



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO. 585 OF 2012

Commandant, Guard Regimental
Centre (GRC), Kamptee Contonment
Area, Kamptee, District – Nagpur.

} ... Appellant

Versus

1. Pandhari s/o Lahanuji Thakre
since deceased (deleted by an order,
dated 12.08.2010)
2. Sau. Pushpa w/o Pandhari Thakre
Aged 40 years, Occupation : Household
3. Harshal s/o Pandhari Thakre
Aged 22 years, Occ. Students
- 4 Ku. Diksha d/o Pandhari Thakre
Aged about 18 years,
All residents of Patansaongi,
Taluka Saoner, District – Nagpur.

} ... Respondents

Mr. P.V. Navlani, Advocate for appellant.

Mr. G.D. Asole, Advocate for respondent Nos.2 to 4.

CORAM : MRS. VRUSHALI V. JOSHI, J.

RESERVED ON : 07.11.2023.

PRONOUNCED ON : 12.01.2024.

JUDGMENT:

Heard finally by consent of both the learned counsel
for the parties.

(2) Being aggrieved by the award dated 30.07.2011
passed by the Motor Accident Claims Tribunal, Nagpur, in MACP

No.903/2006. The appellant original respondent has preferred this appeal.

(3) Brief facts of the appeal are as under :

The respondents had filed a claim petition before Motor Accident Claims Tribunal, Nagpur, as his daughter Kum. Sweeti Thakre, expired in motor accident on 06.07.2006 at about 16:15 hours. She was travelling as a pillion rider with her brother on his Motorcycle Hero Honda and they were proceeding towards their house at Patansaongi from Saoner. Near the outskirts of the Village Mangaon, the vehicle of the appellant i.e. Military Trailer which was coming from same direction gave a dash to the motorcycle, due to which Sweeti was thrown in to air and had a fall due to which she suffered grievous head injury and died on the spot. The incident was reported to the Saoner Police Station and Crime was registered bearing Crime No.121/2006 against the trailer Driver Harimohan Shriram. The respondents claimed compensation of Rs.3,00,000/- on various counts.

(4) The appellant has denied the involvement of said vehicle in said accident. It was the defence of appellant that three persons were riding on the motorcycle without wearing helmet which

was driven in high speed and in a negligent manner and they were going from the middle of the road.

(5) It is the case of appellant that on 06.07.2006, the military vehicle was proceeding from Betul to Nagpur and near Manegaon, the driver of the vehicle had given a hand signal to the motorcycle. At the relevant time, one car was coming from opposite direction as the appellant driver has given the signal, he overtook the motorcycle safely. However, after 25 Kms., the vehicle was stopped by police at Deogaon and has informed about the accident and accordingly, the crime was registered against the driver of the military vehicle.

(6) The appellant has stated that in an inhouse enquiry conducted by the department, it was found that the offending vehicle i.e. military vehicle was not involved in the accident and neither the driver of the vehicle was in anyway negligent in his driving.

(7) It is further submitted that the owner and the insurer of the motorcycle was not made party to the claim petition. Without properly appreciating the evidence, the Claims Tribunal

passed impugned award dated 30.07.2011 and awarded the compensation of Rs.2,08,000/- which includes the amount of Rs.50,000/- under Section 140 of the Motor Vehicles Act and interest @ of 7.5% on the said amount.

(8) Learned counsel for the appellant has argued that the Tribunal has erred in placing reliance solely on the registration of the FIR and other police investigation to come to the conclusion that the military vehicle was involved in the accident. The petitioner has examined the driver of the vehicle, his evidence clearly shows that accident was not caused due to military vehicle and the appellant was not liable to pay any compensation on account of injury sustained to the deceased. Moreover, the owner of the motor vehicle as well as insurer of the motor vehicle were not made party to the claim petition, who are the necessary parties. It is not appreciated by the Tribunal that three persons were seated on the motorcycle and the motorcycle was driven in high speed and in negligent manner without wearing the helmet. Hence, prayed to set aside the award passed by the trial Court as there is no pleading, and no evidence that the vehicle was driven negligently.

(9) Learned counsel for respondents opposed the application stating that immediately after the incident, the vehicle was seized, the FIR was registered against the driver of the vehicle. The deceased died on the spot she came under the wheel of the trailer and instead of taking care of the deceased, the appellant ran away from the spot and he was stopped by police after 25 Kms. The evidence of the witnesses proves that the accident took place because of the vehicle of the appellant, hence, prayed to dismiss the appeal.

(10) Heard Mr. Navlani, learned counsel for appellant and Mr. Asole, learned counsel for respondent Nos.2 to 4.

(11) The petitioner has denied the involvement of vehicle in accident. The evidence of driver of vehicle itself proves the involvement of vehicle. He has deposed that he saw the motorcycle driven by the PW(1), he has mentioned that there were three persons seating on the motorcycle and he has given signal by hand and thereafter, after 20 Kms. from the spot, he was arrested. The driver was remembering everything which is not possible without specific circumstance. The appellant has placed reliance on the judgment of the Delhi High Court in *MAC.APP592/2011, New India Assurance*

Company Limited Vs. Harsh Mishra and Ors., in which it is held that mere registration of crime is not enough to prove the negligence. In case in hand, there is eye witness and involvement of vehicle is proved through evidence of defence witnesses.

(12) The appellant has stated that the rash and negligent act is not proved by the claimant as the witness has not stated about it. It is the duty of the claimant to prove rash and negligent act of respondent. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Surendeer Kumar Arora and anr. Vs. Manoj Bisla and Ors. (2012) 4 SCC 552*.

(13) On perusal of the claim petition, I found that it is mentioned in petition that "They were going towards house at Patansawangi from Saoner. Motorcycle rider was driving his motorcycle on proper side of the road in slow speed. When they reached in the outskirts of village Manegaon at that time an offending vehicle Military Trailer was coming in same direction from Saoner towards Nagpur in a very high speed, rash and negligently without following traffic rules as such it gave a heavy dash to the motorcycle from backside because of which deceased was thrown into air and landed on the street and she sustained grievous head injury and died

on the spot”. The claim petition is filed on affidavit. Pleading about rash and negligent act are there in petition. The evidence of PW – 2 who is the eye witness and was driving the vehicle has also proves the rash and negligent act of trailer driver as he has stated that the trailer came in speed and it touched to him and he also received injury, Sweeti the sister came under wheels of trailer and died there. He has also received injuries. Rash and negligent act is pleaded and also proved through eye witness.

(14) The crime was registered against the driver of the vehicle. From the evidence of the witnesses, it is proved that the accident took place because of said vehicle. Rash and negligent act is also proved as the pillion rider thrown in the air and she came under the vehicle of appellant. The learned Tribunal has rightly considered the evidence and documents on record and awarded the compensation, there is no need of any interference at the hands of this Court, hence, the appeal stands dismissed.

(15) Pending applications, if any, shall stand disposed of accordingly.

[MRS. VRUSHALI V. JOSHI, J.]