

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1329 OF 2018

The New India Assurance Co. Ltd. } Division Office, Park Chowk, Solapur, } Thr. Mumbai Legal Hub, 41-B-, 4 th Floor, } Market Tower-E,, Near World Trade } Centre, Cuffe Parade, Mumbai-400 005. }	(Org. Opponent No.2) Appellant
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Versus

1. Harshada Harishchandra Bandivadekar } Aged-46 years, Occupation : Household } 2. Jayashri Anandrao Keripale } Aged-Adult, Occupation : Business } R/o. Madhavnagar, Tal-Miraj, District- } Sangli. }	 Respondents
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Mr.Sandeep S. Jinsiwale, for the Appellant.
 Mr.R.S. Alange, for Respondent No.1.
 Mr.Balwant V. Salunkh, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th FEBRUARY 2024

ORAL JUDGMENT :-

1. The issue involved in this Appeal is non-involvement of the vehicle.

2. It is contention of the learned counsel for the

Appellant-Insurance Company that after the happening of accident in FIR the Registration number of the vehicle was given as MH-44-4769 and thereafter, two days the said number was replaced with MH-10-S-9322 on the basis of the Supplementary Statement of the witness. The learned counsel further submitted that, the insured vehicle was not involved in the said accident. Moreover, to prove the defence the Insurance Company has examined Officer from RTO Office, Ambajogai, but these facts are not considered by the Tribunal and passed impugned order. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that after the accident immediately information was given to Police, the information was lodged by the Pillion Rider who was Labourer. Hence, initially he gave the wrong registration number of vehicle "Tamtam-Rickshw". After two days his Supplementary Statement was recorded by the Police and in the said Supplementary Statement he has stated that he was admitted in the hospital due to accidental injuries, hence, he could not tell proper registration number of the offending

vehicle. In the said statement he gave registration number of the offending vehicle. The learned counsel further submitted that, in spot panchanmma it shows that the the offending vehicle was involved in the accident. The Investigation Officer was examined to prove the involvement of the offending vehicle in the said accident. The Appellant-Insurance company has not examined the driver of the offending vehicle to prove its defence. The Tribunal has considered all the aspects while passing judgment and order. No interference is required in it.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Solapur.

5. It is Claimant's case that, on 30th January 2011 deceased Harishchandra was riding on motorcycle from Solapur to Sanjwad, one Mallikarjun Kondade was pillion rider. When they were proceedings on road at that time one tamtam rickshaw bearing Registration No.MH-10-S-9322 came from opposite direction in high speed without observing traffic rules, because of the high speed tumtum rickshaw driver lost the control over the

vehicle and dashed to the motorcycle driven by the deceased. Due to dash deceased and pillion rider fell down and deceased had sustained serious injuries and died while taking treatment. The pillion rider was admitted in the hospital. Police recorded the statement of the pillion rider Mallikarjun, on the basis his statement initially offence was registered against driver of tamtam rickshaw No.MH-44-4769. Thereafter, after two days Police recorded Supplementary Statement of pillion rider Mallikarjun. In the said statement he has stated that dash was given to their motorcycle by tamtam rickshaw bearing No.MH-10-S-9322.

6. To prove the involvement of the offending tamtam rickshaw and negligence of the driver of the offending rickshaw the Claimant's examined Srikant Aragbal, Investigating Officer at Exhibit-59. He has stated that, a Crime bearing registration No.9 of 2011 was registered on the basis of the statement of the victim recorded in the hospital. The investigation was handed over to ASI Shri.Mujawar attached to Valsang Police Station. Initially, the offence was registered under zero number at Solapur. Statement of Mallikarjun Konade was recorded in the hospital by

Police Constable B.C.No.1969 attached to Mohol Police Station. It was recorded in the City Hospital, Solapur on 30th January 2011. The scene of offence panchnamma was drawn by ASI Shri.Mujawar on 2nd February 2011. Supplementary statement of complainant was recorded on 2nd February 2011. In cross-examination this witness admitted that, initial complaint was lodged against rickshaw bearing No.MH-44-4769 and he cannot tell whether the contents of complaint are correct. He further admitted that, vehicle number was subsequently changed because of the statements made by the injured witnesses. This witness denied the suggestions that subsequently by entering into conspiracy, false number of a vehicle having Insurance Policy is inserted in the documents. This witness denied the suggestion that, rickshaw bearing registration No.MH-10-S-9322 was not involved in the accident.

7. To prove its defence the Appellant-Insurance Company has examined Ramchandra Junior Clerk attached with Deputy RTO Office, Ambajogai. He had brought particulars of vehicle No.MH-44-4669. He stated that, as per their Register

the permit was granted to the said vehicle to ply between Ambajogai to Parali.

8. While dealing with the issue of the negligence the Tribunal has observed that, Insurance Company has not led any evidence on the point of the negligence either exclusively by the deceased or by way of contributory negligence. When such defence is taken then, it is excepted that independent evidence will have to be led by Insurance Company. In absence of such evidence, adverse inference is required to be drawn against the driver of the offending vehicle and it will have to be concluded that accident took place due to negligence on the part of driver of the said vehicle bearing NO.MH-10-S-9322. I do not find infirmity in it.

9. In my view, the owner of the offending vehicle has joined as a party Respondent by the Claimant's. He has not filed Written Statement stating that, his vehicle is falsely involved in the accident. Moreover, the Appellant-Insurance Company could have examined driver of the offending vehicle as witness. The Investigating Officer of the said crime is examined by the

Claimant's. He has stated about involvement of the offending vehicle in the accident. DW-1 Junior Clerk of RTO Office states that, the permit of the vehicle MH-44-10-4769 was to ply between Ambajogai city to Parli city. The distance between Solapur to Ambajogai is more than 200 k.m. The question remains when the said vehicle had no permit to ply in Solapur, why it came to Solapur. It proves that the initial number given by the pillion rider was wrong. In the supplementary statement of the pillion rider, he has stated that, he was admitted in the hospital due to which he could not recollect the correct number of the tamtam rickshaw when earlier statement was recorded by the police and later on he gave the correct number of rickshaw.

10. It is contention of the learned counsel for the Appellant that consortium amount is on higher side.

11. It is contention of the learned counsel for the Respondent that the Claimants are entitled for 30% future prospects as deceased was 50 years old, but the Tribunal has awarded 15%, future prospects which is on lower side. If this Court consider 30% future prospects it matches with the consortium amount. Consortium is given on higher side.

12. In view of above, I pass following order.

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The Claimants are permitted to withdraw the amount deposited by the Appellant along with accrued interest thereon.
- (iii) The statutory amount along with interest be transferred to the Tribunal. The parties are at liberty to withdraw it as per Rules.
- (iv) Pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)