



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 FIRST APPEAL NO. 3879 OF 2023

CHHAYA GORAKH CHAVAN AND OTHERS
VERSUS
SANTOSH SAINATH KANHERE AND OTHERS

Ms. Poonam Bodkhe-Patil, Advocate for the Appellants
Mr. Shrikant Sali h/f Mr. N. S. Ghanekar, Advocate for Respondent Nos.1
and 2.
Mr. M. R. Deshmukh, Advocate for Respondent No.3.

CORAM : R. M. JOSHI, J.

DATE : 22nd AUGUST, 2025

P.C. :-

1. This Appeal under Section 173 of the Motor Vehicles Act takes exception to the judgment and award dated 03/08/2022 passed by the Motor Accident Claim Tribunal, Aurangabad in MACP No. 748/2018, whereby the claim petition came to be dismissed for failure on the part of the claimants to prove that the accident in question has occurred due to the negligent driving of the of motor vehicle bearing registration No. MH 20 EJ 0597 by its driver.

2. By consent of both sides, heard finally at the stage of admission.

3. Parties are referred to as their nomenclature in the original proceedings for the sake of convenience.

4. Claimants filed claim for seeking compensation in respect of death of deceased Gorakh Chavan being widow, children and mother of the deceased. According to the claimants on 12/07/2018 deceased along with his niece, Pradnya was proceeding on motorcycle bearing No. MH CJ 9272 from Baba Petrol Pump towards village Khirdi. It is claimed that when the motorcycle reached near Tarangan of village Mitmita at Aurangabad Nashik Highway on 3.40 p.m a tractor bearing No. MH 20 EJ 0597 driven by Respondent No.1 came in speed and negligent manner and gave dash to the motorcycle of the deceased. Due to which deceased and pillion rider sustained serious injuries and were shifted to GMCS, Auranabad. Gorakh was declared dead. Pillion rider Pradnya lodged Crime No. 153/2018 registered the offence against the driver of the tractor bearing No. MH 20 AY 7961 and trolley No. MH 20 AS 1961. On the next date i.e. on 13/07/2018 she made supplementary statement stating that accident has occurred not by the said tractor and trolley but due to involvement of tractor bearing No. MH 20 EJ 0597. Claimants raised other pleadings with regard to the compensation entitled by them.

5. Owner and Driver opposed claim. Insurer filed written statement denying the contention of the claimants. It is specifically contended therein that, the tractor bearing No. MH 20 EJ 0597 is not involved in the accident and the said vehicle has been shown to be

involved therein in collusion with Respondent Nos.1 and 2 with the aid of the Investigating Agency. It is alleged that police has falsely implicated the tractor bearing No. MH 20 EJ 0597 in order to extract the compensation from the insurance company.

6. On the basis of these pleadings the Tribunal framed issues.

"1. Whether due to rash and negligent driving of the motor vehicle bearing registration No. MH-20-EJ-0597 by the respondent No. 1 the accident occurred and as a consequences thereof, deceased Gorakh s/o Shankar Chavan died ?

2. Whether the claimants are entitled to get compensation? If yes, what should be the quantum ?

3. Who is liable to pay compensation?"

7. Parties led evidence. Learned Tribunal deciding the issue No.1 in negative and dismissed the claim petition. Being aggrieved by the same, present Appeal.

8. Learned Counsel for the Appellants submits that the Tribunal has committed error in dismissing the claim on the basis of variance in the statement made by the pillion rider while recording the first information report. It is her submission that the pillion rider has also sustained injuries in the said accident and therefore, there is possibility of she committing mistake in giving incorrect number of the motorcycle vehicle which is involved in the accident. By placing of the judgment of the Hon'ble Supreme Court in case of ***Kusum Lata and Ors. V. Satbir and Ors., AIR 2011 SC 1234***, it is contended in such situation the claim

cannot be rejected.

9. Learned Counsel for the Insurer supported the impugned order by contending that this is not a case wherein any mistake has been committed by the first informant in giving the incorrect number of the vehicle involved in the accident. It is his submission that though it is possible that the number of the vehicle is mentioned by mistake. However, it is not probable to say that the vehicle itself is changed. It is submitted that a tractor without trolley cannot be confused with tractor with trolley. It is his submission that the whole intention behind changing the said number of vehicle is to extract the compensation from the insurance company unlawfully. It is specifically alleged that with the help of police, the involvement of the vehicle is also falsely shown. It is his submission that on such false claim, the compensation cannot be awarded.

10. There is possibility that an injured witness may not be in a position to give the correct number of vehicle and such mistake can be corrected by making a supplementary statement. It is however beyond comprehension that the vehicle itself is changed. Even to some extent, one can give the benefit of doubt in respect of any person committing error in mentioning the model of any vehicle. However, it is not possible to accept that the tractor without trolley can be mistaken with the tractor with trolley, as there could be no such confusion in this regard.

Pertinently, the first informant had given not only number of tractor but also reregistration of the trolley while lodging the report to the police immediately.

11. In this backdrop when there is specific case made out in the written statement by the Insurer that this is a case of false involvement of the vehicle in order to extract compensation from the insurance company needs to be considered on the basis of material evidence placed on record.

12. No doubt in appropriate and genuine cases, the claimants are entitled to receive compensation. However, when a case is made out about false involvement of any vehicle being shown in the accident, no claim can be granted.

13. Though the pillion rider Pradnya claims on the next date of lodging of the report that there is no involvement of the tractor and trolley registration number sought which are given in the previous date. She, however, does not claim any such information to her own knowledge. Pertinently, as per the case of the Investigating Agency the name of the driver of the concerned tractor was revealed on 21/02/2019 on the basis of statement of a witness, he came to be arrested much prior thereto i.e. on 15/07/2018. Apart from this when the said tractor was seized by the police, the seizure panchnama was

prepared. The seizure panchnama indicating the condition of the tractor would have been conclusive evidence to hold its involvement in the accident.

14. Perusal of the evidence of the Investigating Officer shows that the said tractor was shown as seized and was immediately released by the police. Admittedly, there is no seizure panchnama on record which would have revealed the condition of the tractor at the time of its seizure. Even if it is accepted that any mistake was committed in giving the number of vehicle, the involvement of the vehicle could have been ascertain from the panchnama carried out by the police. Moreover, from the cross- examination of the Investigating Officer it is revealed that even no investigation was made with regard to the existence of the tractor and trolley mentioned in the first information report. He failed to inquire into source of information in respect of the involvement of the tractor bearing registration No. MH 20 EJ 0597. All these facts brought on record, supports the theory of false involvement of vehicle in question.

15. As far as evidence of claimant is concerned, claimant No.1 has admitted to have not witness the occurrence of the accident and having no knowledge about the involvement of the vehicle therein. With a specific plea has been raised by the Insurer with regard to the false implication of the tractor in question on the ground that the actual

tractor and trolley involved in the accident were not insured. When such specific plea was raised, it was open for the claimant to lead evidence in order to show that the said tractor and trolley mentioned earlier were insured in order to challenge the contention of the Insurer. No such attempt is made by the claimant to rebut the said contention.

16. In case of *Kusum Lata and Ors. V. Satbir and Ors.*, (supra) the Hon'ble Supreme Court considering the inability of the informant to note the registration number of vehicle and it was held that the same is not fatal to the case of the claimant. In the instant case, however, not only the number is sought to be changed, however, the nature of vehicle by itself is changed. Even if it is accepted that the pillion rider Pradnya, also met with injuries, it is not possible to accept that she would describe vehicle to be a tractor with trolley when subsequently she claimed that it is not with trolley but only tractor. Such mistake in noticing the vehicle is improbable. In respectful view of this Court the said judgment does not help the Appellants in any manner to substantiate case.

17. Once a conclusion is drawn on the basis of evidence on record about false involvement of vehicle in question, the claim petition can not be decided on sympathy. Hence, in the facts and circumstances of the case and having regard to evidence brought on record, the only conclusion which could be drawn is that, the claim against the Insurer is

not genuine and hence, this Court finds no reason to cause interference in the order impugned. Hence, Appeal stands dismissed.

(R. M. JOSHI, J.)

ssp