
(2015) 04 BOM CK 0188
In the Bombay High Court
Case No : First Appeal No. 132 of 2012

Maria Graciano Gomes and Others	Vs	APPELLANT
Sitabai Ankush Gauns		RESPONDENT

Date of Decision : 18-04-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 04 BOM CK 0188

Hon'ble Judges : K.L. Wadane, J

Bench : Single Bench

Advocate : J.J. Mulgaonkar, for the Appellant; A. Mashelkar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.L. Wadane, J.

1. The present appeal is preferred by the appellants/original respondents against the judgment and award dated 5th May, 2012 passed by the Presiding Officer, Motor Accident Claims Tribunal, Panaji, ("Presiding Officer" for short) in Claim Petition No. 61/2010, by which the claim petition filed by the respondent/original claimant is partly allowed and the appellant no. 1/original respondent no. 2 is directed to pay sum of Rs. 97,650/-to the respondent/original claimant with 9% interest.

2. Parties are referred to as per their original status in the claim petition.

3. Brief facts giving rise to the present appeal may be stated as follows:-

The claimant has filed an application under the provisions of Section 166 of the Motor Vehicles Act ("the Act", for short) for the compensation on account of death of her husband Ankush Gauns. On 26.1.2009 at about 18.55 hours, Shri Ankush Tolyo Gauns alias Fatarpekar (since deceased) husband of claimant was returning from work. On that day he went to clean the cashew garden belonging

to Manguesh Canaconkar, behind the G.M.C. Hospital, Bambolim. At the relevant time, the deceased was proceeding towards his house at Curca, Ilhas. When he reached near the Military Workshop, Bambolim on the NH17 and while crossing the road one motorcycle bearing registration No. GA-08-H-6421 driven by the respondent no. 1 came from Panaji side in a fast speed and dashed against the deceased. Due to the dash, deceased Ankush fell down and was seriously injured due to which he died on the same day at 22.45 hours in GMC Hospital, Bambolim.

4. Claimant has two sons who are residing separately and they are not dependent on the deceased Ankush.

5. The accident occurred due to the rash and negligent driving of the motorcycle by the respondent no. 1. The respondent no. 2 is the owner of the motorcycle. Hence, both of them are jointly and severally liable to pay the compensation as claimed by the claimant.

6. The respondents no. 1 and 2 have filed their written statement and they have denied age, occupation and income of the deceased so also they have denied the nature of the injuries sustained to the deceased and they have specifically denied the rash and negligent driving of the respondent no. 1. It is their defence that the respondent no. 2 was the pillion rider on the motorcycle proceedings from Panaji to Nuvem. At the relevant time of the accident the deceased was trying to cross the road suddenly he dashed against the legs of the respondent no. 2 who was sitting on the motorcycle as a pillion rider. Due to the dash, the respondent no. 1 lost control over the motorcycle and fell down on the road. When both of them were trying to get up at that time one maruti Zen of gold Colour and Maruti 800 of white colour came at the spot and went over the deceased due to which he was dragged up to one metre towards Margao side. Therefore, the respondents have lastly prayed to dismiss the petition.

7. Considering the rival pleadings of the parties, the learned Presiding Officer has framed necessary issues.

8. To establish the claim of the claimant and the negligence on the part of the respondent no. 1, the claimant led oral evidence by submitting her affidavit at Exh. 13 and produced on record the medical certificate, inquest panchanama Death certificate, First Information Report in addition to that the claimant examined AW2 Babani Shetgaonkar, Investigating Officer who prepared the panchanama and the sketch of the scene of accident. AW3 Dr. Mandar Kantak, to prove the injuries and death. The postmortem report at Exh.28. AW4 Shamrao Chawan, PSI was examined. AW5 Gangu Shirodkar as an eye witness examined at Exh. 35. As against this, the respondent no. 2 filed her affidavit at Exh. 37. Considering the evidence adduced by both the sides, learned Presiding Officer has allowed the petition referred above.

9. Being aggrieved by the award/order the respondents have preferred this appeal mainly on the ground that there was negligence on the part of the deceased and accident was caused by some other vehicle coupled with other

usual grounds.

10. I have heard the arguments of Mr. J. Mulgaonkar, learned counsel appearing for the respondents and Mr. A. Mashelkar, learned counsel appearing for the claimant. Considering the evidence on record and arguments of both sides, following points arise for my determination:-

11. I have heard the arguments of Mr. Mulgaonkar, learned counsel appearing for the appellants/original respondents and Mr. Mashelkar, learned counsel for the respondent/original claimant. With their help, I have gone through the evidence on record and other relevant documents.

12. From the pleadings of the claimant, it appears that the accident occurred due to the negligence of the respondent no. 1 while driving the motorcycle, as against this it is case of the respondents that the deceased himself was negligent while crossing the road. He suddenly tried to cross the road in that attempt the deceased came in contact with the legs of the pillion rider, due to which the respondent no. 1 and deceased both fell down on the road, hence the accident occurred.

13. Looking to the oral evidence of the claimant she was not witnesses the accident. She has clearly admitted in cross examination that she had not seen the accident, therefore obviously oral evidence of the claimant is not sufficient to prove the negligence on the part of the respondent no. 1. Besides oral evidence of the claimant other oral evidence as well as documents are on record.

14. On scrutiny of the evidence of AW5 Mr. Gangu Shirodkar, at the relevant time he was riding his motorcade from Panaji to Curca at that time he noticed the respondent no. 1 overtaking him at a fast speed. On reaching near military workshop Bamboli he gave dash to the pedestrian who was crossing the road. He further stated that then he stopped his motorcycle, run towards the said Ankush who was seriously injured. The accident caused due to rash and negligent driving of the motorcycle rider. Looking to the oral evidence of this witness it appears that he is an independent eye witness to the accident. During the cross examination nothing in brought on record to disbelieve his version.

15. It is contended by the respondents that deceased suddenly was trying to cross the road, however, oral evidence coupled with the situation appearing at the spot of the incident (as can be seen from the contents of the spot panchanama with sketch) do not supports the defence taken by the respondents. Respondents no. 2 is the owner of the vehicle involved in the accident, therefore, she is interested in blaming the deceased, however looking to the situation of the spot of accident, I do not think that there was any negligence on the part of the deceased.

16. Admittedly the deceased was pedestrian and have almost crossed the road at that movement motorcycle gave dash to the deceased. Therefore no negligence could be attributed to the deceased. From the situation appearing in the sketch it

appears that after the dash motorcycle went further up to 7.60 mts which indicate high speed of the motorcycle. Mr. Mulgaonkar, learned counsel appearing for the respondents has pointed out location of the blood appearing on the sketch and has argued that this could not be possible due to dash of the motorcycle. According to Mr. Mulgaonkar, the deceased and the respondent no. 1 fell on the road at that movement two vehicles runs over body of the deceased and therefore, the deceased received multiple injuries i.e 21 injuries all over the body. According to Mr. Mulgaonkar, such injuries could not be possible due to the single impact given by two wheeler. The respondent no. 2 in her evidence has stated that at the time of the accident two vehicles i.e Zen and Maruti 800 went over the body of the deceased. However, during the cross examination the respondent no. 2 she has admitted that she do not know from where the other vehicles came at the spot being gold colour Maruti Zen and Maruti 800. This material admission given by the respondent no. 2 falsifies the story of the respondent as to involvement of other vehicles in the accident.

17. There is absolutely no evidence on record to show that some other vehicles were involved in the accident. There is no remote reference in any of the documents or in the evidence involving other vehicles in the accident.

18. By referring to the contents of the postmortem report Mr. Mulgaonkar has argued that the deceased had received in all 21 injuries all over the body which supports the case of the respondents that after the accident two vehicles run over the injured due to which he died. However, during the cross examination, Dr. Kantak, say that as follows "

These injuries would not be caused in case such pedestrian is run over by some light motor vehicle as there were no crushing injuries and no tyre imprints."

19. Thus looking to the evidence of Dr. kantak, I am of the opinion that there is no evidence to show involvement of other vehicles then the motorcycle owned by the respondent no. 2 and driven by the respondent no. 1.

20. Hence, points no. 1 and 2 are answered accordingly. On scrutiny of the evidence on record and the reasons recorded by the learned Presiding Officer, I am of the opinion that no infirmity, irregularity, illegality is pointed out by Mr. Mulgaonkar, so as to set aside the judgment and award passed by the learned Presiding Officer. Consequently there is no merit in the appeal. Therefore, the same is liable to be dismissed and accordingly, it is dismissed with no order as to costs.