



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1593 OF 2022
WITH CA/10175/2022 & CA/15336/2022

The Branch Manager, New India
Assurance Co. Ltd

...Appellant

Versus

Shrikant Trimbak Pawar & Anr

...Respondents

- Mr. M. R. Deshmukh, Advocate for the Appellant
- Mr. D. R. Jaybhar & Mr. S. D. Jaybhar, Advocates for Respondent No. 1

CORAM : KISHORE C. SANT, J
RESERVED ON : JULY 20, 2024
PRONOUNCED ON : AUGUST 07, 2024

ORDER :

1. This appeal arises out of judgment and award passed by the learned Chairman, Motor Accident Claims Tribunal, Ahmednagar in MACP No. 495/2019 dated 01.02.2022. This appeal is filed by Insurance Company/ Original Respondent No. 2. Respondent No. 1 is the Claimant before the claims Tribunal. By way of impugned judgment and award, learned Chairman has partly allowed the claim Petition directing the Respondents therein to pay total compensation of Rs. 15,85,641/- to the

Claimant including no fault liability amount along with interest at the rate 7.5% p.a. from the date of Petition i.e., 09.10.2019. Present claim is the injury claim.

2. For the purpose of convenience, parties are referred to as per their original status in the claim Petition.

3. It is the case of the Claimant that he received an injury in an accident dated 18.05.2019 at 09.30 pm near Daula Wadgaon on Ahmednagar Beed road. He was traveling in a vehicle, namely, Swift Dzire bearing registration no. MH-14-FC-1964 owned by Respondent No.1. It is further stated that Respondent No. 3 was driving a car in high speed in rash and negligent manner and rammed into a tractor trolley. The claimant received injuries as follows: Blunt Abdominal Trauma Grade III Splenic Laceration, Post Explorative Laparotomy & Splenectomy Status Foecal peritonitis Reexploration & Hemicolectomy, Pancreatic Necrosectomy Fracture proximal Left Humerus – Post Orif Chronic Pancreatitis with Chronic Peripancreatic fluid

collection DM Type II and other injuries. His left shoulder got fracture. Claimant was of 45 years of age on the date of accident. His earning was Rs. 15,000/- per month. He was working as driver. He was also having agriculture income of Rs. 1,00,000/- p.a. Claimant was required to incur expenses of Rs. 10,50,000/- for medical treatment and Rs. 25,000/- for conveyance to the Hospital and towards special diet. He further needed Rs. 2,00,000/- for treatment by Orthopedic Surgeon. His further case is that he suffered permanent disability to the extent of 45% & has lost 75% earning capacity. He further prayed Rs. 25,000/- towards pain and suffering. Total compensation sought was Rs. 20,00,000/- along with 12% interest.

4. The owner of the vehicle did not appear and the Petition proceeded *ex parte* against him. Respondent No. 2/Insurance Company filed written statement. Insurance policy is admitted, however, accident and the liability to pay compensation are denied. The owner of tractor trolley was not added as party. Swift Dzire car was plying without valid permit and fitness certificate

for its use. The injuries are simple in nature and there is no permanent disability. Respondent No. 3, a driver, has accepted that he was driving the vehicle at the time of accident. He pleaded that he was having a valid and effective license. His car was in moderate speed and there was no negligence on his part.

5. Learned Chairman considered oral as well as documentary evidence and held that though injuries are proved, Applicant has not suffered permanent disability. So far as negligence is concerned, it is held that the driver of the offending vehicle was negligent. About stand of the insurance company of breach of policy is concerned, Tribunal held that there is no breach of policy and passed impugned judgment and award. On all these, Insurance Company has approached this Court.

6. Mr. Deshmukh, learned Advocate for the Appellant, vehemently argued the Appeal. He submits that in the present case there is no evidence to show that the claimant has received a permanent disability. In support of claim, claimant has examined only himself

and doctor who has issued disability certificate. Doctor who has issued disability certificate is not a treating doctor. The said doctor has not examined the claimant. The nature of injuries as shown are not possible by an accident. The claimant was already suffering from the diseases. The doctor however has stated that all the injuries are due to accident, which is not correct. The only fracture injury can be said to have been due to accident. The other injuries are not due to accident. He took this Court to the evidence of claimant and specially to his cross-examination.

He strenuously argued that there is no evidence to show that the claimant was sitting in the car. The entire evidence show that there were only two persons in the Dzure car i.e., owner and his brother, who was driving vehicle. In the statement of the person driving the car there is no reference of any third person sitting in the car i.e., claimant. He further argued that it is after 83 days of accident, Sunil Thorat, owner of nearby hotel, gave statement to the police that there was third person sitting in the car who was taken to the hospital. However, the said hotel

owner is also not examined. The investigating officer who conducted investigation is also not examined. All these factors along with nature of injuries show that the claimant was not at all sitting in the vehicle when the accident took place. In the alternative, he submits that the compensation awarded is on higher side. In support of his submissions he relied upon following judgments: Bajaj Allianz General Insurance Co. Ltd vs. Manisha Lahu Kale, First Appeal No. 2742/2015, New India Assurance Co. Ltd vs. Ashalata Suryakant Patil and Ors, First Appeal No. 2829/2015, Bajaj Allianz General Insurance Co. Ltd vs. Vanita Ganesh Gadakh and Ors, First Appeal No. 2968/2013, Kalpana Rajendra Kothari and Ors vs. Santosh Arvind Jangam and Anr, 2019 SCC OnLine Bom 2283.

7. Mr. Jaybhar, learned Advocate for Respondent No. 1, vehemently submits that Appeal deserves to be dismissed. In the present case, name of the passenger came late in the investigation as he was all the while in the hospital after the accident. He submits that though this statement dated 11.08.2019 of the police

states that there were only two persons in the vehicle, this claimant was sitting in the same car. Santosh Thorat, the hotel owner, has clearly stated before police that there was third person sitting in the vehicle and he was taken to the hospital. So far as the medical expenses are concerned, he submits that there are bills on record which are not in dispute. The statement of the claimant before the police dated 25.07.2019 clearly shows that he had taken lift in the Swift Dzire car. The driver was driving the car in high speed. It gave dash to trolley of tractor carrying sugarcane and in that accident, claimant received injury to his abdomen and chest. Since he was admitted in the hospital for more than 1½ month, he could not immediately come to record statement. In support of his submissions, he relied upon following judgments: Bimla Devi and Ors vs. Himachal Road Transport Corporation and Ors, AIR 2009 SC 2819, Ravi vs. Badrinarayan and Ors, AIR 2011 SC 1226 & New India Assurance Co. Ltd vs. Mita Samanta and Ors, 2009 SCC OnLine Cal 2142.

8. Considering the arguments and from the record

it is clear that after 83 days of the accident for the first time a statement came to be recorded before the police that the claimant was sitting the Swift Dzire car. The evidence of doctor also shows that he has not treated the claimant. He has only issued a disability certificate to the claimant. The claimant has not examined any doctor who treated him after the accident. He has only produced the medical bills. There is no convincing reason coming-forth as to why the treating doctor is not examined.

9. Coming to the judgment cited before this Court in case of Manish Lahu Kale wherein this Court has held that initial burden always on lies on the claimant to show involvement of the vehicle in an accident and that he has received injuries. So also it is for the claimant to establish the claim though beyond reasonable doubt is not expected. In that case only certified copy of final report filed by the investigating officer was produced on record. Even if the claim is not contested by the truck owner and driver, itself is not indicative of the involvement in

the accident. There was collusion between the parties and, therefore, the claim was not contested by the owner and the driver.

10. In case of Ashalata Suryakant Patil this Court held that though strict proof of involvement is not required, still it is required to show some substance. The investigation papers are not sufficient to draw inference of involvement of the vehicle. In case of Vanita Ganesh Gadakh there was a admission of the driver in the written statement about involvement of the truck in an accident. However, in that case also the statement before the police was made after much delay and, therefore, Court held that it creates serious doubt about involvement of the vehicle in an accident. In case of Kalpna Rajendra Kothari this Court had considered a postmortem report, inquest panchnama to show that the deceased died in an accident. What was not proved is that the accident was caused by the rider of the bullet motorcycle against whom claim was made. This Court disbelieved the involvement of the vehicle allegedly involved in the

accident.

11. Considering the facts in the light of above judgments, it is clear that the claimant has not even *prima facie* proved involvement of the Swift Dzire car in an accident.

12. Respondent relied upon judgment in Bimla Devi wherein it is held that the Court/Tribunal has to take a holistic view of the matter and strict proof of the accident was not required. In case of Ravi the Hon'ble Supreme Court has considered that mere delay in lodging FIR cannot be a ground to doubt claimants case knowing the Indian conditions. The purpose of lodging FIR is primarily to intimate the police about a accident and nothing more. Case of Mita Samanta is on the similar lines. On the facts, this Court find that these judgments are not applicable in present case.

13. After looking into the record, it is clear that in the present case what is on record to show involvement is only a statement of the claimant and statement of the hotel owner, which is recorded after

83 days of the accident. The said hotel owner is also not examined in the Court. Doctor's evidence is also not inspiring confidence of the Court at any rate which will not show the involvement of the Swift Dzire vehicle in an accident in which the claimant has received the injuries. On such kind of evidence, it cannot be said that the claimant has discharged even initial burden to prove his case. For all these reasons, the Court is persuaded to hold that the impugned judgment and award needs to be quashed and set aside.

14. In view of above discussion, Appeal stands allowed. Impugned judgment and award dated 01.02.2022 passed by the learned Chairman, Motor Accident Claims Tribunal, Ahmednagar in MACP No. 495/2019 is quashed and set aside. Claim Petition stands dismissed. No order as to costs. Necessary consequences to follow.

15. Pending civil applications, if any, stand disposed of.

(KISHORE C. SANT, J.)

16. At this stage, learned Counsel for the Appellant makes a request that office be directed to refund the amount lying in this Court to the Appellant.

17. Office is, therefore, directed to refund the amount deposited in the office of this Court along with accrued interest.

(KISHORE C. SANT, J.)