
(2000) 02 BOM CK 0016
In the Bombay High Court

Mayabai and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 21-02-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 134
Penal Code, 1860 (IPC) — Section 304A

Citation : (2000) 1 ACC 599

Hon'ble Judges : P.S. Brahme, J;J.N. Patel, J

Bench : Division Bench

Judgement

J.N. Patel, J.—Rule. Heard forthwith by consent of the learned Counsel for the parties.

The petitioner No. 1 is the widow of deceased Narendra Ramaji Kokarde who is alleged to have met an accidental death, after having met with an accident near Bhole Petrol Pump, BHEL Office, Nagpur, on being hit by a motor vehicle bearing Registration No. MH31/H.1544 (Tata Mobile). Narendra Ramaji Kokarde was rushed to Sitabuldi Police Station, Nagpur, from where he was sent to the Government Medical College and Hospital, Nagpur, for necessary treatment. The Medical Officer at the Casualty Ward and the Surgeon on duty happened to examine him and, on diagnosis, found that the patient had abrasion on forehead and abrasion on right leg. No evidence of head injury was present, and they did not feel it necessary to admit him as an indoor-patient for treatment. Therefore, the police brought back the injured at Sitabuldi Police Station where he was lodged to take rest. Narendra Kokarde thereafter died in the Police Station itself.

2. The necessary inquest was made and the dead body of Narendra Kokarde was sent to the Government Medical College and Hospital, Nagpur, for postmortem examination. On the autopsy being conducted, the Medical Officer found in all 14 injuries on this body, which was recorded in Col. 17 of the post-mortem report, and are as under:

(1) Lacerated wound--right leg front middle $1/2 \times 1/4 \times$ muscle deep.

- (2) Abrasion--medial side of left knee joint 1" x 1/2" with black scab with contusion below it.
- (3) Abrasion--medial side right--middle--3/4" x 1/2" surrounded by contusion of size 3" x 2" brown in colour.
- (4) Abrasion--2" below right knee-transverse 2 1/2 x 1/4"--brownish.
- (5) Abrasion--right elbow--outer aspect 3/4" x 3/4"--brownish.
- (6) Abrasion--4" above right iliac crest in mid axillary line--2" x 1"--brownish.
- (7) Abrasion--Right shoulder tip--1" x 1/2"--brownish.
- (8) Abrasion--1" below right mastoid-1/2" x 1/2"--brownish.
- (9) Lacerated wound--2" above outer angle of left eye on forehead 3/4" x 1/4" x skin--deep, sealed with iodine gauze surrounded by contusion in area of 2" x 1"--brownish.
- (10) Abrasion--left flank--in posterior axillary line-2 1/2 x 3/4"--brownish.
- (11) Abrasion--left flank--in posterior axillary line-2 1/2" x 3/4"--brownish.
- (12) Abrasion--left medial malleolus 1/2" x 1/4" surrounded by contusion in area of 2" x 2"--brownish.
- (13) Abrasion--back of right knee--1" x W--brownish.
- (14) Abrasion--outer aspect of right buttock, lower quadrant--2" x 1"--brownish.

3. Insofar as the injuries relating to head are concerned, it was found that under scalp, hematoma was present in left parietal-occipital area, brownish colour - 4" x 3". As regards the brain, it was observed that Dura and Meninges were congested and intact and brain was congested, edematous. As regards thorax, it was found that there was fracture of ribs 4 to 6 on right side in anterior axillary line, pleura was congested; larynx, trachea and bronchi were intact. The doctor found all these injuries to be ante-mortem, and the opinion was reserved as the viscera was sent for analysis.

4. Considering all these circumstances, the petitioner felt that her husband Namdeorao Kokarde has died due to the negligence on the part of the Police Officers and the Medical Officers in providing proper treatment to him, and as her husband has died while he was in the custody of the police, she has prayed for grant of compensation in the sum of Rs. 7,00,000/- and for an enquiry through CBI and for taking appropriate action against the Police Officers and the Medical Officers.

5. In the course of hearing of this petition, it was brought to the notice of this Court that the State CID has conducted the investigation in the case and what transpired in the enquiry was that this was a case of death caused due to the rash and negligent driving arising out of the accident with Tata Mobile, and the

Police had registered offence under Sections 304A and 427 of the Indian Penal Code read with Sections 134 and 12 of the Motor Vehicles Act, vide Crime No. 740/98 on 20.12.1998.

6. The opinion of the Forensic Expert from the Government Medical College, Nagpur, was sought, in which it has been observed that all the 14 injuries were possible in vehicular accident. Taking into consideration the fact that the injured, who succumbed to his injuries, was taken to the Government Medical College and Hospital at Nagpur and was attended by the Medical Officers as well as the Surgeon who was on duty and they failed to take notice of all the injuries found on his person and the seriousness of those injuries. this Court prima facie finds that this may be a case of negligence and dereliction of duties on the part of the Medical Officers. The Medical Officers were impleaded as respondents and they filed their affidavits in reply. They have explained in what manner they have attended the deceased when he was brought to the hospital and have denied the fact that they were, in any manner, negligent in giving him treatment. The affidavits of the two Medical Officers and the subsequent finding regarded by the Panel of Doctors who conducted the post-mortem on the dead body of the deceased, only indicate that the Medical Officers have been casual in treating the deceased when he was taken in injured condition at Government Medical College and Hospital, Nagpur. The report of the Panel of Doctors, who conducted the post-mortem examination could detect as many as 14 injuries on the person of the deceased, which were ante-mortem and were surprised to note that how the Medical Officers could not note or detect it, when the injured was taken to them. We are satisfied that these injuries are not, in any manner, caused to the deceased after he was discharged from the Government Medical College and Hospital, Nagpur, and brought to the Police Station, as at that time, he was carried in a police vehicle and there was no occasion for the victim to have suffered such injuries. This we say so because a second opinion sought from the Panel of Doctors also confirmed this, that the injuries noticed in the post-mortem examination could be caused by the accident as suffered by the victim.

7. It is submitted on behalf of respondent No. 5, Dr. P.S. Dalu, that he was on duty only as a Casualty Medical Officer, and after clinical examination of the patient, he had referred him to the Resident Surgeon, and it was the responsibility of the Resident Surgeon to have taken a decision whether to admit the patient or not for further treatment. On the other hand, respondent No. 6, Dr. Ghotekar, who is the Resident Surgeon has come up with a case that unless the patient Would require scanning and surgical operation, it was not necessary for him to admit the patient.

8. If we accept the post-mortem report and the opinion of the Panel of Doctors, the only inference we are able to draw is that the Medical Officers have not performed their duty with the required diligence and proficiency, particularly when the patient is brought to the hospital with the history of accident. It is expected of the Medical Officers attending the patient, whether he is Casualty

Medical Officer or a Resident Surgeon to whom the patient was referred, to thoroughly examine him, so that they can positively come to the conclusion as to what type of injuries suffered by him and what treatment should be given to him. It is needless to say that in case of an accident, all pathological, medical and forensic tests should be conducted, such as X-ray examination, scanning and such other test depending upon the nature of injuries suffered by the victim. Nothing was done in the matter. In our considered opinion, if the Medical Officers would have done their duty properly, probably the victim could have been saved. We expect the respondent/ State to hold enquiry into the conduct of the two doctors who attended the patient and if they are found guilty of negligence and dereliction of duty, punish them in accordance with law.

9. We have already expressed that the victim did not meet his death due to custodial torture or while in custody, but having met with a vehicular accident. The question, whether he could have been saved or not, is debatable, and we are not, in any manner, examining this aspect of the case. It will be sufficient to observe that in future the doctors of Government Medical College and Hospital, Nagpur, and for that reason, of any hospital, whether it is run by Government or private authority, who are appointed to attend patient/s, should not leave it to guesswork and take chance with lives of persons brought to their hospitals.

10. Mr. Khan, learned Counsel appearing for the petitioners, submits that in view of the report filed by the State CID, the petitioners would seek remedy for claiming compensation by moving a proper application before the Motor Accident Claims Tribunal under the Motor Vehicles Act.

11. We do not find that any enquiry is required to be ordered by CBI. Our order be communicated to the Secretary, Public Health Department, Government of Maharashtra for necessary action.

12. The petition stands disposed of accordingly.