

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 252 OF 2021

Bajaj Allianz General Insurance Company Ltd.,
GE Plaza, Airport Road, Yerwada,
Pune - 411006

...Appellant

Versus

1. Kekanaje Balkrishna Bhat
Age: 63 Years, Occ: Service.
2. Atmaram K. Balkrishna Bhat
Age: 20 Years, Occ: Education
Both residing at 4-1/6 Kamaljeet Balebail,
Kadri-Hills, Magaluru.
3. Kakanje Shivram Sharma (dismissed)
4. Noushad Abbas
Age- Major, Occu: Business
House No. 9-53/42, M. Nashweer Manzil,
Milat Nagar, Melangadi Ullal,
Post-Mangalore (South Kanada)
Karnataka - 5775020

...Respondents

SNEHA
NITIN
CHAVAN

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Mr. Sarthak Diwan for the Appellant.
Mr. Shailendra Kanetkar for Respondent Nos. 1 and 2.

CORAM : M.M. SATHAYE, J.
DATE : 18 SEPTEMBER 2024

: ORAL JUDGMENT:

1. Heard learned counsel for the Appellant/Insurance Company and learned counsel for Respondent No.1 and 2/Claimants. As regards Respondent No.3 (driver), the appeal is already dismissed. None appears for Respondent No.4 (owner) though served.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 ('the said Act' for short) challenging the Judgment and Award dated 22.02.2021 passed in Motor Accident Claims Petition (MACP) No. 22 of 2017 by the Motor Accident Claims Tribunal (MACT), Sindhudurg-Oros. By the impugned Judgment and Award, the Appellant/Insurance Company is jointly and severally held liable to pay Rs. 21,60,760/- along with interest 9% p.a. to the claimants from the date of claim.

3. Few facts are as follows. On 16.05.2016 at about 2.15 p.m. one Prabhavati Balkrushna Bhat (deceased) was travelling with her husband and son (claimants) from Manglur to Jaigad-Ratanagiri in Alto Car bearing No. KA-19-MC-0254 (offending vehicle). When the car reached Zarap Muslimwadi area, Respondent No.3-the Driver, who is brother of Claimant No.1, lost control of the car which swerved on one side of the road and while trying to control the vehicle, it collided against the divider on the road and turned turtle. In the said accident, deceased suffered internal injuries, who was shifted to hospital, where she was declared dead on examination.

4. Learned counsel for the Appellant/Insurance company submitted

that the evidence of its witness No.1 (Dr. Smita Prashant Pandit), who had performed postmortem on deceased Prabhavati is not considered in proper perspective. He invited this Court's attention to the deposition of the said Doctor. It is submitted that it is clearly stated by the said Doctor that the postmortem was conducted at 7.00 p.m. on the date of the accident and it was found that rigor mortis had already set in deceased's whole body and in her opinion, the deceased would have died about 18 to 20 hours before conducting postmortem. It is contended that accident had taken place about 2.15 p.m. and therefore, if time of postmortem is considered (7.00 p.m.), it can be concluded that the deceased had not died in the accident, but prior to that. On this ground the liability is disputed by the Insurance company. Learned counsel for the Appellant also submitted that according to the Appellant/Insurance Company, there was breach of policy terms viz. the driver of the offending vehicle was not holding valid and effective license at the time of accident. On these grounds, the appeal is pressed.

5. *Per contra*, the learned counsel for the Respondent/Claimants invited this Court's attention to the statements of the said Doctor, pointing out that the Doctor has admitted that rigor mortis may develop even within 8 to 12 hours of the death. He pointed out that in examination in chief itself, the said doctor has stated that on going

through pathological report, in her opinion, deceased would have died due to lung intraalveolar hemorrhage, which may be natural or accidental and it may be due to blunt trauma to lungs. He pointed out that the said Doctor has also admitted that the bleeding to lungs may happen due to accidental shock. He submitted that if the deposition of the Doctor is considered as whole, it cannot be conclusively said that the death had occurred prior to accident.

6. I have considered the submissions and perused the record. Perusal of the deposition of the said Doctor shows that she has stated that she cannot say that the deceased might have died naturally and even she cannot say that the deceased died accidentally. After going through pathological report, she has opined that deceased would have died due to lung intraalveolar hemorrhage which according to the said Doctor can be both natural or accidental. It is also stated that the said hemorrhage may be due to blunt trauma to the lungs. It is admitted in the cross-examination that rigor mortis may develop even within 8 to 12 hours of the death. She has also admitted that bleeding to lungs may happen due to accidental shock. Finally and importantly, it is also admitted by the said doctor in cross examination that coldness of body starts after 8 to 10 hours of death and when she started conducting the postmortem, the body was semi-cold.

7. Perusal of the impugned order shows that the learned Tribunal has considered these aspects in paragraphs 18 and 19 of the impugned Judgment and has concluded that the possibility of the death due to accident is not completely denied. Based on these admissions, the Tribunal has found that accidental death is possible on preponderance of probabilities. It is therefore held that the provisions for compensation under the beneficial legislation such as the Motor Vehicles Act, 1988, specifically Section 166 therein, cannot be denied to the claimants in the present matter.

8. Having considered the deposition of the doctor who conducted the postmortem, as indicated above and the admissions narrated above and having considered the appreciation of the said evidence at the hands of the Tribunal, I do not find that there is any error in the view taken by the Tribunal. The view taken is most probable view. It is not the case of the Appellant Insurance company that the body of the deceased was planted or someone else was falsely included in the record of the accident as deceased. No such questions are put to Claimants' witnesses by the Appellant in cross-examination. There is not even a hint of any such doubt. Unless there is unequivocal evidence indicating that the deceased was not involved in the accident at all, it is not possible to disbelieve the evidence of Respondent No.1 coupled with

police papers including the FIR lodged, statements recorded and Panchnama drawn after the said accident, recording the death of the deceased in the said accident. As such, no fault can be found with the conclusion drawn by the Tribunal in this regard.

9. So far as the argument about driver not holding valid and effective license is concerned, perusal of the impugned judgment would show that the Claimants have in fact brought before the Court the driving license of the driver at Ex.11 and R.C. Book of the offending vehicle at Ex.12. The Tribunal has clearly held that apart from claiming that there is a breach of policy condition, the Insurance company has not brought before the Court any evidence to support the case. No such evidence is pointed out to this Court also. In that view of the matter, the said argument of the Insurance Company also cannot be accepted.

10. No other argument is advanced by the Appellant Insurance Company.

11. In view of the aforesaid facts and circumstances and for reasons stated above, there is no merit in the appeal and the same is accordingly dismissed. No costs.

12. Statutory amount deposited by the Appellant/Insurance Company in this Court, may be transferred to concerned Tribunal at Sindhudurg - Oros as soon as possible, for appropriate adjustment.

13. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)