



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 1737 OF 2011**

**DADASAHEB SUKHDEO AHER
VERSUS
PUSHPABAI BALAJI SALVE AND ORS**

...
Mr. Yuvraj V. Kakde, Advocate for Appellant.
Mr. S. W. Jawale, Advocate for Respondent Nos.1 to 4.

...
**WITH
CIVIL APPLICATION NO. 2076 OF 2010
IN FA/1737/2011**

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 12th FEBRUARY, 2024.**

JUDGMENT:-

1. The appellant/owner of the vehicle impugns the judgment and award dated 10.08.2009 passed by the Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No.196/2008.

2. Mr. Kakde, learned Advocate appearing for the appellant submits that the vehicle owned by the appellant has been falsely implicated in the aforesaid crime. Although the accident took place on 26.03.2007 and insurer died on 30.03.2008, there was nothing on record to show involvement of Jeep bearing Registration No.MH-20-E-2711 owned by the appellant. He would submit that the appellant has filed written statement before the Tribunal and took specific defence regarding non-involvement of his vehicle. Mr. Kakde would further invite attention of this Court to the oral evidence recorded by the appellant, which is in the line with the defence raised in the case.

3. The record indicates that the accident in question was reported to the Police Station Usmanpura, Aurangabad leading to the registration of Crime No.59/2007 dated 26.03.2007 against

driver of Jeep. The contents of the FIR clearly depicts registration number of the offending vehicle. The spot panchanama also refers to particulars of Jeep being offending vehicle. Both these documents clearly depicts that immediately after accident, report was made to the police and particulars regarding the offending vehicle were made part of the police papers. The medical papers clearly depicts that the deceased lost his life because of injuries suffered in the accident. The cause of death is shown to be the head injury in postmortem report.

4. It appears that the appellant/owner of the vehicle and his driver filed written common statement before the Tribunal, wherein they denied involvement of Jeep in the accident. However, the driver of the Jeep who was the employee of the appellant did not step into the witness box to controvert the contentions in the FIR, so also the claim petition. The Tribunal appreciated aforesaid aspects and recorded positive findings holding involvement of the Jeep in the subject accident.

5. Apparently, after due investigation, the charge-sheet was filed against respondent no.2. The name of eye witness Laxman Jadhav is referred in the list of witnesses as per charge-sheet. He recorded his evidence before the Tribunal at Exhibit-37. He being a Rickshaw driver, his presence on the spot cannot be ruled out. He has specifically stated about the manner of the accident and involvement of the Jeep in question. There is no explanation with the appellant as to why he did not examine his driver namely Babasaheb before the Tribunal.

6. It is trite that, proceedings under Section 166 of the Motor Vehicle Act are summary in nature and claimants are required to prove their case based on preponderance of probability and not by leading the evidence like criminal case.

7. At this stage reference can be given to observations of the Supreme Court of India in case of ***Sunita and Others Vs. Rajasthan State Road Transport Corporation and Others***¹ wherein it is held as under:

“It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal’s role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.”

8. In the present case, the claimants have relied upon the police papers including charge-sheet and also examined the eye witnesses to support their contentions on the point of involvement of Jeep in question. On the other hand, the appellant has withhold the material evidence of his driver. Looking to the material on record, the claimants have proved their case. In that view of the matter, there is no merit in appeal. Hence, appeal stands dismissed.

9. In view of dismissal of the First Appeal, pending Civil Application is also disposed of.

(S. G. CHAPALGAONKAR)
JUDGE