedule to these rules with particulars specified in that form.

(2) Every such application shall be sent to the said Claims Tribunal or to the Chairman, in case the Tribunal consists of more than one member, by registered post or may be presented to such Claims Tribunal and shall, unless the Claims Tribunal or its Chairman otherwise directs, be made in duplicate and shall be signed by the applicant.

(3) In case the Tribunal consists of more than one member, the State Government shall designate one of them as the Chairman of the Tribunal.

(4) The Chairman of the Tribunal shall have power to transfer any claim petition from the file of any member to the file of any other member.

(5) There shall be appended to every such application, the following documents, namely:

- (i) injury certificate or in case of death, post-mortem report, or Death Certificate;*
- (ii) True copy of First Information Report or Police Station Diary Entry or Traffic Accident Report duly certified by the Police Officer of the Police Station concerned, in respect of the accident; and*
- (iii) Certified copy of the Form Comp ‘AA’ of the First Schedule mentioned in sub-rule (8) of this rule.*
- (iv) If the accident has occurred out of the jurisdiction of the Claims Tribunal and the claimant has opted to file the application for*

compensation before the Claims Tribunal within whose jurisdiction the claimant resides or carries on business or the claimant has opted to file the application for compensation before the Claims Tribunal within whose jurisdiction the defendant resides, a document showing that the defendant resides within the local limits of jurisdiction of the said Tribunal.

(6) The Officer-in-charge of the Police Station shall, on demand by a person who wishes to make an application for compensation and who is involved in an accident arising out of the use of a motor vehicle or the legal successor of the deceased, shall furnish to him such information and particulars mentioned under Section 160 and within 15 days from the date of such demand.

(7) If any of the documents specified in sub-rule (5) are not appended to the application the reasons for not appending them shall be stated, and if the Tribunal is satisfied, it may proceed with the application, and require production of such documents at a later stage.

(8) The Police Station within whose jurisdiction the accident for any motor vehicle occurs shall submit a detailed report regarding an accident to a Claims Tribunal having jurisdiction over the area under Section 166(4) of the Act and obtain an acknowledgment for it. The information shall be submitted by the Police Station in Form Comp AA within one month from the date of accident. Such information shall be submitted only in respect of accidents which are of fatal or serious in nature.

(9) True copies of the annexures referred to in sub-rule (5) shall also be attached to the copies of the main application to be served on the opposite parties and the Insurance.”

11. In view of the said Rule, every such application shall be appended with Injury certificate or in case of death, postmortem report and Death Certificate, true copy of FIR or Police Station Diary Entry or Traffic Accident Report duly certified by the Police Officer of the Police Station concerned in respect of the accident, certified copy of the Form Comp 'AA' of the First Schedule mentioned in sub-rule (8) of this Rule. If the accident has occurred out of the jurisdiction of the Claims Tribunal and the claimant has opted to file the application for compensation before the Claims Tribunal within whose jurisdiction the claimant resides or carries on business or the claimant has opted to file the application for compensation before the Claims Tribunal within whose jurisdiction the defendant resides within the local limits of jurisdiction of the said Tribunal.

12. Here in the present case, the claimant had not filed the FIR. The police papers which are filed on record are only spot panchnama and the charge-sheet. The claimant has not examined the Investigating Officer to show that on what basis he come to the conclusion that the vehicle Matador bearing No. MH-33/2609 is involved in the said accident. From the Final Report it appears that regarding the said accident crime was registered after four days of the said accident. It further apparent that during investigation, the Investigating Officer has recorded relevant statements of the witnesses

but there is no evidence on the basis of which statement the Investigating Officer had come to the conclusion that the Matador bearing No. MH-33/2609 is involved in the said accident. It is apparent that Spot Panchnama was drawn on 02.11.2004 wherein the vehicle number is not mentioned. This fact is to be appreciated in the light of the cross examination of the claimant that the claimant has specifically admitted that previously he had worked as a driver with the respondent No.1. Thus, claimant was very well aware about the Matador which is owned by the respondent No.1. No evidence is adduced to show that who had lodged report about the said accident. Though the claimant was serving as a driver and aware about the involvement of the accident, it is pertinent to note that he neither lodged any report immediately after the accident nor stated the number of the vehicle before the Investigating Agency immediately after the accident. The motorcycle of which the claimant was proceeding bearing No. MZW-8609 and Matador bearing No. MH-33/2609, both were referred for the inspection to the Inspector of Motor Vehicles. The Inspection Report Exh.56 shows that during inspection, no mechanical default was found with the Matador as well as no damage was noticed by the Inspector of Motor Vehicles. Whereas, motorcycle which was inspected was found to be damaged. Thus the statement of discreet source was not annexed with the final report nor the said person was examined before the Court. The

Investigating Officer had filed the charge-sheet on the basis of information from the investigation carried out by him and concluded that the offending vehicle was involved in the said accident. However, no such statement of such discreet inquiry or Investigating Officer was filed on record neither the said persons are examined by the claimant.

13. Though the learned Advocate Mr. Pendke placed reliance in the case of ***United India Insurance Co. Ltd. Vs. Sangita Sanjay Tawale*** (supra) wherein the fact shows that the certified copy of the FIR was filed which was clearly indicating the involvement of the vehicle in the alleged accident and description was specially mentioned. Therefore, it is observed by this Court at Aurangabad Bench that involvement of the vehicle is established. The another judgment of ***Vimla Devi Vs. National Insurance Company Limited*** (supra), wherein it is held that the Act is a beneficial piece of legislation and is designed in a manner, which relieves victim from ensuring strict compliance. The fact shows that though police papers were filed, the Court did not exhibit the same and therefore, claimant received compensation. In 3rd case of ***Dilip s/o Jagdish Deshmukh Vs. Chandrakant S/o Mahadeo Shinde*** (supra), the facts shows that FIR lodged after four months, defence was taken that driver of the Jeep did not have requisite valid licence, involvement of two vehicles shown in spot panchnama and oral evidence completely corroborating the same hence, it is held that the

evidence is sufficient to show the involvement of the vehicle in the alleged accident.

14. When the matter was before the Tribunal, the Tribunal had considered all these facts and held that the claimant failed to prove the involvement of the vehicle Matador bearing No. MH-33/2609 in the alleged accident. No reason has been assigned by the claimant as to why he could not produced the FIR before the Tribunal. The claimant has not examined the Investigating Officer, when the involvement of the vehicle was challeged by the owner as well as by the Insurance Company. Only the certified copy of charge-sheet wherein it is not clarified that on what basis the Investigating Officer had come to the conclusion that vehicle is involved in the said accident.

15. It is not disputed that the provisions under the Motor Vehicle Act, 1988 which is a beneficial piece of legislation and it is designed in a manner to assist the victim in getting compensation. However, foundational facts to be proved by the claimant. It is undisputed position of law that in proceeding before the Tribunal, the Rule of Evidence Act is not strictly applicable. The certified copies of the police papers can be read in the evidence. However, that does not mean that the claimant in the accidental claim need not proved anything on the basis of oral and documentary evidence. Initially

burden always lies on claimant to establish the claim by proving oral as well as documentary evidence which would *prima facie*, shows the involvement of the vehicle and the claimant had sustained injury or his near and dear one lost his life in the said accident. The burden of proof is on the basis of the principle of preponderance of probability and the claimant can discharge the said burden. However, in the present case, there is no slightest material on record which is sufficient to show that the Matador bearing No. MH-33/2609 was involved in the accident and the said accident occurred due to rash and negligent driving of the said driver.

16. I hold that unless there is some substance in the investigation paper to connect the offending vehicle by which the claimant has sustained injury, the respondent cannot be held liable to pay compensation. In the light of the above said principles, the observations of the Tribunal that claimant failed to prove the involvement of the vehicle in the alleged accident is just and proper. To prove the involvement of the offending vehicle on the basis of preponderance of probability, there shall be at least some *prima facie* material to show the involvement of the offending vehicle in the accident. Thus, after careful examination of the evidence placed on record, I am satisfied that absolutely no evidence is brought on record which indicates the involvement of offending vehicle in the said

accident therefore, though claimant has sustained grievous injuries but liability cannot be fasten either on owner or driver of the offending vehicle nor on Insurance Company of the said Matador.

17. In view of the above, I hold that the claim petition is rightly dismissed by the Tribunal and no interference is called for. Accordingly, I answered the point Nos.1 and 2 in the negative and point No.3 in the affirmative and I proceed to pass the following order :

The First Appeal is dismissed. No costs.

(URMILA JOSHI-PHALKE, J.)

Kirtak