IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2132 OF 2024

Divisional Manager,
The New India Assurance Company Ltd.
3rd floor, Rushiraj Residency ,
Near Vidya Vikas Circle ,
Gangapur Road, Nasik -422005
Through Senior Divisional Manager
Ajay Engineering Compound, Near Kranti Chowk,
Mahesh Compound, Adalat Road, Aurangabad
..Appellant...
(Orig. Respdt.No.02)

Versus

1) Kavita Sunil Datir
Age : 34 Years, Occu. Household

2) Ashvini Sunil Datir,
Age : 17 Years, Occu. Education

3) Akshay Sunil Datir
Age : 16 Years, Occu. Education.

4) Kartik Sunil Datir
Age : 14 Years, Occu. Education,
(Respondent no. 2 to 4 through their natural
Guardian Mother i.e. Respondent no.1)

5) Sitaram Babasaheb Datir
Age : 58 Years, Occu. Agriculture

6) Mandabai Sitaram Datir
Age- 55 Yrs. Occu: Household

Respondent no.1 to 6 Resident of
Village Pimpri Lauki Tq. Sangamner
Dist. Ahemadnagar

7) Bhagwan Yashwant Kobarne,
Age- 45 yrs. Occu: Tempo Business,
Address : Lohgaon- Pravranagar, Tq. Rahata
Dist. Ahemadnagar

...Respondents...

(Respdt. Nos.1 to 6 – Orig. Claimants
Respdt. No.7 - Orig. Respdt.No.1 / Driver and owner).

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Advocate for Appellant : Ms. A. V. Rotte
Advocate for Respondents 1-6 : Mr. R.B. Dhakane

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WITH

CIVIL APPLICATION NO. 8621 OF 2024 IN FA No.2132 of 2024

Kavita W/o Sunil Datir And Ors. Applicants.

Versus

Bhgwan Yashwant Kobarne And Anr Respondents

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Advocate for Applicants : Mr. R.B. Dhakane
Advocate for Respondent no.2 : Ms. A V. Rotte

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CORAM : S. G. CHAPALGAONKAR, J.
Reserved on : 8th January, 2025.
Pronounced on : 17th January, 2025.

JUDGMENT :-

1. The appellant/insurer takes exception to the judgment and award dated 25.4.2023 passed by the Member, Motor Accident Claims Tribunal, Sangamner, District Ahmednagar in MACP No.28 of 2019.

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

3. Respondent nos.1 to 6/original claimants filed M.A.C.P. no.28 of 2019 before the Motor Accident Claims Tribunal, at Sangamner raising claim of Rs.10.00 Lakhs against the appellant/respondents towards accidental death of Sunil Sitaram Datir, who died in motor vehicular accident dated 28.11.2017. According to the claimants, while deceased was riding motorcycle bearing registration no.MH-17/M-2767, Tata Magic bearing registration No.MH-17/AZ-6682 gave dash to the motorcycle. Consequently, motorcycle skidded causing fatal injuries to the deceased. Deceased was engaged in agriculture and milk business, so also used to work as labour for harvesting the sugarcane and maintaining his family. Accident occurred due to rash and negligent driving on the part of Tata Magic. All claimants were depending on income of the deceased. Hence, they are entitled for the compensation as claimed.

4. Respondent no.1 owner of the vehicle accepted factum of accident, but denied assertions regarding negligence on the part of the Tempo driver. Respondent no.2-Insurer pleaded that claimants have put up a piled up story of

accident. Vehicle tempo has been falsely involved in the accident. Insured Tempo was not at all involved in the accident. False story has been hatched and brought on record through belated FIR registered on 26.1.2018. Rest of the averments regarding occupation, income and dependency were also denied. However, the Tribunal, after recording evidence of the parties allowed claim directing respondent nos.1 and 2 to pay compensation of Rs.14,88,500/- alongwith interest @ 8% p.a. vide impugned judgment and award dated 25.4.2023.

5. The Insurer impugns award of the Tribunal in this appeal.

6. Smt. Rote, learned advocate appearing for the appellant/insurance company submitted that it is a case of false involvement of insured vehicle in the subject accident with intention to grab the compensation amount from insurer. She would submit that the accident occurred on 28.11.2017 at about 10.45 p.m. FIR has been lodged by claimant no.5 – father of deceased on 26.1.2018 i.e. after 60 days of the accident. She would submit that source of information regarding involvement of insured vehicle in alleged accident is claimant no.5 and his relative Mr. Bhausaheb Lavre. They

claims that they were following offending vehicle at the time of accident and actually witnessed it giving dash to motorcycle of the deceased. She would urge that, if claimant no.5 and his companion were witness of the accident, FIR ought to have been immediately lodged. She would further invite attention of this Court to the accident report dated 29.11.2017 made by Ashok Nagre/Police Patil of village Shiblapur contending that he saw a motorcycle laying entangled to the roadside Babool tree. Body of deceased Sunil was laying at the spot. He dialed from phone of the deceased and came to know about his identity. Then his family members arrived at the spot.

7. On the basis of aforesaid report, she would submit that, if claimant no.5 had witnessed the accident, it could have been reported at least to the Police Patil with particulars as to involvement of the offending tempo. There is no explanation as to why FIR was delayed by about two months. She would further point out that claimant no.5 did not enter in the witness box. PW no.2-Bhausaheb Lavre alleged companion of claimant no.5 examined before the Tribunal, wherein he admitted that he did not report incident to the police. Although, he was aware about the accident, he never posed

himself as eye witness. Chit where he had noted number of offending vehicle was not seen by the police. He admitted that he is relative of the claimants.

8. Close scrutiny of the aforesaid evidence clearly depicts that deceased skidded from his motorcycle and dashed to the roadside babool trees and suffered fatal injuries. Report of police patil dated 29.11.2017 which is filed alongwith list of documents exhibit-33 throws light on the aforesaid facts. It shows that marks of skidding of the motorcycle were visible. Apparently, family members of deceased gathered on the spot, but report of the accident involving insured tempo was never made. Statement of Bhausaheb Lavre appears to have been recorded on 26.1.2017 so also FIR has been lodged by claimant no.3 on the same day. No explanation is given for delay in lodging the FIR.

9. Minute reading of the FIR clearly depicts that a made up story has been put into service to bring home involvement of the insured vehicle. Except claimant no.5 and PW 2 Bhausaheb Lavre, no other person has knowledge about accident involving insured vehicle. It is stipulated in the FIR that since deceased had not returned home, his

father/claimant no.5 alongwith Bhausaheb Lavre were searching him and during their search, they saw insured tempo giving dash to the motorcycle. In that process, Bhausaheb Lavre alleged to have recorded the number, but they did not find it necessary to see who was the motorcycle rider dashed by the tempo. Even after getting knowledge of accidental death of Sunil at the very same spot of the accident as noted by them in last night, no report was lodged as regards to involvement of tempo for sixty days. The story appears to be improbable and hatched only for the purpose of converting orphan accident to the accident involving insured vehicle.

10. Except FIR and evidence of so-called eye witness, Bhausaheb Lavre there is nothing on record to prove the accident.

11. In normal case, this Court would not have discarded case of the claimants only on the ground of delay in filing the FIR, in a factual scenario surfaced on record, delay in lodging the FIR is relevant. It is primary burden of the claimants to prove accident involving insured vehicle to raise claim for compensation against owner and insurer of the offending vehicle. It is trite that, the claimants have to prove

the case based on preponderance of probabilities. Strict proof of evidence may not be necessary. However, glaring facts surfaced in the present case pinpoints false implication of the insured vehicle on the basis of a cooked up story. In all probabilities, deceased died due to skidding of the motorcycle. There is no foundation of pleadings and evidence to accept the case of claimants as regards to the accident involving insured vehicle. The Tribunal ignored aforesaid material aspects and merely based on the evidence of witness Bhausaheb Lavre, accepted claimants' case alongwith the fact of filing of charge-sheet, which is inconsequential. In facts, so-called admission of the respondent no.1 as regards to involvement of his vehicle appears collusive. This Court came across large number of cases, wherein on the basis of belated FIR's or police statements insured vehicles are sought to be implicated in the orphan accidents. In this scenario, cryptic findings recorded by the Tribunal cannot be sustained. Consequently, first appeal deserves to be allowed. In the result, following order is passed.

ORDER

i. First appeal is hereby allowed.

ii. The impugned judgment and award dated dated 25.4.2023 passed by the Motor accident Claims Tribunal, Sangamner, District Ahmednagar in M.A.C.P. No.28 of 2019 is hereby quashed and set aside.

iii. The amount of compensation, if any, deposited by the appellant-insurance company be refunded after 90 (Ninety) days.

iv. First appeal stands **disposed off**. Pending civil application, if any, also stands disposed off.

(S. G. CHAPALGAONKAR)
Judge.

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aaa/-