



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 940 OF 2014

The National Insurance Company Ltd.
a Subsidiary of the General Insurance
Corporation of India and a company
Incorporated under the Companies Act
having one of its Divisional office at
Hazari Chambers, Station road, Aurangabad
Through its Authorized Signatory

.. Appellant
(org. Resp. No.4)

Versus

1. Ashok Dagadu Thorat,
Age: 36 Years, Occu.: Labour,
R/o.: Vadgaon, Tk.: Sangamner,
Dist.: Ahmednagar
2. Ahmed Shaikh Shaikh Hussain Baban,
Age: Major, Occu.: Business,
R/o.: Ward No.2, A.P Tk. & Dist. Ahmednagar
3. Iqbal Ahmed Shaikh,
Age: Major, Occu.: Nil,
R/o.: Ward No.2, Srirampur,
Tk. Srirampur, Dist. Ahmednagar
4. Shaikh Hussain Baban Shaikh,
Age: Major, Occu.: Nil,
R/o.: As above

.. Respondents

(R. No.1: Org. clmt, R.No.2-4 Org. R.Nos.1,3,4)

...

Advocate for Appellant : Mr. Kadethankar Ajit B.
Advocate for Respondent No.1 : Mr. S. K. Shinde

...

WITH

...

FIRST APPEAL NO. 942 OF 2014

- . The National Insurance Company Ltd.
a Subsidiary of the General Insurance
Corporation of India and a company
Incorporated under the Companies Act
having one of its Divisional office at
Hazari Chambers, Station road, Aurangabad
Through its Authorized Signatory

.. Appellant
(org. Resp. No.4)

Versus

1. Ashok Kushaba Sonawane,
Age: 46 Years, Occu.: Labour,
R/o.: Vadgaon, Tk.: Sangamner,
Dist.: Ahmednagar
2. Ahmed Shaikh Shaikh Hussain Baban,
Age: Major, Occu.: Business,
R/o.: Ward No.2, A.P. Tk. & Dist. Ahmednagar
3. Iqbal Ahmed Shaikh,
Age: Major, Occu.: Nil,
R/o.: Ward No.2, Srirampur,
Tk. Srirampur, Dist. Ahmednagar
4. Shaikh Hussain Baban Shaikh,
Age: Major, Occu.: Nil,
R/o.: As above

.. Respondents

(R. No.1: Org. clmt, R.No.2-4 Org. R.Nos.1,3,4)

...

Advocate for Appellant : Mr. Kadethankar Ajit B.
Advocate for Respondent No.1 : Mr. S. K. Shinde

...

WITH
CIVIL APPLICATION NO. 8362 OF 2016
IN
FA/942/2014

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 23rd AUGUST, 2024

ORAL JUDGMENT:

1. Heard.
2. An unfortunate accident had taken place on 25.07.1998 at about 09:00 p.m. in the shiwar of village Wadgaonpan, in front of Hotel Yadgar. The motorcycle bearing no.MJK-5130 met with an accident with a Jeep bearing no.MXI-2080. The claimant in First Appeal No.942 of 2014 is one Mr. Ashok Sonawane, who was the pillion rider of the motorcycle at the relevant time. It is contended that the Jeep was coming in high and excessive speed and the driver of the said vehicle could not control the speed of the vehicle and gave dash to the motorcycle in which the driver and the pillion rider sustained injuries.
3. The motorcycle rider Mr. Ashok Thorat filed the claim for Rs.1,50,000/- towards the injuries suffered by him, loss of income and towards the medical expenses. The tribunal considering the evidence on record has granted compensation of Rs.68,000/- to the claimant, which is challenged in the present First Appeal No.940 of 2014.

4. It is the contention of the learned counsel for the insurance company that in the appeals filed by the insurance company that it was the motor cycle rider, who was negligent. As such, the claim amount for liability ought to have been on the motorcycle rider and, in any event, the final amount granted should have been apportioned between the insurance company and the motor cycle rider depending upon the contributory negligence.

5. The insurance company points out cross-examination of the rider of the motorcycle and submits that there are admissions made, which go to the root of the matter. However, the tribunal in para 10 of the judgment mentioned about the cross examination of the rider of the motorcycle. The relevant portion reads as under:

“During the course of his cross-examination on behalf of Respondent No.2, it appears that some typing mistakes have taken place while recording his cross-examination. It appears that in his cross-examination suggestions were put to him that he has not sustained injuries to his head and right hand, that he has not sustained permanent disability to the extent of 10%, that he has not incurred expenditure of Rs.50,000/ towards medical treatment. However while recording that deposition, by mistake those suggestions are typed in the positive form. Thus what appears is that the Petitioner has admitted in his cross-examination that he has not sustained injuries on his head and right hand in the accident, that he has not sustained permanent disability of 10% and that he has not spent amount Rs.50,000/ towards his medical treatment. It also appears that it is mistakenly typed that the

accident had taken place due to his own negligence. In fact it was necessary to type that said accident has taken place not because of his own negligence. The significant fact is that during the course of Examination-in-Chief, the Petitioner has specifically stated that said accident has taken place due to rash and negligent driving of offending vehicle by its Jeep driver and that he sustained injuries on his head and right shoulder. It is also stated by him that he was admitted in Nagajee Memorial Hospital, Nashik and Dr.Koshy gave medical treatment to him. In the light of these positive assertions made by the Petitioner in his examination-in-chief, it is not possible that he must have admitted all the facts during the course of his cross-examination. Therefore in my opinion it is because of typing mistakes his cross-examination is recorded in that fashion.”

The tribunal has observed that it is the typing error, as such, there is no admission before the tribunal by the rider. The tribunal has squarely held that the rider of the motorcycle is not responsible for the accident. The documentary evidence in the form of the First Information Report at Exhibit 64 and the Spot Panchanama at Exhibit 66, wherein it is noticed that the claimant was riding the motorcycle on Sangamner to Loni road and the accident took place near the Yadgar Hotel and the motorcycle was found on the kaccha road and the said road was the tar road which shows that the jeep coming from the opposite direction must have gone to the wrong side and must had given dash to the motorcycle. On the basis of Spot Panchanama, the finding is rendered that it was this driver of the Jeep who was negligent.

6. No material is pointed out to me to deviate from the findings of the tribunal. In view of the same, I see no reason to interfere in the impugned order.

7. As regards the case of the pillion rider is concerned, the same would be also covered within the facts in the First Appeal No.940 of 2014, so also, even if it is held that motorcycle rider is responsible the appeal still would be covered within the composite negligence.

8. The learned counsel appearing for the insurance company submits that the matter before the tribunal was pending for about 10 years for non service of the owner and the insurance company cannot be saddled with interest for such delay.

9. The learned counsel submits that the owner was served in the year 2010, as such, the interest awarded by the tribunal from the date of institution of the proceedings till 01.01.2010 the interest granted would be at the rate of 6% and thereafter the interest would be at the rate of 8% as granted by the tribunal.

10. The amount deposited in this court should be forthwith transferred to the Motor Accident Claims Tribunal, Sangamner in MACP Nos.548 of 2002 and M.A.C.P No.533 of 2002.

11. If any excess deposited amount remains, the same would be refunded to the insurance company. However, on computation, if it is found that the deposited amount is deficit, then the insurance company to deposit the deficit amount within a period of eight (08) weeks before the tribunal from the date of uploading of this order.

12. Both the first appeals stand disposed of.

13. All pending civil applications are also disposed of.

[ARUN R. PEDNEKER, J.]

marathe3432