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

FIRST APPEAL NO.1085 OF 2010

Sudhakar s/o Ganpati Zanzad,
Aged about 59 years, occupation : retired,
R/o MSEB Colony, unit No.2,
Near Bagdi Flour Mill, Takiya Ward,
Bhandara, taluka and district Bhandara. **Appellant.**

:: V E R S U S ::

Sayyad Ekramuddin Syd.
Tamujuddin, aged about 55 years,
occupation : service,
R/o Anwari Ward, Bhandara, taluka and
District : Bhandara. **Respondent.**

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Shri M.V.Rai, Counsel for the Appellant.
Shri N.G.Solao, Counsel for the Respondent.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 02/02/2023

PRONOUNCED ON : 05/04/2023

JUDGMENT

1. The appellant, who is owner of vehicle "Luna" bearing registration No.MH-35/C/3135 (the offending vehicle "Luna"), has preferred this appeal against judgment and award dated 20.7.2010 passed by learned Member of the Motor Accident Claims Tribunal at Bhandara (learned Member of the Tribunal) in Claim Petition No.127/2006 whereby learned Member of the Tribunal directed the appellant to pay

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Rs.64,492/- towards compensation to the respondent (claimant).

2. Brief facts necessary to dispose of the appeal are as under:

On 1.8.2005, the claimant was proceeding on vehicle "Scooty" bearing registration No.MH-35/8063 which was driven by one Ganeshlal Mohabanshi. The claimant was pillion rider on the said vehicle. As per contentions of the claimant, the rider of the vehicle "Scooty" was having valid driving licence to ride two wheelers and he has driven the said vehicle by observing the traffic Rules and Regulations. The appellant, at the relevant time, was proceeding on the offending vehicle "Luna" in a rash and negligent manner from South to North on Bhandara Industrial Estate Road. The claimant and Ganeshlal were proceeding from East to West on the said road. As the appellant has driven his vehicle in a rash and negligent manner, without observing the traffic Rules and Regulations, dashed against the vehicle "Scooty" of the claimant. In the result, the claimant fell down from the vehicle "Scooty" and sustained fracture injury to his right leg.

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After the accident, he was immediately shifted to hospital of Dr.Kukde wherein he was indoor patient from 1.8.2005 to 10.8.2005. He had incurred expenses Rs.22,000/- towards medical charges and Rs.30,119/- towards medicines. As the said accident took place due to the rash and negligent driving of the appellant and as the offending vehicle "Luna" was owned by Nemeshwari (respondent No.1 in the claim petition), both are jointly and severally liable to pay compensation.

3. As per the contention of the claimant, at the relevant time, he was was serving in MSRTC and due to the accidental injuries, he sustained 7% permanent disablement.

4. In response to the Notice, the appellant and Nemeshwari (respondent No.1 in the claim petition) resisted the petition by filing written statement and denied the accident itself. As per their contentions, the claimant himself was riding the vehicle "Scooty" and could not control over the said vehicle as a result of which the said vehicle turned turtle and the claimant sustained the injuries. According to them,

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they are not at all concerned with the alleged accident and, therefore, they are not liable to pay compensation.

5. The claimant adduced his evidence in support of his contentions. Besides his evidence, he examined PW2 Dr.Pradip Kukde, vide Exhibit-38, to prove the disability; PW3 Dr.Gopal Satyanarayan vide Exhibit-47, and PW4 Ganeshlal Pyarelal Mohabanshi vide Exhibit-52. The appellant and Nemeshwari (respondent No.1 in the claim petition) also adduced their evidence by examining the appellant vide Exhibit-63, RW2 Kiritkumar Patel vide Exhibit-66 and RW3 Mukesh Raut vide Exhibit-67. Beside the oral evidence, the claimant relied upon the accident form Exhibit-22, copy of chargesheet Exhibit-23, First Information Report Exhibit-24, oral report Exhibit-25, medical certificate Exhibit-26, spot panchanama Exhibit-27, copy of R.C.Book of the offending vehicle "Luna" Exhibit-29, driving licence of the appellant exhibit-30 and driving licence of the vehicle "Scooty" rider Exhibit-31, disability certificate Exhibit-48, and discharge card Exhibit-39.

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6. After appreciating the evidence, learned Member of the Tribunal held that the claimant has proved that the alleged accident has taken place due to the rash and negligent driving of the appellant and, therefore, the appellant and Nemeshwari (respondent No.1 in the claim petition) are liable to pay compensation to the claimant.

7. Being aggrieved and dissatisfied with the judgment and award passed by learned Member of the Tribunal, the appellant, who is rider of the vehicle "Luna", has preferred this appeal on the ground that learned Member of the Tribunal has not considered that the claim petition is bad in law as the rider and owner of the vehicle "Scooty" was not made party to the claim petition. Learned Member of the Tribunal also had not considered that in fact the claimant was riding the vehicle "Scooty" and one Alok was pillion rider and PW4 Ganeshlal Mohabanshi was on duty from 6:00 pm to 12:00 mid night. Learned Member of the Tribunal erroneously held the appellant liable to pay the compensation and, therefore, the judgment and award passed by learned Member of the Tribunal is erroneous and the same is liable to be set aside.

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8. Heard learned counsel Shri M.V.Rai for the appellant and learned counsel Shri N.G.Solao for the respondent.

9. Learned counsel Shri M.V.Rai for the appellant submitted that the rash and negligent driving by the appellant is not at all proved by the claimant. In fact, the claimant was riding the vehicle "Scooty" and as he could not control over his vehicle, he sustained the injuries. The involvement of the offending vehicle "Luna" is shown falsely by the claimant. However, learned Member of the Tribunal had not considered the evidence and, therefore, the judgment and award deserves to be set aside.

10. In support of his contentions, learned counsel Shri M.V.Rai for the appellant placed reliance upon the decision of the Division Bench of this Court in the case of **Pukhraj Bumb vs. Jagannath Atchut Naik and others**, reported in **2014(4) Mh.L.J. 447**.

11. Per contra, learned counsel Shri N.G.Solao for the respondent/claimant supported the judgment and award passed by learned Member of the Tribunal and submitted that

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the claimant has adduced the evidence before the Tribunal and on the basis of the oral as well as the documentary evidence, learned Member of the Tribunal held the appellant liable to pay the compensation. Thus, as there is no merit in the appeal, the appeal deserves to be dismissed.

12. Having heard both the sides, following points arise for my consideration:

Whether learned Member of the Tribunal is justified in awarding the compensation to the claimant?

Whether the claimant has made out a case that the offending vehicle "Luna" bearing registration No.MH-35/C/3135 was not involved in the accident?

13. The claimant has come with a case that on 1.8.2005 he was proceeding on the vehicle "Scooty" bearing registration No.MH-35/8063 as a pillion rider. At the relevant time, the appellant came riding the offending vehicle "Luna" bearing registration No.MH-35/C/3135 in a rash and negligent manner and dashed against his vehicle "Scooty", due to which he sustained the injuries which resulted into permanent disablement. To substantiate the contentions, the claimant

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stepped into the witness box vide Exhibit-16. He reiterated the contentions as per his pleadings in the petition. The sum and substance of his evidence is that the alleged accident took place due to the rash and negligent driving of the rider of the the offending vehicle "Luna" which resulted into his permanent disablement to the extent of 7%. Regarding the said accident, the crime was registered at Bhandara Police Station vide CR No.291/2005. Though he is cross-examined at length, there is no suggestion to the claimant that the offending vehicle "Luna" was not involved in the accident. The cross-examination is only to the extent that the dash was not given by the offending vehicle "Luna", which is denied by him. Thus, nothing incriminating came on record during the cross-examination.

14. Besides the oral evidence, the claimant relied upon the police papers which show that regarding the said accident, the crime was registered against the appellant vide Crime No.291/2005 under Section 279, 337, and 338 of the Indian Penal Code. The Investigating Officer, after due investigation, submitted the chargesheet against the appellant.

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15. Perusal of the First Information Report, Exhibit-24, shows that the crime was registered on the basis of report, which is at Exhibit-25, lodged by PW4 Ganeshlal Mohabanshi, who reported that he was proceeding on his vehicle "Scooty" bearing registration No.MH-35/8063 and the claimant was pillion rider, at about 6:45 pm on 1.8.2005. At the relevant time, the appellant came from opposite side riding the offending vehicle "Luna" in a rash and negligent manner and gave dash to the vehicle "Scooty". The spot panchanama was also drawn at the spot of the incident. Thus, immediately, after the accident, on the next day, the crime was registered.

16. The claimant has also examined PW4 Ganeshlal Pyarelal Mohabanshi, vide Exhibit-52, who corroborated the version of the claimant. Though it is contentions of learned counsel Shri M.V.Rai for the appellant that PW4 Ganeshlal Mohabanshi was not present at the spot of the incident and the claimant himself was riding the vehicle "Scooty", the said contentions are neither pleaded in the written statement nor the same are suggested during the cross-examination. It was nowhere suggested to said PW Ganeshlal that it was the claimant who was riding the vehicle "Scooty". Thus, the

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grounds raised in the appeal are without pleadings before learned Member of the Tribunal. The rash and negligent act is proved by the claimant on the basis of his oral evidence as well as the police papers.

17. It is well settled that in a claim petition claimant has to prove rashness and negligence on the basis of preponderance of probability and not beyond reasonable doubt. The phrase rash and negligent act means doing an act with consciousness of a risk that evil consequences will follow. Negligence, in other words, is breach of duty imposed by the law. Therefore, when an act has been done with recklessness and indifference, the consequences of such act have to be treated as rash and negligent act.

18. The oral evidence of the claimant and PW4 Ganeshlal Mohabanshi, supported by the police papers, is sufficient to prove that the offending vehicle "Luna" was involved in the alleged accident. Though learned counsel Shri M.V.Rai for the appellant submitted that PW4 Ganeshlal Mohabanshi was present on his duty and was not riding the vehicle "Scooty", the same is not supported by any evidence.

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The ground raised by the appellant, that Kiritkumar Patel and Mukesh Raut, who were pillion riders on the offending vehicle "Luna", who are the witnesses of the incident, stated that there is no direct dash between the vehicles, i.e. the offending vehicle "Luna" and the vehicle "Scooty", is not raised in the written statement. The written statement nowhere shows that these both witnesses were also present at the time of the accident. The evidence of RW3 Mukesh Raut is to the extent that on 1.8.2005 he was proceeding along with the appellant on his the offending vehicle "Luna" as a pillion rider and there was no direct dash between the vehicles "Luna" and "Scooty". The evidence of other witness RW2 Kiritkumar Patel shows that he witnessed the incident when he was proceeding towards his house. However, the names of these witnesses are nowhere reflected in the written statement. In fact, the defence, that the offending vehicle "Luna" was not involved in the accident, is not raised in the written statement. Learned Member of the Tribunal had also observed that in the written statement the fact, that PW4 Ganeshlal Mohabanshi was not riding the vehicle "Scooty", was not raised. After registration of the offence also, the appellant has not challenged the

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involvement of the vehicles in the alleged accident. After due investigation, the chargesheet was filed against the appellant.

19. Thus, involvement of the vehicles is proved by the claimant. The claimant has further proved that due to the rash and negligent driving of the rider of the offending vehicle "Luna", that is the appellant, the alleged accident has taken place. The evidence on record is sufficient to prove that the offending vehicle "Luna" was driven by its driver in a rash and negligent manner as strict rules of evidence are not applicable for the compensation cases.

20. The burden on the claimant is to be proved only on the basis of preponderance of probability. There is no evidence to show that there was any enmity between the claimant and the appellant and, therefore, he was falsely involved.

21. The medical evidence on record shows that the claimant had sustained the injuries. The evidence of PW2 Dr.Pradip Kukde and PW3 Dr.Gopal Satyanarayan shows that immediately, after the incident, the claimant was admitted in the hospital as he sustained fracture injury of right femur and

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undergone the surgery. The medical treatment papers, extended to the claimant, also show that the claimant was admitted in the hospital as he sustained injuries in the accident.

22. There is no dispute that strict proof of accident is not required to be given by the claimant. The evidence on record is sufficient to show that the accident was occurred and the claimant had sustained the injuries in the said accident. Immediately, the report was lodged. PW4 Ganeshlal Mohabanshi is the eyewitness of the accident.

23. In the light of the above facts and circumstances of the case, I have no hesitation in my mind to hold that the claimant has proved that the alleged accident took place due to the rash and negligent driving of the appellant and, therefore, the appellant is liable to pay the compensation to the claimant. Learned Member of the Tribunal had considered the aspect and passed the judgment and award assigning reasons and, therefore, I do not find any gross error committed by learned Member of the Tribunal.

Judgment

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24. In this view of the matter, as the appeal has no merits, the appeal is liable to be dismissed and the same is **dismissed** and I answer the points accordingly.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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