
(2015) 04 BOM CK 0118
In the Bombay High Court
Case No : First Appeal No. 63 of 2011

Meera Sidharth Kambli and Others	Vs	APPELLANT
Viraj Ekawade and Others		RESPONDENT

Date of Decision : 18-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 4
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 3 ACC 821

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 claimants against the judgment, order award dated 9.3.2011 passed by the Presiding Officer, Motor Accident Claims Tribunal, North Goa, Mapusa, ("Presiding Officer" for short) in Claim Petition No. 53/2009, by which the claim petition of the appellants is dismissed with no order as to costs. Hence, the present appeal.

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 summarised as follows:-

The claimants i.e widow, son and daughter of the deceased Sidharth Pandurang Kambli have filed an application under the provisions of Section 166 of the Motor Vehicles Act ("the Act" for short) claiming compensation of Rs. 12,00,000/- (Rupees Twelve Lakhs only) from the respondent nos. 1 to 3 being driver, owner and insurer of the matiz car bearing registration no.GA-01-R-1674.

4. It is contended by the claimants that on 1.6.2009 at about 13.10hours on

NH17a Goa, driver of the matiz car proceedings from Sanquelim to Margao in a rash and negligent manner and gave dash to the deceased as a result deceased sustained grievous injuries and thereafter resulted in death.

5. Claim petition is opposed by the respondent nos. 1 to 3 by filing their separate written statements. All the respondents have denied the age, occupation and income of the deceased. So also they have denied the fact of the accident itself. Rash and negligent driving on the part of the respondent no.1 was specifically denied.

6. To prove the claim of the claimants and the rash and negligent driving on the part of the respondent no.1, the claimant no.1 examined herself by filing affidavit at Exh. 26 and has produced copy of the FIR, complaint, panchanama, registration particulars of the car, insurance, registration certificate, inquest panchanama, postmortem report, death certificate, school leaving certificate, Exh. 27 to Exh.36 respectively.

7. The claimants have examined AW2 Dayanand Naik, the co-worker of the deceased to prove the monthly earning of the deceased, AW3 Dr. S. Dias Sapco to prove the postmortem report. As against these no evidence is led by the respondents.

8. Considering the pleadings of the parties, the learned Presiding officer framed three issues firstly relating to rash and negligent driving of the respondent no.1 causing death of the deceased, which is answered in the negative. Second relates to entitlement of the compensation which is answered in the affirmative and third is breach of terms and conditions of the policy which is answered in the negative.

9. The claimants have filed this appeal being aggrieved by the reasons recorded to the issue no.1. No appeal or cross objections are filed by the respondents against the findings of the Presiding Officer relating to issue nos. 2 and 3. Hence, findings to the issue nos. 2 and 3 became final. Hence, the only points to be determined in the present appeal is: Sr. No. POINTS FOR DETERMINATION FINDINGS 1) Whether the claimants have proved that accident which took place on 1.6.2009 due to the rash and negligent driving of the car bearing registration no. GA-08-R-1674 by the respondent no.1?.. Negative. 2) What Order?.. Appeal is dismissed.

10. I have heard the arguments of Mr. Mulgaonkar, learned Advocate appearing for the Appellants/claimants and Mr. E. Afonso, learned Advocate appearing for the respondent no. 3.

11. Looking to the pleadings and evidence on record, it is unfortunate for the claimants that their claim for compensation on account of death of only bread earner has been dismissed.

12. Looking to the contents of the petition at Exh.1, it appears that the claimants are claiming compensation under the provision of Section 166 of the Act, based

upon the fault. Therefore, it is basically for the claimants to establish that the accident occurred due to the negligent driving of the respondent no.1.

13. Looking to the pleadings of the petition at Exh. 1 relating to the rash and negligent act, it appears that it is very short and vague pleadings. It is only pleaded by the claimants that the accident took place due to the negligence of the respondent no.1 and this pleadings of the claimants have been specifically denied. Not only this but factum of the accident itself is denied by all the respondents. Considering the defence of the respondents it was obligatory on the part of the claimants to led cogent, reliable evidence to establish rash and negligent act of the respondent no.1, but unfortunately no such evidence is adduced by the claimants.

14. The claimant no.1 Meera Kambli filed her affidavit under the provisions of Order 18 Rule 4 of C.P.C. and has reiterated all the contents of the petition at Exh.1. The contents of the affidavit are not sufficient to establish the negligent act on the part of the respondent no.1 because the claimant no.1 has specifically admitted in her cross examination that she had not witnessed the accident. This single admission of claimant no.1 falsifies oral evidence of the claimant no.1. The oral evidence is not reliable to prove the rash and negligent act of the respondent no.1. The claimants are claiming compensation under the provision of Section 166 of the Act. Therefore, initial burden is upon the claimants to establish firstly the fact of accident, then the rash and negligent act on the part of the driver of the vehicle involved in the accident. Looking to the contents of the FIRs and the spot panchanama, it appears that offence is registered against the respondent no.1 for rash and negligent driving however, this fact itself is not sufficient to constitute the negligence on the part of the respondent no.1. There has to be independent witnesses to prove this fact.

15. The contents of the spot panchanama together with sketch are also not sufficient to establish negligence on the part of the respondent no.1 The correct direction of the vehicle, exact location from which deceased was proceeding on a road is not clear from the panchanama with sketch therefore, this documents are not sufficient to establish the negligence. It was possible for the claimants to adduce evidence showing the negligence of the respondent no.1 because from the record it is seen that offence was registered against the respondent no.1 therefore, obviously police must have recorded the statement of the witness and it was possible for the claimants to call such witnesses to prove the rash and negligent act of the respondent no.1 but they have fail to do so. Mr. Mulgaonkar has relied upon the observation in the case of Maharashtra State Road Transport Corporation through the Divisional Controller Vs. Smt. Majulabi W/o Bhagwanji and others, reported in 201491) ALL MR 300. However, the observation of the above said authority is not applicable to the facts of the present case because there is reference in paragraph 9 that witness Lata Kadu, deposed about rash and negligent driving of the bus driver. In that case bus driver was also examined. Therefore, observation of the above cited authority is not applicable to

the facts of the present case simply because no witness has been examined in this case.

16. Mr. Afonso, learned counsel appearing for the respondent no. 3 has rightly relied upon the observation made in the judgment of the Division Bench of this Court in First Appeal No. 32 of 2013 (Mr. Pukh Raj Bumb Vs. Mr. Jagannath Atchut Naik, and others) and particularly, paragraph 33 which reads as under:-"We are aware of the loss suffered by the claimant due to injuries sustained in the unfortunate accident which took place. We have sympathy for the claimant. However, sympathy cannot take place of proof of negligence. We find that the claimant has miserably failed to prove that the accident occurred due to the rash and negligent driving of the Hyundai Getz Car bearing no. GA-03-C-5711 by the respondent no.1. Since the negligence of the driver is not proved, the claimant is not entitled to receive any compensation on the ground of injuries resulting in permanent disability, sustained by him, as has been rightly held by the learned tribunal."

17. Thus the observation of the above cited judgment more appropriately applicable to the facts of the present case Resultantly, I find that the evidence adduced on behalf of the claimants is not sufficient to hold that the accident occurred due to the negligence of the car driver, the respondent no.1. Hence, above point no.1 is answered in the negative. Hence, appeal is dismissed with no order as to costs.