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**(2017) 01 BOM CK 0063**  
**In the Bombay High Court**  
**Case No : First Appeal No. 272 of 2006**

Jyoti

APPELLANT

Vs

Shrawan Wamanrao Umathe

RESPONDENT

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**Date of Decision :** 24-01-2017

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166, Section 173

**Citation :** (2017) 1 ACC 907

**Hon'ble Judges :** A.S.Chandurkar, J.

**Bench :** Single Bench

**Advocate :** Shri Asghar Hussain, Advocate, for the Appellant; Shri B.B. Raipure, Advocate, for the Respondent No. 2

**Final Decision :** Dismissed

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## Judgement

A.S. Chandurkar, J.—This appeal filed under Section 173 of the Motor Vehicles Act, 1988 (for short, the said Act) takes exception to the judgment of the Motor Accident Claims Tribunal, Nagpur dated 30/11/2005 in Claim Petition No.204/1994 whereby said claim petition has been dismissed.

2. It is the case of the appellants that the appellant No.1 was married with one Rajendra Gupta. The appellant No.2 was the daughter born from said wedlock. On 01/03/1993 said Rajendra was travelling in a jeep. The same was driven in a rash and negligent manner as a result of which it dashed a tree causing fatal injuries to Rajendra. On that basis, claim for compensation came to be made against the owner and insurer of the jeep. The respondent No.2 denied the claim as made and took the stand that said Rajendra had not met with any accident and that he was alive even on 12/09/1997. On said date the appellant No.1 had lodged report with Sadar police station in respect of a theft committed at her house. In that report reference was made to said Rajendra as being alive. After the parties led evidence, the learned Member of the Claims Tribunal held that the death of Rajendra in the accident dated 01/03/1993 was not proved. Hence the claim petition came to be dismissed.

3. Shri Asghar Hussain, the learned counsel for the appellants submitted that from the material on record it was clear that Rajendra had died on account of injuries suffered in the accident. He referred to the evidence of the priest at Exhibit-40 as well as the witness examined below Exhibit-42 who had maintained the burial register which indicated that after the death of Rajendra he had been buried on 03/03/1993. It was submitted that there was no reason whatsoever for the appellants to make a false claim for seeking compensation. The First Information Report with regard to the incident of theft had not been duly proved. Similarly the house in question was insured with the Oriental Insurance Company while the jeep in question was insured with respondent No.2 National Insurance Company Ltd. The report of the Investigator was not liable to be relied upon and therefore by not considering the entire evidence in its proper perspective, the claim petition had been wrongly dismissed. He sought grant of appropriate compensation.

4. Shri B. B. Raipure, the learned counsel for respondent No.2 supported the impugned judgment. It was submitted that on the basis of the report of the Investigator, the written statement had been amended and a specific stand with regard to the factum of existence of Rajendra on 12/09/1997 had been taken. The report of theft was made by appellant No.1 in which she had stated that her husband was alive. The marital status of appellant No.1 was also doubtful as the marriage certificate had not been proved. The driver of the jeep examined by the appellants had not identified Rajendra Gupta. He therefore submitted that considering all this material on record it was clear that a false claim had been filed and the same was rightly dismissed by the Claims Tribunal.

5. I have heard the respective counsel for the parties at length and with their assistance, I have perused the records of the case. The following points arise for determination :

(i) Whether the appellants prove that Rajendra died in the motor accident dated 01/03/1993 ?

(ii) If point No.1 is answered in the affirmative, whether the appellants are entitled for compensation and if yes, then to what extent ?

6. In the claim petition filed by the appellants under Section 166 of the said Act, it has been stated that on 01/03/1993 at about 1 pm when Rajendra Gupta was travelling in a jeep, the same overturned resulting in an accident in which said Rajendra Gupta sustained fatal injuries. Thereafter the basis for claiming compensation has been pleaded. In the written statement filed by the Insurance Company, the claim for compensation was opposed on the ground that the source of income of the deceased could not be believed and the same was doubtful. Thereafter the written statement came to be amended and it was pleaded that said Rajendra Gupta was still alive and was residing along with the appellants. Reference was made to the First Information Report dated 12/09/1997 along with the statements of appellant No.1 and Rajendra Gupta in

that regard. This was the specific defence set up by the Insurance Company.

The appellants amended their pleadings and disputed the aforesaid facts. Reference was made to various documents indicating the death of Rajendra Gupta in the motor accident. On all these pleadings, the claim for compensation was contested.

7. The appellant No.1 examined herself who admitted that she had not witnessed the accident in question. She also admitted that she had personally not gone to the hospital after the accident. She admitted that in 1997 there was a theft at her house and that she had filed a claim in the office of Oriental Insurance Company for the loss of stolen property. She denied the suggestion that she was not married with Rajendra Gupta. Another witness examined was the priest below Exhibit-40. This witness stated that Rajendra Gupta was working as a priest along with him and that he was present when the body of Rajendra Gupta was buried on 03/03/1993. The Secretary of Cemetery Society Vijaykumar Sarathi was examined below Exhibit-42 and he referred to the certificate as well as extract of burial register and stated that Rajendra Gupta was buried on 03/03/1993. He further stated that he had no personal knowledge about said burial. Another witness Vipin Bower was examined to prove the marriage of appellant No.1 did not identify the signature of his father on the marriage certificate. These were the witnesses examined in support of the claim.

The Insurance Company examined one S. M. Dhingra at Exhibit-79 who was an Investigator at the National Insurance Company. He stated that while making inquiry he had noticed that a theft case pertaining to very same parties in which the Oriental Insurance Company was the insurer was investigated by him. During the course of said investigation he had recorded the statement of appellant No.1 in which she had stated that her husband was alive in the year 1997. He also examined the police papers in that regard and therefore stated that the claim that Rajendra Gupta had died in an accident was false. In his cross examination he referred to another report of Investigator Shri B. B. Yadu. The Administrative Officer of the respondent No.2 Insurance Company was also examined below Exhibit-96. The Police Sub-Inspector Shankarraoji Parwekar examined below Exhibit-103 stated that he had recorded the statement of Rajendra Gupta on 12/09/1997 in connection with Crime No.721/1997. The said statement is at Exhibit-104.

The driver of the jeep was examined below Exhibit-112 and he stated that he was not knowing the person who had died in the accident. This was the evidence led by the Insurance Company.

8. From the aforesaid material on record, it can be seen that though the accident in question had occurred on 01/01/1993 the aspect which is disputed is the death of Rajendra Gupta in said accident. The driver of the vehicle was not acquainted with Rajendra Gupta. The marital status of appellant No.1 and her case that she was married with Rajendra Gupta has not been duly proved in view

of the fact that witness No.4 examined by the appellants could not identify signature of the father on the marriage certificate which indicted the marriage of the parties. Perusal of Exhibit-97 which is First Information Report in Crime No.721/1997 indicates that there was a theft at the place of the appellants on 11/09/1997. The address mentioned therein is the same address as given in the cause title of the claim petition. Lodging of this First Information Report is admitted by appellant No.1. Exhibit-104 is the statement of Rajendra recorded by the Police Sub-Inspector on 12/09/1997. Thereafter as per the report of the Investigator at Exhibit-93, the claim for compensation on account of death of Rajendra Gupta was found to be false as in the year 1997 it was reported that Rajendra Gupta was alive. This evidence on record therefore indicates that after the theft took place at the house of the appellants, the First Information Report was lodged in which the appellant No.1 recorded her statement that her husband was alive and on the next day his statement was also recorded. The aspect of recording the First Information Report and the statement of Rajendra Gupta thereafter are the acts done in normal course of business giving rise to presumption under Section 114 of the Evidence Act and therefore the same do not appear to be improbable. The investigation into the theft started on account of lodging of the First Information Report by the appellant No.1 herself.

9. Though the evidence of Novel Naik at Exhibit-40 indicates that he had seen the dead body of Rajendra Gupta for being buried, that by itself would not be sufficient to wipe out the other material placed on record by the Insurance Company. Except this piece of evidence there is nothing on record to indicate that Rajendra Gupta died as a result of a motor vehicle accident on 01/03/1993. On the contrary, there is overwhelming evidence to indicate the fact that Rajendra Gupta was alive even on 12/09/1997 when his statement came to be recorded by the Investigating Officer. This evidence is not such that can be ignored while considering the claim for compensation. On the touchstone of preponderance of probability, the weight of this evidence is much more than the evidence of the witness at Exhibit-40 who is stated to have witnessed the burial of Rajendra Gupta. The Claims Tribunal therefore has rightly found that the claim for compensation was liable to be dismissed as the marital status of the appellant No.1 was not established and the fact that the Insurance Company had proved that Rajendra Gupta was alive at least on 12/09/1997 while the accident resulting in death of Rajendra Gupta was alleged to have taken place on 01/03/1993. The points as framed stand answered accordingly.

10. In view of aforesaid discussion, I do not find that any case has been made out to interfere with the judgment of the Claims Tribunal dated 30/11/2005 dismissing the claim petition. The said judgment stands confirmed. The first appeal is dismissed. No order as to costs.