

(2013) 10 GUJ CK 0072
In the Gujarat High Court

Case No : First Appeal No's. 5357 and 5358 of 2007

Dahyabhai Somabhai Patel

APPELLANT

Vs

Ashwinbhai Ishwarbhai Ptel and Others

RESPONDENT

Date of Decision : 18-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0072

Hon'ble Judges : M.D. Shah, J

Bench : Single Bench

Advocate : S.P. Majmudar, No. 1-1.2, for the Appellant; Shailesh C. Sharma, Advocate for the Defendant No. 1, Ms. Amee Yajnik, Advocate for the Defendant No. 3 and Rule Served for the Defendant No. 2, 4-6, for the Respondent

Final Decision : Dismissed

Judgement

M.D. Shah, J.—By this appeals, the appellants herein-original claimants have challenged the judgment and award dated 26.12.2006 passed by the learned M.A.C.T. (Main), Anand in M.A.C.P. No. 834 of 2006 and M.A.C.P. No. 835 of 2006. That on 25.12.1991, Ghanshaymbhai Patel was going on motor cycle as pillion rider and said motorcycle was driven by original opponent No. 1. They were going from Nadiad to Mahelav and when they reached near temple of Khodiyar Mata, Nr. Piplata, opponent No. 1 was driving his motorcycle in rash and excessive speed and hence, he lost control over the motorcycle and as a result dashed with pedestrian and accident took place. In the accident pillion rider Ghanshyambhai and pedestrian Piyushbhai suffered injuries and hence, both were admitted in Nadiad Civil hospital, where they succumbed to the injuries. Therefore, claim petitions were filed in respect of accidental death of Ghanshyambhai and Piyushbhai. After considering oral and documentary evidence on record, learned Tribunal by judgment dated 26.12.2006 dismissed both the claim petitions. Against the said award, original claimants have preferred this appeals.

2. It is submitted by learned advocate for the appellants herein that Tribunal has

not properly considered and appreciated the evidence on record. It is further submitted that considering deposition of the witness more particularly, Jayeshbhai and Viliinbhai, brother of deceased Piyushbhai, it appears that Piyushbhai was walking on the road and motorcycle dashed with the Piyushbhai and thereafter dashed with tree. The Tribunal has committed error in not relying on said witnesses. Therefore, it is requested to allow the appeals.

3. This Court has gone through the judgment and award dated 26.12.2006 passed by the learned Tribunal together with oral as well as documentary evidence on record.

4. It is not in dispute that in the accident, Ghanshyambhai and Piyushbhai died. At the time on accident, Ghanshyambhai was only 23 years old and Piyushbhai was 23 years old. It is observed by the Tribunal that applicant No. 3 of M.A.C.P. No. 834 of 2006 has submitted affidavit at Exh. 57 and was cross examined and it reveals that applicant had not witnessed the accident. Thereafter the applicants have examined Jayeshbhai Patel, wherein he deposed that when he was walking alongwith Piyushbhai near the read, at that time, opponent No. 1 came by driving his motorcycle GJ-7-791 in rash and negligent manner and dashed from behind and accident occurred. If we peruse the complaint it is specifically narrated that scooter dashed with the tree. Deceased Piyushbhai and injured person were admitted in Civil Hospital, Nadiad. Jayeshbhai was also admitted in the civil hospital, Nadiad and so his statement must have been recorded by police. But in his deposition before the Tribunal, he has stated that he is not aware about the complaint lodged by the Doctor and nor his statement is recorded by the police nor he himself informed regarding accident before the police. Therefore, this evidence does not inspire confidence. It is further observed by the Tribunal that on perusing FIR at Exh. 88, same was lodged by doctor of Civil Hospital, Nadiad. On perusing panchanama at Exh. 31, it appears that motorcycle No. GJ-7-B-791 was lying at the place of accident, which reveals that motor cycle dashed with the mango tree. Therefore, the appellants have failed to prove the involvement of vehicle. The appellants are not in a position to trace the real number of the offending vehicle because doctor of the hospital has given telephonic vardhi to the police station without mentioning number of vehicle involved in the accident. Moreover, in the present case there are two different numbers of offending vehicles. What was the exact number of offending vehicle is to be proved by the appellants by providing cogent and documentary evidence, which the appellants have failed to prove. It is also pertinent to note that on perusing affidavit of applicant at Exh. 57 and cross examination, it reveals that applicants were not aware of the number of the vehicle involved in the accident as well as the manner in which the accident took place. It is also required to be noted that alleged number of vehicle has been informed to the police after 15 days.

5. Considering above facts and circumstances, this Court is in agreement with the findings arrived by the Tribunal and no interference is called for by this Court

in the said findings. In view of above, the appeals fails and are dismissed. Office is directed to send the Record & Proceedings to the learned Tribunal.