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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3544 OF 2019

1. Swati Sunil Gadgade APPELLANTS
Age - 36 years, Occ - Household
R/o Kondi, Taluka - North Solapur

2. Shrikant Sunil Gadgade
Age - 16 years, Occ - Education
R/o As above (Minor)

3. Prathamesh Sunil Gadgade
Age - 14 years, Occ - Education
R/o As above (Minor)

(Appellant No.2 and 3 are minors and
under guardianship of their mother
i.e. Swati Sunil Gadgde i.e. appellant
no.1 R/o as above)

4. Shakuntala Pandurang Gadgade
Age - 69 years, Occ - Household
R/o As above

5. Pandurang Babu Gadgade
Age - 74 years, Occ - Nil
R/o As above

VERSUS

1. Mohanrao Manikrao Kulkarni RESPONDENTS
Age - Major, Occ - Business
R/o Bagdal,
Taluka and District - Bidar (K.S)

2. The Oriental Insurance Co. Ltd., Bidar
Through the Branch Manager
The Oriental Insurance Co. Ltd.,
Solapur - Aurangabad Road
Near Bank of Maharashtra
Osmanabad

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Mr. P. S. Chavan Advocate for the appellants

Mr. Rameshwar F. Totala, Advocate for respondent No.2

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 22nd JULY, 2024

PRONOUNCED ON : 21st AUGUST, 2024

JUDGMENT:

1. This appeal, filed under section 173 of the Motor Vehicles Act, 1988, by original claimants, challenges judgment dated 9th May, 2019 passed by learned Chairman, Motor Accident Claims Tribunal, Osmanabad in MACP No. 141 of 2015, thereby dismissing the claim filed by the claimants.

2. On 12th January, 2015, Sunil Gadgade was proceeding along with his friend Dadasaheb Shivaji Surwase from Tuljapur to Naldurg, in one Indica Car bearing N. MH-23/E-8706. Sunil was driving the car and his friend Dadasaheb was sitting in the car with him. When the car reached at village Tirth Bk, near the field of one Damodar Somwanshi, on State Highway No. 206, at that time, one travels bus, bearing No. KA-39/6918 came from opposite direction in high speed and by coming to the wrong side of the road, gave dash to the Indica car driven by Sunil. Both, Sunil and Dadahaeb suffered grievous injuries and were admitted to Sub District Hospital, Tuljapur. Sunil succumbed to the injuries. Five family members of deceased Sunil, therefore, filed claim petition, claiming compensation of Rs.20,00,000/- from the

respondents, contending that deceased Sunil was 35 years of age at the time of accident and he was healthy. He owned a small commercial vehicle (tum tum) bearing No. MH-13 / TR 354 (Permanent Registration No. MH-13/AN-3985) and he used to drive the said small commercial vehicle and used to earn Rs.1000/- per day. The claimants claimed that the accident occurred due to the rash and negligent driving by the driver of Travels bus and at the instance of driver of the said Travels bus, police have wrongly registered crime against the deceased, bearing Crime No. 12 of 2015 under section 279, 304-A of the Indian Penal Code.

3. Though respondent No.1 – owner of the travels bus was duly served, he remained absent before the Tribunal.

4. Respondent No.2 – Insurance Company opposed the claim by filing say. It is contended that the claim is false and is based on incomplete information. The accident occurred due to the rash and negligent driving of the deceased, therefore, crime is registered against the deceased. Investigation papers show that deceased was driving the Indica car in rash and negligent manner. The claim petition is not maintainable, since the owner, driver and insurance company of the Indica car are not made party respondents. The claim is, therefore, liable to be dismissed.

5. Claimants examined claimant No.1 – Swati Sunil Gadgade, wife of deceased, in support of the claim and placed on record FIR, Spot Panchanama, Inquest Panchanama, Postmortem report, accident report, Registration Certificate of Travels Bus, Driving licence, insurance policy and also examined Dadasaheb Surwase, who was accompanying the deceased at the time of the accident.
6. Insurance Company examined Driver of the Travels bus namely Shankar Sidram Siddha and Assistant Sub Inspector Deepak Mane, the Investigating Officer, who had recorded statement of Dadashaeb Surwase during the investigation.
7. The Tribunal, after hearing the parties, dismissed the claim on the ground that the accident has taken place due to the rash and negligent driving by the deceased. Appellants / claimants are aggrieved by dismissal of their claim.
8. Heard learned advocate for the appellant – claimants and learned advocate for respondent No.2 – Insurance Company. Perused the Record and Proceedings, the impugned judgment and the citation relied on by the learned advocate for appellants – claimants.
9. Learned advocate for the appellants – claimants, assailed

the impugned judgment of the Tribunal, by relying on a judgment of the Supreme Court in the case of ***“Jiju Kuruvila and Others V/s Kunjujamma Mohan and Others” AIR 2013 SC 2293***. He submits that the Tribunal has erred in giving undue weightage to the FIR and spot panchanama, which are recorded at the instance of the driver of the Travels bus. He submits that the accident has taken place at midnight, on a turn and the spot panchanama does not record the correct position of the spot of accident. He submits that undue weightage is given to the statement of Dadasaheb Surwase, recorded under section 161 of the Criminal Procedure Code, during the course of the investigation. He submits that injury claim of Dadasaheb Surwase is settled by the insurance company in Rs.2 lakh before the Lokadalat at Osmanabad.

10. Learned advocate for the insurance company, on the other hand, supported the impugned judgment. He submits that on the basis of information received at Police Station, FIR (Exhibit-30) is lodged on 14th January, 2015. By referring to the statement of Dadasaheb, recorded during the investigation, he submits that, since the record indicates that deceased was driving the Indica car in rash and negligent manner, he has caused the accident, therefore, the Tribunal has rightly dismissed the claim of the claimants.

11. Record indicates that the accident in question has taken place at 11.50 p.m, in the night of 12th January, 2015, on a turn, on State Highway No. 206. On receipt of a call intimating about the accident, ASI Deepak Mane rushed to the spot along with Police Head Constable Aher. They admitted the injured in the Sub District Hospital, Tuljapur, where Sunil was declared as dead and Dadasaheb was referred to Solapur for further treatment. Spot Panchanama was conducted by them. It is claimed by ASI Deepak Mane that on inquiry it was revealed that deceased Sunil was driving his vehicle in rash and negligent manner and by coming on the wrong side of the road, he gave dash to the travels bus and expired in the accident. He, therefore, lodged FIR on 14th January, 2015 against deceased Sunil under sections, 279, 304-A, 338 of the Indian Penal Code and under section 148 of the Motor Vehicles Act.

12. In the spot panchanama (Exhibit-31), it is stated that travels bus No. KA39/6918 was standing on the left side of the road and car No. MH-23/E-8706 is entangled in its engine. Front side of the travels bus and glass is broken. Its radiator is also broken and engine is damaged. Further, it is mentioned that so also car No. MH-23/E-8706 is standing on the right side of the road, in front of the travels bus and the same is totally damaged.

Its front bonnet, radiator and both front doors so also engine are broken in the accident.

13. It is pertinent to note that the road is a single road. Spot panchanama does not mention tyre or break marks at the spot of accident, It does not record width of the road. No sketch map of spot of incident is drawn while preparing spot panchanama. In this view of the matter, no reliance can be placed on the spot panchanama as, at one place it mentions that both the vehicles are on the left side of the road and immediately thereafter, it records that the car is standing on the right side of the road, in front of the travels bus.

14. In ***“Jiju Kuruvila”*** (*supra*), the Apex Court, in similar facts, has observed :

“24. The mere position of the vehicles after accident, as shown in the Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.”

15. The above observations are squarely applicable to the present case. Had the deceased been rash and negligent in driving the Indica car involved in the accident, due to which accident has taken place, driver of the travels bus would have immediately called the police station and lodged FIR, which is not done.

16. Learned advocate for the claimants seems to be justified in raising a doubt about station diary entry of the accident, which is taken on 12th January, 2015, which is not brought on record by ASI Deepak Mane, though he is examined in support of the case of the Insurance Company. It is strange that the station diary No.12/2015 dated 12th January, 2015 is mentioned in the spot panchanama conducted on the same day, whereas the general diary reference entry No. 14/15 is mentioned in the FIR. Considering belated registration of the FIR and the manner in which the spot panchanama is conducted, it does not depict correct situation of the spot of incident and incorrect general diary reference is mentioned in the FIR, there is every reason to believe that the investigating agency has not prepared documents and conducted investigation in impartial manner.

17. Fact remains that claimants examined Dadashaeb Surwase, an eyewitness to the accident, in support of their claim, at

Exhibit-41. He has supported the case of claimants. He has stated in his evidence affidavit that after the accident, while he was taking treatment at Government Hospital, Solapur, police enquired with him about the accident and he had disclosed that the accident took place due to the rash and negligent driving by driver of travels bus No. KA-39/6918. Thereafter, police obtained his signature on a blank paper. The accident has not taken place due to the mistake of the deceased Sunil and it has taken place due to the high speed and rash and negligent driving by the driver of travels bus.

In the cross-examination, he has stated that - *"When police were recording my statement, at that time, I was not in position to speak properly because of injury to my lip."*. He has denied the portions marked as "A", "B" and "C" in his police statement, wherein he has in short stated that the accident has taken place as the deceased could not control his Indica car.

18. The Tribunal has misdirected itself in placing reliance on the FIR, spot panchanama and the statement of Dadasaheb, recorded under section 161 of the Criminal Procedure Code. It is necessary to mention here that the statement of Dadasaheb is recorded by police on 21st January, 2015 i.e. after almost 9 days after the accident. The Tribunal has ignored the fact that FIR is

lodged belatedly and spot panchanama does not depict the correct picture of the spot of accident. Dadasaheb Surwase, admittedly, is an eyewitness of the accident, who was sitting beside the deceased in Indica car and was injured in the accident. His substantive evidence must be given due weightage. His evidence is not shattered in cross-examination. The Tribunal has committed error in ignoring the substantive evidence and gave undue weightage to his statement recorded under section 161 of the Criminal Procedure Code.

19. For the aforestated reasons, evidence of ASI Deepak Mane is not worthy of credit, so also as the driver of the travels bus since is interested in exonerating himself as well as his owner from the liability to pay compensation amount, has supported the case of the insurance company. The driver of travels bus has admitted that Tuljapur to Naldurg road is a single road and after the accident, one teacher travelling in his bus called the police, but he failed to lodge the FIR about the accident when police came on the spot, immediately after the accident. Therefore, he does not appear to be a reliable witness and his evidence is not worthy of credit.

20. It is well settled that when two inferences can be possible, the one favourable to the claimant needs to be considered. In

this respect, judgment of the Apex Court in **“Union of India Vs. Prabhakaran Vijaya Kumar and Others” [MANU/SC/7608/2008]**, may usefully be referred, wherein it is observed :

“12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation....”

21. In the light of aforesaid ratio, finding recorded by the Tribunal that the accident took place due to the rash and negligent driving by the deceased, is unsustainable in law and facts of the present case.

22. There is sufficient evidence brought on record by the claimants that the deceased was owner of small commercial vehicle and was earning Rs.1000/- per day, by driving said vehicle. Claimants have filed on record copy of registration certificate of small commercial vehicle, owned by the deceased and his driving licence. Thus, the deceased being the skilled worker i.e. driver, and since was earning his livelihood by plying the small commercial vehicle, his earning at the time of the accident can be assessed at Rs.10000/- per month. Considering 5

claimants are dependent upon him, by deducting one fourth amount towards personal expenses, Rs.7500/- can be determined as his monthly income.

23. Considering these aspects, claimants are entitled for the following compensation:

Sr. No.	Particulars	Amount
1	Monthly income of deceased	Rs.10,000/-
2	Monthly income of deceased after deducting 1/4th amount from monthly income towards personal expenses, since he has five dependents (Rs.10,000/- - Rs.2,500)	Rs.7,500/-
3	Annual income (Rs.7,500/- X 12)	Rs.90,000/-
4	Future prospects @ 40%	Rs.36,000/-
5	Total annual income after adding future prospects Rs.90,000/- + Rs.36,000/-	Rs.1,26,000/-
6	Total compensation = (Since age of deceased was 36, hence, multiplier of 16 is applied) (1,26,000/- X 16)	Rs.20,16,000/-
7	Consortium to wife	Rs.10,000/-
8	Loss of Estate	Rs.15,000/-
9	Funeral Expenses	Rs.15,000/-
	Total Compensation	Rs.20,56,000/-

24. Thus, Rs.20,56,000/- appears to be just and fair compensation payable to the claimants.

25. In the result, following order:

ORDER

A. Appeal is allowed with proportionate costs.

B. Impugned judgment and award dated 9th May, 2019

passed by learned Chairman, Motor Accident Claims Tribunal, Osmanabad in MACP No. 141 of 2015 is quashed and set aside.

- C. Respondents are held jointly and severally liable to pay compensation of Rs.20,56,000/- to the appellants / claimants along with interest @ 6% p.a. from the date of filing of the claim petition i.e. 22nd June, 2015.
- D. Respondent No. 2- Insurance Company to deposit the entire amount of compensation along with interest before the Tribunal within 12 weeks from the date of receipt of writ of this order to the Tribunal, which shall be paid to the claimants by the Tribunal, after due verification.
- E. Claimants to pay Court fee on enhanced compensation as per rules.

[NITIN B. SURYAWANSHI]
JUDGE