



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 2061 OF 2023

Vitthal Sopan Suryawanshi & Anr. .. Appellants

Versus

Daji Rajkumar Shinde & Anr. .. Respondents

Mr.A.D. Sonkawade, Advocate for the appellants.
Mr.A.G. Vasmatkar, Advocate for respondent No.2.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 09.07.2024
PRONOUNCED ON : 01.08.2024

O R D E R :-

01. This appeal is by the original petitioners challenging judgment and order passed by the learned Member, Motor Accident Claims Tribunal, Osmanabad dated 10.03.2023 in Motor Accident Claim Petition No. 97 of 2006. By the impugned judgment and order, the learned Member has dismissed the claim petition with costs.

02. The facts in short as per the petition are that the original petitioners/appellants are the parents of deceased Manoj Vitthal Suryawanshi, who died unfortunately in an accident dated 13.09.2015. The deceased with his cousins Dnyaneshwar Suryawanshi and Mahesh

Suryawanshi was proceeding towards his village from Ujani on motorcycle bearing registration No. MH-13-AQ-6601. The deceased was driving the motorcycle. While they were near village Bhandari, one pickup van bearing registration No. MH-25-P-3774 coming in opposite direction in high speed and in rash and negligent manner, gave dash to the motorcycle. All the three on the motorcycle fell down and received multiple injuries. Manoj died on the spot whereas Mahesh died during the treatment. The claimants/present appellants filed claim petition on these facts.

03. Respondent No.1 filed written statement and denied the claim. He admitted involvement of the offending vehicle in the accident but denied all other allegations on the ground that the owner and insurance company of the motorcycle are not made party to the petition and therefore the claim is bad for non-joinder of the necessary party. The claim is exorbitant. The deceased was riding triple seat on the motorcycle and it is the motorcycle driver who was driving his motorcycle in rash and negligent manner.

04. Respondent No.2 – insurance company denied the claim. The involvement of the vehicle is also denied. The FIR was registered against

unknown vehicle. The claim is filed in collusion with parents and respondent No.1 – owner. The driver of the offending vehicle was not having valid and effective driving licence and thus there was total breach of condition.

05. After the pleadings, the claim proceeded further. In support of the claim, the claimants examined claimant No.2 – Ranjana. Affidavit of one Laxman Umate was also filed. However, he did not offer himself for cross-examination.

06. On considering the evidence, the main reliance of the claimant is on the police papers and admissions by respondent No.1 of involvement of the vehicle. The learned Tribunal on going through the evidence, came to conclusion and recorded finding in negative so far as involvement of pick-up van is concerned and secondly that the claimant failed to prove that the alleged accident took place due to absolute negligence on the part of the driver of the pick-up van and did not record any finding so far as breach of condition of the insurance policy and rejected the claim.

07. The learned Advocate for the appellants vehemently argued

the appeal. He submits that the involvement of the vehicle is proved in view of the admission by respondent No.1. Though the FIR was registered against unknown vehicle, however in enquiry, it revealed that the pick-up van was involved in the accident. Petitioner No.2 has adduced her evidence to prove age and income of the deceased. The FIR was immediately lodged on 14.09.2015. The police also carried out investigation. In the investigation, statements of various persons came to be recorded. During the course of enquiry, it revealed that the vehicle of respondent No.1 was the offending vehicle. The learned Tribunal still has not believed such evidence. The learned Tribunal has not considered the age, income etc. and dismissed the claim, only considering the issue about involvement. The learned Tribunal failed to appreciate that Laxman Umate has made statement before the police showing involvement of the offending vehicle. There is also a panchanama drawn on the same day of the accident. This major evidence is not considered. On these submissions, he prayed to allow the appeal by allowing the claim petition.

08. Learned Advocate for the respondent No.2 vehemently opposed the appeal. He submits that the FIR was registered against unknown vehicle on 13.09.2015. The statement of Laxman Umate came

to be recorded on 23.10.2015 i.e. after about 40 days of the accident. Said Laxman though filed affidavit in lieu of evidence, did not offer himself for cross-examination. The respondent, therefore, could not cross-examine this witness. In absence of cross-examination, the evidence of Laxman cannot be believed and is rightly discarded by the learned Tribunal. There is no any other evidence to show involvement of the offending vehicle. Merely giving statement before police, that too, after 40 days is not sufficient to prove involvement of the vehicle. Though owner has admitted involvement of his vehicle, still it was strictly required to be proved. He supports the impugned judgment and prays for rejection of the appeal.

09. Coming to the judgments cited by both the parties, the appellants relied upon judgment in the case of **Ravi Vs. Badrinarayan and Ors., (2011) 4 SCC 693**. The Hon'ble Apex Court in the said judgment held that delay in lodging FIR cannot be a ground to doubt claimant's case in genuine cases. In the said case the owner of the vehicle had admitted involvement of the vehicle in the accident.

10. The learned Advocate for the respondent relied upon judgment in the case of **Anil & Ors. Vs. New India Assurance Co.**

Ltd. & Ors., (2018) 2 SCC 482. In the said case the High Court had set aside judgment of the Motor Accident Claims Tribunal allowing the petition holding that the involvement of the insured's vehicle was managed. In that case also though owner had admitted involvement of the vehicle, it manifestly appeared that it was case of collusion between the parties. In that case though the accident had taken place on 12.01.1995, the complaint was filed on 15.02.1995. There was also variance in the statement of the driver of the offending vehicle. The Hon'ble Apex Court confirmed the findings of the High Court and held that the High Court rightly allowed the appeal and set aside judgment of the Tribunal.

11. In the case of **Shriram Insurance Company Ltd. Vs. Vanita And Ors., MANU/MH/2654/2019.** This Court observed that it was necessary to examine the investigating officer also to show as to how even after getting information of death of deceased, in that case no offence was immediately lodged for three weeks thereafter and no attempt was made to draw panchanama. It is further held that the burden was on the claimants to prove that the accident took place because of negligence on the part of the driver of the offending vehicle. In the said case the claimant had failed to examine witnesses who

witnessed the accident. In the said case, even the fact of driver having valid and effective licence was also not proved.

12. In the judgment in the case of ***Farzana Begum and Ors. Vs. Sk.Saleem and Ors., MANU/MH/2682/2018***, this Court considered that there are serious doubts raised about the investigation in the matter of alleged accident. In that case the offence was registered against unknown vehicle on 20.02.2010. Statement showing involvement of the vehicle was recorded for the first time on 18.05.2010. In that view this Court dismissed the appeal of the claimants.

13. The last judgment relied upon by the respondents is in the case of ***Shriram General Insurance Co. Ltd. Vs. Tilottam and Ors. MANU/MH/1303/2022***. In that case also the report was lodged against unknown vehicle. After three weeks of the lodging of the report, some person came forward stating that he had witnessed the accident. In that view, the case of the appellant was not believed. The appeal came to be allowed by dismissing the claim petition and the amount deposited by the insurance company was directed to be refunded.

14. Considering all above judgments, it is clearly seen that there

is no evidence led before the learned Tribunal showing involvement of the offending vehicle. Witness Laxman Umate, who filed his evidence did not offer himself for cross-examination. The learned Tribunal, therefore, has rightly discarded his evidence. In view of the ratio of the above judgments and in view of the facts of this case, there is nothing to prove the case of the appellants. Resultantly, this Court does not find any reason to interfere in the impugned judgment and order.

15. The appeal, thus, stands dismissed with no order as to costs.

[KISHORE C. SANT, J.]