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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.5104 OF 2017

1. Smt Gangasagar wd/o Balaji Bhosle APPELLANTS
Age - 24 years, Occ - Household
R/o C/o Shri Digambar Pol
Vaibhav Nagar, Parbhani
Taluka and District - Parbhani
2. Nagorao s/o Sakharam Bhosle
Age - 58 years, Occ - Agril Labour
R/o Amba, Taluka - Basmat
District - Hingoli
3. Shanta w/o Nagorao Bhosle
Age - 56 yeas, Oc - Household
R/o Amba, Taluka - Basmat
District - Hingoli

VERSUS

1. Dilip s/o Dnyanoba Dombe RESPONDENTS
Age - 25 years, Occ - Business
R/o Pimpla, Taluka and District - Parbhani
2. Future Generali India Insurance Co. Ltd.,
2nd Floor, Pagariya Towers,
Plot No.3, Dr. Rajendra Prasad Road
Adalat Road,
Aurangabad

.....
Mr. M. P. Ambekar, Advocate for the Appellants
Mr. Rohit Dahat, Advocate for Respondent No.2
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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 3rd OCTOBER, 2024
PRONOUNCED ON : 22nd OCTOBER, 2024

JUDGMENT :

1. This appeal, filed under section 173 of the Motor Vehicles

Act, by the claimants, challenges Judgment and Award dated 30th May, 2017 passed by learned Member, Motor Accident Claims Tribunal / District Judge -2 Parbhani in MACP No. 185 of 2015.

2. Facts in brief, leading to this appeal, can be stated as follows:

On 1st December, 2014, Balaji Nagorao Bhosle was coming to Parbhani on Motorcycle No. MH-38/M-0986, from village Amba. When he reached near Bharti Camp, on Basmat-Parbhani Road, one Car, bearing registration No. MH-22/U-7772 came from opposite side and gave dash to his motorcycle. Due to the dash, Balaji died on the spot. The accident was reported to Purna Police Station and Crime No. 196 of 2014 was registered against the driver of the offending vehicle for the offence punishable under section 279 and 304-A of the Indian Penal Code.

3. Claimants filed Claim Petition for compensation of Rs. 18 lakh, contending that at the time of the accident, the deceased was 27 years of age and was employee of AJE India Private Limited, Dahisar, Mumbai and was drawing monthly salary of Rs.15,000/-.

4. Respondent No.1 - owner of the offending vehicle, though appeared, but failed to file written statement.

5. Respondent No.2 - Insurer, opposed the claim, by filing written statement, contending that the accident took place due to the rash and negligent driving of the motorcycle rider. The offending vehicle is not involved in the accident and hence, the insurer is not liable to pay the compensation. The Tribunal dismissed the claim holding that the claimants have failed to prove involvement of the offending vehicle in the accident. Hence, this appeal.

6. Heard learned advocate for Appellants - Claimants and learned advocate for Respondent No. 2- Insurance Company. Perused the impugned Judgment and Award and the record.

7. Learned advocate for the Appellants - Claimants assailed the impugned Judgment and Award contending that criminal case was registered against driver of the offending vehicle and, therefore, the claimants have discharged their *prima facie* burden to show that the accident has taken place due to the rash and negligent driving of the driver of the offending vehicle. Respondent No. 1- owner of the offending vehicle has admitted the accident. He submits that the Tribunal has doubted involvement of the offending vehicle in the accident, merely because statement of the eyewitness to the accident was recorded after 20 days of the accident. No issue with regard to

involvement of the offending vehicle was framed by the Tribunal, which has caused prejudice to the Claimants. He submits that for the lapses committed by the investigating agency, the claimants should not be punished. He, therefore, submits that the impugned Judgment and Award is liable to be quashed and set aside and the claimants are entitled for just and fair compensation.

8. Though served, none appears for respondent No.1. Learned advocate for respondent No. 1 - insurer, has supported the impugned Judgment and Award. He submits that considering the fact that the offending vehicle was involved in the accident, on the basis of the statement of the eyewitness Bhagu, which was recorded after 20 days of the accident, the Tribunal is justified in disbelieving involvement of the offending vehicle. Bhagu and informant were not examined by the claimants. Considering the fact that initially, offence was registered against unknown vehicle and later on the offending vehicle was involved in the present case. Similarly, earlier also Crime No. 140 of 2010 was registered with Parbhani Rural Police Station under section 279, 338 and 304 A of the Indian Penal Code against unknown vehicle and subsequently, the same driver of the offending vehicle was arrested for causing accident. Similar was the case in Crime No. 37 of 2012 registered with Parbhani Rural Police Station.

Therefore, it is clear that the driver of the offending vehicle is habitual in accepting that he has caused accident, in order to facilitate claimants to get compensation amount. The Tribunal has rightly held that the offending vehicle was not involved in the accident. He submits that admittedly, statement of the eyewitness is recorded after 20 days of the accident. The Tribunal has rightly appreciated evidence on record and recorded finding of fact that the claimants have failed to prove that the offending vehicle is involved in the accident. There is no merit in the appeal and the appeal be dismissed.

9. Claimants have come out with a specific case that on the date of the accident at about 7.00 p.m, Bhagu Bhosale informed Manchak, brother of the deceased that Balaji met with an accident. On receipt of the phone call, Manchak immediately rushed to the spot of accident and found dead body of Balaji lying there. Manchak has lodged FIR (Exhibit-18) against unknown vehicle. Accordingly, Crime No. 196 of 2014 was registered with Purna Police Station under section 304-A and 279 of the Indian Penal Code, against driver of unknown vehicle. Spot of the accident was shown by Manchak and spot panchanama (Exhibit-19) was prepared on 2nd December, 2014.

Station diary entry Exhibit-56/1 brought on record is taken

at 19.05 hours, wherein it is mentioned that from Zero Phata, Police Constable Javed had informed that one person had met with an accident by falling from motorcycle. The Investigating Officer, who is examined, has deposed that after taking note of this entry, he, along with Police Sub Inspector Rathod, visited the spot of the accident.

10. Admittedly, statement of Bhagu @ Shivaji Bhosale, cousin of the deceased is recorded 20 days after the accident, on 21st December, 2014, wherein he has stated that on the day of the accident, he saw vehicle bearing Registration No. MH-22/U-7772 (offending vehicle) gave dash to the deceased. He found that the deceased was resident of his village. Since he did not understand what to do, he has informed Manchak, brother of the deceased, about the accident and he stayed there. If this statement is correct, then, both Manchak and Bhagu ought to have been at the spot of accident when Investigating Officer reached there, after taking station diary entry Exhibit-56/1. However, the Investigating Officer in his deposition has categorically stated that when he went to the spot of accident, neither Manchak nor Bhagu were present there.

11. Material on record further indicates that driver of the offending vehicle is in habit of taking responsibility of accident

cases in the crimes registered against unknown vehicles. Prior to the present crime, Crime No. 37 of 2012 (Exhibit-67) was registered with Parbhani Rural Police Station for offence punishable under section 279, 337 of the Indian Penal Code, against unknown vehicle. Prior to that Crime No. 140 of 2010 (Exhibit-68) was registered with Parbhani Rural Police Station for offence punishable under section 279, 338, 304-A of the Indian Penal Code against unknown vehicle. In both these crime, later on, driver of the offending vehicle, namely Gopal Jadhav was arrested, as he had taken responsibility of causing the accident. It therefore, appears that the driver of the offending vehicle is in a habit of taking blame of accidents registered against unknown vehicles, on himself, by joining hands with the claimants to grab compensation from insurance company.

12. For the reasons best known to them, the claimants have failed to examine Manchak and Bhagu. If really Bhagu had informed about the accident to Manchak and Manchak immediately went on the spot, then at that time at least Bhagu would have disclosed number of the vehicle involved in the accident and Manchak would have lodged FIR against the driver of the offending vehicle. However, admittedly, the FIR is lodged against driver of unknown vehicle.

13. The aforestated circumstances raise doubt about involvement of the offending vehicle in the accident. In the peculiar facts of the present case, merely because charge sheet is filed against the driver of the offending vehicle, it cannot be said that the claimants have discharged their initial burden of proving involvement of the offending vehicle and its driver in the accident.

14. The Tribunal, by assigning cogent reasons, has rightly held that involvement of the offending vehicle in the accident is doubtful and is justified in dismissing the claim. No case is made out by the claimants to interfere in the impugned judgment and award passed by the learned Tribunal. First Appeal being devoid of merit, is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE