



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2384 OF 2018

Shriram General Insurance Company Ltd.,
Through it's Authorized Signatory,
Having office at E/8, EPIP, Risco Industrial Area,
Sitapur, Jaipur (Rajasthan)

... APPELLANT
[Org. Respondent No.2]

VERSUS

- 1] Keshav Pandurang Kokate,
Age: 53 years, Occu. Nil
- 2] Ambadas Keshav Kokate,
Age: 24 years, Occu. Education,
- 3] Nitesh Keshav Kokate
Age: 21 years, Occu. Education,

All R/o. Pimpala, Tq. Ashti,
Dist. Beed

- 4] Manik Shivaji Bhawar
Age: 48 years, Occu. Business,
R/o. Gurukrupa Apartment,
Ekveera Chowk, Padamanagar,
Pipeline Road, Savedi, Ahmednagar
Dist. Ahmednagar

...RESPONDENTS
[Respondent Nos.1 to 3–Orig. Claimants
Respondent No.4 – Orig. Respondent No.1]

....
Mr. B. V. Virdhe, Advocate h/f Mr. A. P. Basarkar, Advocate for
appellant
Mr. Manoj Shinde, Advocate h/f Ms Savita A. Kathane, Advocate
for respondent Nos. 1 to 3

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 30th APRIL 2024

ORDER :-

1. By the present appeal under Section 173 of the Motor Vehicles Act, the appellant/Insurance Company challenging the judgment and award dated 31.08.2017 passed by the learned Member, Motor Accident Claims Tribunal, Ahmednagar in M. A .C .P No. 425 of 2015, whereby the claim of the present respondents/original claimant Nos. 1 to 3 came to be allowed and the present appellant and respondent No. 4 jointly and severally directed to pay compensation to the tune of Rs. 7,55,000/- with interest at the rate of 8% p. a. from the date of filing of claim petition i.e. 19.09.2015 till its realisation.

2. The present appellant is the original Respondent No.2 and present respondent Nos. 1 to 3 are the original claimant Nos. 1 to 3 in claim petition bearing M. A. C. P No. 425 of 2015. For the sake of brevity, I would like to refer the parties to the present appeal in their original nomenclature as claimants and the respondents.

3. The claimants have filed M. A. C. P. No. 425 of 2015 alleging that, on 16.10.2013, Sou. Alka Keshav Kokate, wife of claimant No.1 and mother of claimant Nos. 2 and 3 were travelling from Pimpala to Chichondi Patil on motorcycle bearing registration No. MH-16-BB-8982 as pillion rider. Said motorcycle was driven by Navnath Namdeo Aanfat and owned by present respondent No. 4. According to the claimants, at about 12.00 noon, said motorcycle reached near Bhatodi diversion, near village Chichondi Patil at Jamkhed – Nagar road and at that time, said Navnath was riding the motorcycle in excessive speed, rashly and negligently and was trying to overtake another motorcycle, due to which he lost control over the motorcycle thereby caused jerk and Sou Alka fall down and sustained grievous injuries to her head. Thereafter, she was taken to Civil Hospital at Ahmednagar, but she succumbed due to injuries on 19.10.2013 in the Hospital. According to the claimants, on 16.10.2013, accident took place due to rash and negligent riding of motorcycle by one Navnath. The said motorcycle is insured with respondent No.2/Insurance Company. Hence, prayed for compensation to the tune of Rs. 11,01,666/-, but restricted the claim to the tune of Rs.5,00,000/-.

4. In spite of service of notice to respondent No.1 owner of the vehicle, he failed to appear in the matter. The opponent No.2 /Insurance Company filed its written statement at Exh.15 and resisted the claim of original claimants. Opponent No. 2 denied occurrence of accident due to fault of driver. It further denied about involvement of vehicle bearing No. MH-16-BB-8982. The opponent No. 2 /Insurance Company further pleaded that due to non joinder of rider of motorcycle, application for compensation under Section 166 of the Motor Vehicle Act is not maintainable. Further, the rider of the motorcycle was not holding valid driving license. Hence, prayed for dismissal of the claim of the petition.

5. On the basis of rival pleading of both the sides, the learned Member, M. A. C. T. framed Issues at Exh.16. The claimant PW-1 Keshav Kokate filed his evidence affidavit at Exh.17 and proved various documents. Opponent No.2/Insurance Company did not examine any witness.

6. On 31.08.2017, the learned Member, M. A. C. T. Ahmednagar passed the impugned judgment and award holding that the claimants have proved the contents of F.I.R. Exh.21, which

clearly mentions that Navnath Aanfat was riding motorcycle and Sou. Alka was pillion and when the said motorcycle was passing on Nagar road towards Chichondi Patil village, at that time, he tried to overtake another motorcycle running ahead to him. The Motorcyclist lost control over the motorcycle, due to which, motorcycle skidded which resulted into causing accident and falling down of Sou. Alka on the road which resulted serious head injuries and succumbed while hospitalization. Therefore, considering notional income of housewife, to the tune of Rs.5,000/- per month, the total compensation of Rs.7,55,000/- granted.

7. The learned Counsel appearing for the appellant vehemently canvassed that the claimants have not joined the rider of motorcycle as party, therefore, the claim petition is not maintainable.

8. Per contra, the learned Counsel appearing for respondent/original claimants Nos. 1 to 3 submits that the motorcycle rider is not necessary party, but he may be proper party merely, motorcycle rider is not joined as respondent. The claim of the respondents/original claimants Nos. 1 to 3 does not become bad.

9. Needless to say that the rider of the offending vehicle is proper party in the proceeding under Section 166 of the Motor Vehicles Act, but the driver is not the necessary party as contemplated under Order 1 Rule 10 of the Code of Civil Procedure.

10. In the case of ***Machindranath Kernath Kasar Vs. D. S. Mylarappa and others***, - (2008) 13 SCC 198, it was held that the driver of offending vehicle is not a necessary party. The Hon'ble Supreme Court in Para No. 26 has observed as under:-

“26. The learned Judges in Patel Roadways opined that when the form of the claim petition does not require a claimant to even name the driver, a claim petition would be maintainable even without impleading the driver. The Bench proceeded to consider the general law of tort and the liability of joint tort feasers as contained in various text books. The Bench also noticed the decision of this Court in Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another [SCC pp. 451 & 453 – 54, paras 22 & 27; AIR 1977 SC 1248], wherein it was held:

"22. The liability of the owner of the car to compensate the victim in a car accident due to the negligent driving of his servant is based on the Law of Torts. Regarding the negligence of the servant the owner is made liable on the basis of vicarious liability. Before the master could be made liable it is necessary to prove that the servant was acting during the course of his employment and that he was negligent.

27. This plea ignores the basic requirements of the owner's liability and the claimants right to receive compensation. The owners' liability arises out of his failure to discharge a duty cast on him by law. The right to receive compensation can only be against a person who is bound to compensate due to the failure to perform a legal obligation. If a person is not liable legally he is under no duty to compensate anyone else. The Claims Tribunal is a Tribunal constituted by the State Government for expeditious disposal of the motor claims. The general law applicable is only common law and the Law of Torts. If under the law a person becomes legally liable then the person suffering the injuries is entitled to be compensated and the Tribunal is authorised to determine the amount of compensation which appears to be just. The plea that Claims Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle on a public place without proof of negligence if accepted would lead to strange results."

The Kerala, Bombay, Madras, Allahabad, Patna, Punjab and Haryana and Delhi High Courts, on the one hand, noticing a large number of decisions held that drivers are not necessary parties, the Madhya Pradesh High Court, on the other hand, in New India Assurance Co. Vs Munni Devi [1993 ACJ 1066 (M.P.)] and Madhya Pradesh State Road Transport Corporation Vs. Vaijnati [(1995 ACJ 560 (M.P.)] held that the driver of the offending vehicle would be a necessary party. The Division Bench of the Karnataka High Court further held that under the Madhya Pradesh Motor Vehicle Rules, the driver was required to be impleaded as a party. It was, however, stated:

" We do not however agree with the said two decisions, if they were to be read as laying down a general principle that under Law of Torts, the master cannot be sued to

enforce his vicarious liability for the negligence of the servant, without impleading the servant."

On the aforementioned finding, the following law was laid down.

"(a) Neither the Motor Vehicles Act nor Rules thereunder require the driver to be impleaded as a party to the claim petition, (b) Under Law of Torts, the owner and driver of the Motor Vehicle being joint tortfeasors, who are jointly and severally liable for the negligence of the driver, the claimant can sue either the owner or the driver or both. But, whether driver is impleaded or not, a owner (master) can be made vicariously liable for the acts of his driver (servant), only by proving negligence on the part of the driver (servant), (c) Therefore a claim petition can be maintained against the owner and insurer of the vehicle causing the accident, without impleading the driver. However proving the negligence of the driver is a condition precedent to make the owner vicariously liable for the act of the driver, (d) But where the driver is not impleaded as a party, no decree or award can be made against him. A driver can be held liable personally only when he is impleaded as a party and notice of the proceedings is issued to him."

11. In the case in hand the claimants not joined Navnath Aanfat, the Motorcycle rider as Respondent. The claimants have not claimed any relief against the rider. Therefore, considering the scope of Order 1 Rule 10 of C. P. C. and case of ***Machindranath Kernath Kasar***, cited above, I do not find any substance in submission on behalf of the appellant.

12. The learned Counsel appearing for the appellant/Insurance Company further canvassed that the claimants that FIR Exh.21, the spot panchanama Exh.22 and inquest panchanama Exh.23, however, these documents do not disclose involvement of motorcycle No. MH-16/BB-8982, but the claimants in collusion with respondent No. 1 prepared false and bogus documents about occurrence of accident due to skidding of motorcycle MH-16-BB-8982. However, the learned Member, M. A. C. T., failed to consider documentary evidence and illegally granted compensation. Hence, prayed for quashing and setting aside the same.

13. To buttress his submissions, the learned Counsel appearing for the appellant relied on the case of ***M/s. Shriram General Insurance Company Limited Vs. Tilottam Sandip Sonawane and others – AIR Online 2022 Bom 786*** it was observed in Para Nos. 15 and 16 as under :-

“15. The Tribunal, in the present case, has simply relied on the factum of filing of charge sheet against the tractor driver. Admittedly, the report of the accident was lodged against unknown vehicle. It is only after three weeks a person comes forward claiming to have had witnessed the accident. He recalled of the accident only on having seen the hoarding depicting the picture of the deceased – Sandip. According to

the alleged eye witness, some person had gathered on the spot of accident. Had it really been so, involvement of the offending tractor could have come to light immediately, i.e., on the same day of the accident. Same suggests that no person had witnessed the accident. The conduct of the alleged eye witness Atul Gade in coming forward after three weeks of the accident, is unnatural and does not stand to reason. He was residing at a nearby village. On having seen such an accident, he left the place without intimating the same to anyone else. Realising to have had witnessed the accident only on having seen the hoarding and picture of the deceased, leads this Court to observe that this person is a got up witness only with a view to earn the compensation. This Court is, therefore, not inclined to rely on the evidence of this witness.

16. *There is no other evidence in proof of involvement of the tractor in question. The Tribunal ought not to have allowed the claim petition merely relying on such police papers namely, charge-sheet, seen of accident panchanama and post mortem notes. This Court has, therefore, every reason to interfere with the impugned judgment and award. In view of this Court, the evidence fell short to make out case even on preponderance of probabilities.”*

14. In case of ***M/s Shriram Insurance Company Ltd., Vs. Vanita and Ors, First Appeal No.606 of 2019*** Co ordinate Bench of this Court has held as under:-

“If persons who had the knowledge about the accident, with the number of the offending vehicle do not come forward to lodge the report, then this point is required to be considered, when defence of 'collusion between the driver and/ Owner of the offending vehicle' raised by the insurance company is taken. No

doubt, the tendency of general public who witnesses the accident is, not to approach police voluntarily. But in this case, those persons/ eye witnesses have helped police in preparation of panchnama; yet did not have a word or disclosure of number of vehicle who was negligent has created doubt. Therefore, taking into consideration all these aspects, merely because an offence was registered against the driver of the vehicle owned by respondent No.1 will not prove the involvement of that vehicle in the accident. Conclusion has to be drawn under the said facts that the claimants have failed to prove involvement of Tata Magic bearing No.MH 13/B2719 in the said accident.”

15. In the case in hand, the evidence of claimant No.1 Keshav Kokate proves that on 16.10.2013, the deceased Alka being pillion rider was proceeding on motorcycle No. MH-16-BB-8982, from Pimpala to Chichondi Patil via Jamkhed – Nagar road, at that time, one Navnath Namdev Aanfat was riding motorcycle and at about 12.00 noon, said motorcycle reached near Bhatodi diversion in the vicinity of village Chichondi Patil and at that time, the motorcycle rider was riding motorcycle in very high speed in rash and negligently and trying to overtake another motorcycle, which was proceeding ahead to his motorcycle and while overtaking the motorcycle rider lost his control and due to heavy jerk, Sou Alka, the wife of claimant No.1 and mother of claimant Nos. 2 and 3 fell down and sustained grievous injuries. Therefore, injured Alka was immediately taken to

Civil Hospital, Ahmednagar, where she succumbed due to accidental injuries on 19.10.2013. The FIR Exh.21, spot panchanama Exh.22, inquest panchanama and postmortem report corroborate death due to head injuries caused in said accident.

16. Since, the deceased was household wife, therefore, her monthly income of Rs. 5,000/- p. m. was considered and awarded compensation to the tune of Rs. 7,55,000/- under various heads, which does not appear to be illegal. The appellant/Insurance Company has not denied that the motorcycle MH-16-BB-8982 was insured and the said accident occurred during subsisting period of insurance. Therefore, the present appellant/Insurance Company and the owner i.e. respondent No.4 are liable to pay compensation jointly and severally. Considering all these aspects, I do not find any substantial ground to interfere with the findings recorded by the learned Member. Accordingly I proceed to pass the following order:

::ORDER::

- (i) Present appeal is dismissed.
- (ii) Decree be drawn accordingly.
- (iii) Record and proceedings be remitted back.

(iv) Since, the appeal is dismissed, therefore, the amount deposited by the Insurance Company in this Court be disbursed in favour of the claimants with interest accrued thereon.

(v) In view of above, Civil Application No.4619 of 2019 shall also stands disposed of.

[Y. G. KHOBRADE, J.]

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