



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 965 OF 2016

1. Smt. Vimalbai Bhanudas Mali
Age- 56 years, Occu. Household
2. Kailas Bhanudas Mali,
Age- 38 years, Occu- Labour
3. Vilas Bhanudas Mali
Age- 28 years, Occu- Labour
All R/o. Chinawal, Tq. Raver,
Dist. Jalgaon.

...APPELLANTS

VERSUS

1. Tapi Prestige Product Pvt. Ltd.,
Through; M.P. Kotecha,
Age- Major, Occu: Business,
R/o. Anjale, Tq. Yawal,
Dist. Jalgaon.
2. The Oriental Insurance Company Ltd.,
Central Phule Market, Jalgaon,
Through: Divisional Manager,
Branch Office, Jalgaon.

...RESPONDENTS

Mr. V.B. Patil, Advocate for appellants
Mr. Uday S. Malte, Advocate for respondent No. 2
Respondent No. 1 served

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON: 1st AUGUST, 2024

PRONOUNCED ON: 19th AUGUST, 2024

JUDGMENT:

1. **Admit.** Heard finally with the consent of parties.

Bhagyawant Punde

2. This appeal filed by appellants/original claimants under section 173 of the Motor Vehicles Act, 1988, challenges impugned judgment and award dated 26.09.2013, passed by Member, Motor Accident Claims Tribunal & District Judge- 3 Jalgaon, in Motor Accident Claim Petition No. 173 of 2007, thereby dismissing claim filed by claimants.

3. Claimants filed claim petition contending that on 11.05.2006 Bhanudas Laxman Mali was driving his motorcycle No. MH-19-X-4213, Shaikh Gafur Shaikh Bismillah, was the pillion rider. They were returning from village Vivara after attending marriage ceremony. At 8.00 pm on Raver-Savda road, on State Highway 4, near Nimbhora phata, one truck bearing No. MH-19-5928 came from the opposite direction in high speed and in rash and negligent manner and gave violent dash to the motorcycle, resulting into head injury to Bhanudas, due to which he died on the spot. At the time of accident, Bhanudas was 52 years of age and was working as mason since last 25 years and was earning Rs. 300 to 500 per day. Claimants, therefore, claimed compensation of Rs. 3,00,000/-.

4. Owner of the truck/respondent No. 1 opposed/respondent No. 1 opposed the claim by taking general

denial and defences. Insurance Company/respondent No. 2 opposed the claim contending that deceased was not holding valid and effective driving license and he was rash and negligent while driving motorcycle, which resulted into accident.

The Tribunal after recording evidence came to a conclusion that the deceased was rash and negligent, due to which accident has taken place, he was not authorized to drive the motorcycle, hence, dismissed the claim. Claimants are aggrieved by the same.

5. Heard learned advocate for claimants and learned advocate for Respondent No. 2. Though served, none appears for respondent No. 1.

6. Learned advocate for claimants assailed the impugned judgment and award contending that the Tribunal has ignored the settled legal position and has recorded wrong finding of fact that claimants have failed to prove that the truck driver was rash and negligent and has caused the accident. He submits that in fact charge sheet is filed against the truck driver for rash and negligent driving and causing accident. He therefore submits that dismissal of claim petition is unsustainable and first appeal may be allowed and matter be remanded back to the Tribunal to

decide just and fair compensation.

7. Learned advocate for insurance company, on the other hand, supported the impugned judgment and award. He submits that from the material placed on record the Tribunal is right in holding that the deceased was not authorized to drive the motorcycle and he was imbalanced and his motorcycle came into rear wheel of the truck and claimants have failed to show how the truck driver was negligent in causing the accident. He therefore submits that no case is made out by the claimants to interfere in the impugned judgment and award and first appeal may be dismissed.

8. Heard learned advocate for claimants and learned advocate for insurance company at length. Perused the record.

9. Record indicates that FIR (Exhibit-32) is registered with Nimbhora Police Station against the driver of the truck at C.R. No. 24/2006, under sections 304(A), 337, 427, 279 of Indian Penal Code and under section 184 of Motor Vehicles Act. Inquest panchnama, post mortem report, statement of Shaikh Gafur Shaikh Bismillah recorded during the investigation, accident report form (Exhibit-37) are placed on record by the

claimants to prove their case that the truck driver was rash and negligent in driving the truck and he has caused the accident. Charge sheet (Exhibit-38) in C.R. No. 24/2006 is filed against the driver of the offending truck on 05.06.2006. All these documents show that after conducting investigation the police have filed charge sheet against the truck driver for causing accident by rash and negligent driving.

10. It is settled legal position that claimants have to establish their case on the touchstone of preponderance of probability and not on standard of proof beyond reasonable doubt. (*Bimla Devi and Ors. vs. Himachal Road Transport Corporation and Ors.*, AIR 2009 SC 2819).

11. In *Kaushnuma Begum v. New India Assurance Co. Ltd.*, MANU/SC/0002/2001, it is held;

"It is sufficient that negligence on the part of the driver or owner is established from the totality of circumstances."

In view of aforesaid documents placed on record by claimants, they have discharged the preliminary burden of showing that the truck driver was rash and negligent in driving the truck and therefore accident has taken place. Adverse finding recorded by the Tribunal is therefore unsustainable in law and

facts of the present case.

12. In *Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Ors.*, (2008) 9 SCC 527 it is held:

"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 the literal or strict interpretation."

13. Since the provision of compensation incorporated in Motor Vehicles Act is a beneficial piece of legislation, in view of aforesaid principle laid down by the Apex Court, it should receive a liberal and wider interpretation. Hence, interpretation which would advance the object of the said provision and serve its purpose needs to be preferred in the present case. Hence, it is held that the accident has caused due to rash and negligent driving of truck driver, in which deceased has expired and hence claim petition filed by claimants ought to have been considered on merits by the Tribunal. The Tribunal has failed to appreciate material on record in the proper perspective and in consonance with the settled legal position. The Tribunal has misdirected itself in dismissing the claim of the claimants. The impugned judgment and award passed by the Tribunal is therefore unsustainable in

law and facts of the present case. Hence, the following order:

ORDER

- i) First Appeal is allowed.
- ii) Impugned judgment and award dated 26.09.2013, passed by Member, Motor Accident Claims Tribunal & District Judge- 3 Jalgaon, in Motor Accident Claim Petition No. 173 of 2007 is hereby quashed and set aside.
- iii) Motor Accident Claim Petition No. 173 of 2007 is remanded back to the Tribunal for adjudicating just and fair compensation to be awarded to the claimants.
- iv) Parties will be at liberty to lead additional evidence, if any in support of their respective contentions about quantum of compensation.
- v) The claim petition shall be decided within six months from the date of first appearance of the parties.
- vi) Parties are directed to appear before the Tribunal on 02/09/2024. Notice in that behalf therefore is dispensed with.

[NITIN B. SURYAWANSHI, J.]