

(2015) 04 BOM CK 0252
In the Bombay High Court
Case No : First Appeal No. 581 of 2011

Krishnaji

APPELLANT

Vs

Umesh Rambhau Shrirame and Others

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 173, 2(28), 2(44)

Citation : (2015) 5 ALLMR 708 : (2015) 6 MhLj 334

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

Bench : Single Bench

Advocate : M.P. Kariya, for the Appellant; N.S. Jog, Advocates for the Respondent

Final Decision : Dismissed

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 dated 19.01.2011 passed by the Motor Accident Claims Tribunal, Wardha allowing the application filed by the respondent No. 1 under Section 163A of the said Act and awarding him compensation.

2. According to the respondent No. 1, he was working as an agricultural labourer and was engaged by the appellant for harvesting Soyabean on a thresher machine. On 08.11.2006 when he was engaged in said harvesting work on the thresher machine which was attached to a tractor belonging to the appellant, an accident took place resulting injuries to his right hand which was required to be amputated subsequently. According to the respondent No. 1, he was entitled for grant of compensation under the provisions of Section 163A of the said Act and hence initiated proceedings in that regard.

3. The appellant filed his Written Statement vide Ex. 17 and took the stand that the tractor in question had been purchased on 28.12.2006 from the respondent No. 3. It was pleaded that the alleged accident was not an accident involving

motor vehicle and hence the appellant was not liable to satisfy the claim. The respondent No. 3 also filed its written statement stating that the tractor in question was owned by the appellant and it was in his possession since prior to the accident.

4. The parties led evidence before the Tribunal and by judgment dated 19.01.2011 the claim petition came to be allowed holding the present appellant and respondent No. 2 to be liable jointly and severally to satisfy the claim. An amount of Rs. 2,78,600/- was held to be payable as the amount of compensation.

5. Shri M.P. Kariya, learned counsel appearing for the appellant raised two-fold contentions. According to him the accident in which the respondent No. 1 suffered injuries as his right hand was partly crushed in the thresher could not be termed to be a motor vehicle accident. It was submitted that the thresher was not a motor vehicle and hence no compensation could be granted under provisions of said Act for the accident. In that regard he placed reliance upon the judgment of the Madhya Pradesh High Court reported in *Kishore Gayre Vs. Shahid Shah and Another*, (2011) ILR (MP) 972 : (2011) 1 MPHT 196 : (2011) 2 MPLJ 201 . It was also submitted that the thresher was in a stationary position and hence it did not answer the definition of the expression "motor vehicle" under Section 2(28) of the said Act.

He then submitted that the spot panchanama on the basis of which the liability came to be fastened on the appellant had not been duly proved. According to him, it was necessary to have examined the person who had written the panchanama and contents of the panchanama were required to be proved independently. In that regard he placed reliance on judgment of the Division Bench in *Gope Laxmichand Badlani Vs. Oriental Bank of Commerce, New Delhi and Others*, (2002) 1 ALLMR 429 : (2002) 1 BOMLR 464 : (2002) 93 FLR 182 : (2002) 2 MhLj 755 and *Smt. Ushakiran Shridhar Shinde and Others Vs. Arunkumar Kisaanlal Kalal and Others*, (2001) 4 ALLMR 21 : (2001) 4 BomCR 200 : (2001) 3 BOMLR 414 . He, therefore, submitted that the Tribunal erred in granting compensation in proceedings under Section 163A of the said Act.

6. Smt. N. Jog, learned counsel appearing for respondent No. 1 supported the impugned judgment. She relied upon the provisions of Section 2(28) of the said Act and submitted that as the thresher was attached to the tractor and was mechanically propelled, it was a motor vehicle for purpose of said Act. She submitted that the thresher could not be used without the tractor and as the appellant was the owner of the tractor he was held liable along with respondent No. 2 who had operated the same. In that regard she placed reliance upon the judgment of the Supreme Court in *Chairman, Rajasthan State Road Transport Corporation and Others Vs. Smt. Santosh and Others*, (2013) 2 ACC 501 : (2013) ACJ 1906 : (2013) 6 AD 140 : AIR 2013 SC 2150 : (2013) 7 JT 412 : (2013) 172 PLR 76 : (2013) 7 SCALE 230 : (2013) 7 SCC 94 : (2013) AIRSCW 2791 and judgment of the M.P. High Court in *United India Insurance Co. Ltd. Vs. Rajendra and others*, (2011) ACJ 782 . She then submitted that the spot

panchanama was not the sole piece of evidence on which the Tribunal had relied. There was other evidence available on record and considering the entire evidence the liability of the appellant and respondent No. 2 had been fixed. She, therefore, submitted that there was no reason to interfere with the present appeal.

Shri M.M. Agnihotri, learned counsel appearing for respondent No. 3 supported the impugned judgment.

7. The following points arise for consideration:

1. Whether the accident in question has arisen out of use of a motor vehicle?

2. Whether there is any reason to interfere with the impugned judgment?

8. I have carefully considered the respective submissions and I have gone through the records of the case. In support of his claim, the respondent No. 1 had examined himself vide Ex. 33. He stated that while harvesting the soyabean with the help of thresher machine which was attached to the tractor, the accident occurred as the machine was suddenly started by the tractor driver. He placed on record various documents including the accident summary, spot panchanama and the disability certificate.

9. The claimant also examined the Police Officer vide Ex. 30 who had inquired into the accident. He stated that after making necessary enquiries it was found that the tractor belonged to the appellant. He also stated that statement of witnesses were recorded in respect of said accident. Ex. 35 is the spot panchanama dated 13.11.2006 and Ex. 38 is the disability certificate. The claimant also examined the Clerk with the Regional Transport Office who produced documents regarding aforesaid tractor. The appellant examined himself vide Ex. 61 and stated that he had purchased the tractor on 29.12.2006. He stated that tractor was not involved in the accident. The son of appellant No. 1 was examined vide Ex. 64 who supported the case of the appellant. The respondent No. 3 was the proprietor of the tractor agency and he stated that on 24.09.2006 the tractor was delivered to the appellant. He also stated that part consideration was duly paid at that point of time.

10. The evidence on record therefore indicates that when the respondent No. 1 was doing work of harvesting the Soyabean, his right hand was caught in the thresher and he suffered injuries on said count. The thresher was being operated through the tractor. The question, therefore, to be considered is whether a thresher answers the definition of a motor vehicle as defined by provisions of Section 2(28) of the said Act. Section 2(28) reads thus:

"(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted

with engine capacity of not exceeding twenty five cubic centimetres."

From said definition it is clear that any mechanically propelled vehicle adapted for use on road to which the power of propulsion is transmitted from an external source is treated as a motor vehicle.

Section 2(44) of the said Act defines "tractor" to mean a motor vehicle which is not itself constructed to carry any load other than equipment used for the purpose of propulsion.

11. Thus, considering the provisions of Section 2(28) along with Section 2(44) of the said Act, it is clear that a thresher to which the power of propulsion is transmitted from an external source, namely a tractor would be a motor vehicle for the purposes of the said Act.

12. In *United India Insurance Company Ltd. (supra)* the Madhya Pradesh High Court after considering a similar situation in respect of an accident arising from the use of a thresher that was being run with the aid of a tractor held that the accident in question was on account of use of a motor vehicle. Similar view has been taken by the Rajasthan High Court in *National Insurance Company (supra)*. In *United India Insurance Co. Ltd. Vs. Anandi Devi and others* 2010 ACJ 1002 said view has been reiterated by the Madhya Pradesh High Court.

13. In view of aforesaid decisions and the fact that the evidence on record indicates that power of propulsion was being transmitted from the tractor to the thresher during use of which the accident took place, it is held that the accident in which respondent No. 1 received injuries on his right hand was a result of an accident arising out of use of a motor vehicle. Hence, point No. 1 is answered by holding that the accident in question had arisen out of use of a motor vehicle.

14. According to learned counsel for the appellant as the spot panchanama had not been duly proved and no witness was examined to depose about its contents, same could not have been relied upon. In *Ushakiran Shridhar Shinde (supra)* learned Single Judge has held that if a party wanted to rely upon the spot panchanama, it was necessary to examine a proper witness to prove its contents. In the present case however, the claim for compensation by respondent No. 1 is not based only on the contents of the panchanama at Ex. 35. There is other evidence led by the respondent No. 1 in support of his claim. It is well settled that while considering the claim for grant of compensation under the said Act the evidence on record has to be considered on the basis of preponderance of probabilities. Considering the overall evidence available on record, even if the spot panchanama is excluded from the consideration, on the basis of other evidence available on record the claim of the respondent No. 1 can be sustained. It is after considering the entire evidence on record that the Claims Tribunal has held in favour of the respondent No. 1. Moreover, it is to be noted that the present proceedings have been filed under provisions of Section 163A of the said Act. The ratio of the decisions in *Ushakiran Shridhar Shinde (supra)* and *Gope Laxmichand Badlani (supra)* therefore cannot be made applicable to the facts of

the present case. There is therefore no reason whatsoever to interfere with the impugned judgment. Point No. 2 stands answered accordingly.

In view of aforesaid findings, the judgment of the Claims Tribunal stands confirmed and the appeal stands dismissed with no order as to costs.