2025:BHC-AUG:7466

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.418 OF 2024

Icici Lombard General Insurance Co. Ltd Through It's Branch Manager

VERSUS

Rekhabai Babasaheb Alias Baba Tupe And Others

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Advocate for Appellant : Mr. M.R. Deshmukh
Advocate for Respondents nos.1 to 6 : Mr. S.R. Shirsat
Respondent no.7 & 8 are served.

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WITH
CIVIL APPLICATION NO. 1316 OF 2024 IN FA/418/2024
WITH
CIVIL APPLICATION NO. 10025 OF 2024 IN FA/418/2024

CORAM : S. G. CHAPALGAONKAR, J.
Dated : March 13, 2025

FINAL ORDER :-

1. The appellant/original respondent no.3-Insurer impugns the judgment and award dated 30.10.2023 passed by the Motor Accident Claims Tribunal, Beed in M.A.C.P. No.315 of 2021. Respondent nos.1 to 6/original claimants instituted M.A.C.P. no.315 of 2021 raising claim for compensation of Rs.40,33,200/- towards accidental death of Babasaheb @ Baba Namdeo Tupe, who died in motor-vehicular accident dated 24.2.2021. According to claimants, they were dependent on income of the deceased. On account of untimely death, they

lost bread earner of the family. They contend that on 24.2.2021 while late Babasaheb was proceeding on his motorcycle from Karzani towards Beed from Solapur-Aurangabad high way, offending motorcycle bearing registration no.MH-23/AP-1137 gave dash to his motorcycle from rear side. Rider of the offending vehicle was responsible for accident. As a result of the accident, Babasaheb suffered grievous injuries. He was immediately admitted at 'Gurukrupa Hospital', Beed. Thereafter, he was referred to Kaku-Nana Memorial Hospital, Beed and lastly breathed on 6.3.2021. According to claimants, respondent no.1 was riding offending motorcycle. It was owned by respondent no.2 and insured with respondent no.3 at the time of accident. Hence, they are jointly and severally liable to pay the compensation.

2. Respondent nos.1 and 2 filed written statement and indirectly admitted involvement of offending motorcycle; although, they denied negligence of it's rider. Respondent no.3-Insurer contested claim firstly doubting involvement of the insured vehicle, in alternative, attributed negligence against deceased.

3. Tribunal framed issues. Claimants relied upon evidence of CW-1 Mahadeo, CW-2 Bibhishan (alleged eye witness), CW-3 Ashok Sonwane, Investigating Officer, so also filed on record copy of the FIR, spot panchnama, certified copy of the MLC dated 3.3.2021, certified copy of the police report dated 6.3.2021. Tribunal, on evaluation of evidence on record, allowed claim petition directing respondents to jointly and severally pay compensation of Rs.6,67,000/- to the claimants alongwith interest @ 7% p.a. from the date of filing the claim petition.

4. Mr. Mohit Deshmukh, learned advocate appearing for the appellant vehemently submit that accident occurred on 24.2.2021. FIR is lodged on 6.3.2021 by CW-1 Mahadeo against unknown vehicle driver. Deceased Babasaheb was admitted to hospital on the same day. Till his death, report of the accident was not lodged for 11 days. Mr. Deshmukh, submits that first time, involvement of the insured vehicle has been brought on record on the basis of statement of alleged eye witnesses recorded on 7th and 8th March, 2021. He would therefore urge that the Investigating Officer has filed a

collusive charge-sheet depicting involvement of the insured vehicle.

5. Per contra, Mr. S.R. Shirsath, learned advocate appearing for respondent nos.1 to 6 submits that Insurance Company has raised false defence. Immediately after accident, deceased was admitted at Civil Hospital, then he was moved to a private hospital for further treatment, where he took his last breath on 6.3.2021. Claimants were busy in providing medical aid to the deceased and immediately after last rites, the FIR has been lodged. Investigating officer then recorded statement of eye witness on 8.3.2021. Insured motorcycle was seized during course of the investigation and charge-sheet has been filed against its driver. Therefore, he urges to dismiss the appeal.

6. Having considered the submissions advanced, it can be observed that there is no dispute that late Babasaheb died on account of the injuries sustained in motor-vehicular accident. On the date of accident, he was proceeding on his motorcycle, which was alleged to have been dashed by the offending motorcycle driven by respondent no.1. Claimants with a view to establish involvement of the insured vehicle

relied upon police investigation papers. They do not have personal knowledge as to the accident. Respondent nos.1 and 2 i.e. owner and rider of the motorcycle filed common written statement and indirectly admitted involvement of the insured vehicle and accident, but submitted that vehicle is insured with respondent no.3 and liability to pay the compensation would be on insurer. Perusal of the written statement of appellant/insurer shows that large number of general defences are taken. In paragraph nos.40 to 42 it is stated that possibility of false implication of the vehicle in order to grab compensation cannot be ruled out and witnesses referred in the charge-sheet are interested. Hence, their evidence is suspicious. Apparently, there is no pleadings as to collusion between claimants and respondent nos.1 and 2 so as to falsely implicate the vehicle.

7. The claimants in order to establish involvement of the vehicle relied upon evidence of Bibhishan Madhukar Kanade. His police statement was recorded on 8.3.2021, wherein he states that on 24.2.2021 he went to Mahzhari Fata. He saw that motorcycle of the deceased was dashed by the motorcycle bearing registration no.MH-23/AP-1137 from rear

side. Eventually, Babasaheb fell from motorcycle and suffered head injury. He took Babasaheb in his auto-rickshaw to Civil Hospital, Beed with assistance of Sugriv Landage and other persons. He gave a call to relative of Babasaheb from his mobile number. He filed affidavit of same content before the Tribunal. During cross examination, he admits that he did not report incident to the police or did not call ambulance. Except, this nothing suspicious could be elucidated from his cross examination. Claimants have further relied upon evidence of Ashok Sonwane, I.O., who stated that on the basis of evidence of eye witness, he filed charge-sheet. In his cross examination, it is suggested that charge-sheet is filed on the basis of false statement of witnesses. He admits that except statement of eye witness, he did not collect any other evidence to confirm the accident and denied that collusive charge-sheet is filed.

8. Apparently, copy of the charge-sheet is placed at Exhibit-30 shows statements of three eye witnesses are recorded by the I.O. One of them is PW 2 Bibhishan. It is also a matter of record that there is delay of more than nine days in reporting accident. Involvement of insured vehicle is surfaced after 11 to 12 days from the date of accident. However, it is

trite that delay in lodging FIR itself cannot be a ground to dislodge the claim. There can be multiple reasons for such delay. When person suffers accidental injuries and put under medical supervision, his relative would concentrate on providing best facilities and attendance to him in order to secure early recovery or in given case to save life. Therefore, mere delay in lodging the FIR may not constitute good defence if other attending circumstances are sufficient to prove accident involving vehicle. In the present case, MLC was forwarded by the Hospital to police station sometimes on 3.3.2021. Copy of which is placed at Exhibit 31, it records that Babasaheb had suffered accidental injuries on his head and shoulder. MLC record of Civil Hospital is not available. Fact remains that, on 6.3.2021 upon death of Babasaheb immediately FIR is lodged against the unknown vehicle and within two days thereafter statement of eye witnesses are recorded depicting involvement of the insured vehicle.

9. The Supreme Court of India in case of **Bimla Devi and others Vs. Himachal Road Transport Corporation and others reported in (2009) 13 SCC 530**, states that claimant is expected to prove involvement of the vehicle concerned on

preponderance of probability and not beyond doubt. Similar view has been expressed in case of **Sajeena Ikhbal and others Vs. Mini Babu George and others reported in (2024) SCC online SC 2883.**

10. The Supreme Court observed that, in the matter of road accident, preponderance of probability is a rule of evidence and claimants are not expected to to prove the factum of accident by leading evidence by giving strict proof of accident caused by particular vehicle in a particular manner. In case of **Mathew Alexander Vs. Mohammed Shafi reported in** 2023 (13) SCC 510, the Supreme Court observed in paragraph no.12 as under :-

> "12. A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident."

11. Recently, in a case of **ICICI Lombard General Insurance Company Ltd., Vs. Rajani Sahoo and Others reported in 2025 SCC Online SC 8** the Hon'ble Supreme Court considered exposition of law on same issue referring to various earlier judgments and held that if police record is available

before the Tribunal, taking note of the Act, it cannot be said that looking into such documents for the aforesaid purpose is impermissible or inadmissible.

12. In the present case, appellant has not raised plea that claimants connived with respondent nos.1 and 2 and falsely implicated insured vehicle. Evidence of eye witness alongwith other police papers shows that claimants have discharged their initial burden to prove the accident involving insured vehicle. The respondent nos.1 and 2 i.e. owner and driver of the insured vehicle have admitted involvement of the insured vehicle in the accident. Plea of non-involvement taken by the appellant-insurer does not find support. This Court while sitting in appellate jurisdiction may re-appreciate the evidence however, would not replace opinion of the Tribunal, which is based on preponderance of probability.

13. In the result, no case is made out to interfere in the judgment and award passed by the Tribunal. Hence, First Appeal being sans merit, **dismissed**.

14. The amount deposited by Appellant-Insurer be disbursed to the claimants. Pending civil applications, if any, also stand **disposed of.**

(S. G. CHAPALGAONKAR)
Judge.

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