
(2008) 06 BOM CK 0030
In the Bombay High Court
Case No : F.A. No. 47 of 1997

Mohan Govind Naik (deceased) through L.Rs. and Others APPELLANT
Vs
Sudhakar V. Gurav and Others RESPONDENT

Date of Decision : 05-06-2008

Acts Referred:

Citation : (2009) ACJ 2072

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : Pangam, for the Appellant; E. Afonso, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—Heard Mr. Pangam, the learned Counsel on behalf of the appellants and Mr. E. Afonso, the learned Counsel on behalf of the respondent No. 2.

2. The appellant (since deceased and now represented by his legal heirs) filed a claim petition before the Motor Accidents Claims Tribunal, Margao, claiming compensation of Rs. 3,96,900, which claim petition came to be dismissed by the learned Motor Accidents Claims Tribunal by judgment dated 12.12.1996.

3. The claim petition was filed against

the driver and owner and the insurer of the rickshaw that is to say the respondent Nos. 1 and 2 herein and the driver/owner and the insurer of the motor cycle that is to say respondent Nos. 3 and 4 herein.

4. The rickshaw was registered under No. GDZ 1262 and motor cycle was registered under No. GDH 7091.

5. The case of the claimant was that on 8.11.1988 at about 4.30 a.m., the claimant and his friend Ramesh Korajkar were going in the said rickshaw which was being driven on the proper side of the road and when it reached near the

Bank of India at Margao, the claimant got down to ease himself and no sooner the claimant alighted from the rickshaw, all of a sudden the said motor cycle came in a very fast speed and banged against the claimant causing him injuries and throwing the said motorcyclist at a distance of about 40 ft from the scene of accident.

6. In support of his case, the claimant has examined himself and the said Ramesh Korajkar. The claimant also examined one Mohan Borkar to support the panchnama. The said Mohan Borkar also claimed that he had seen the accident and stated that the accident took place while the claimant was just alighting from the rickshaw and when the claimant had kept his leg on the ground. However, in cross-examination, he fairly admitted that he had stood as a pancha witness in about 50 cases.

7. The learned Motor Accidents Claims Tribunal after considering the evidence produced came to the conclusion that the claimant's evidence was inconsistent with the evidence of the said Ramesh Korajkar, CW 2, as well as Mohan Borkar, CW 4 who had witnessed the panchnama of the scene of accident. Referring to the evidence of the said Mohan Borkar, CW 4, the learned Motor Accidents Claims Tribunal observed that if the said evidence was accepted then the rickshaw was not in use and that neither the evidence of the claimant/CW 1 nor of said Mohan Borkar/CW 4, there is nothing in the evidence of the claimant/CW 1 to show that it was being driven in a rash and negligent manner. The learned Motor Accidents Claims Tribunal also noted that the evidence of the claimant/CW 1 was inconsistent with the plea taken by him.

7. The learned Counsel on behalf of the appellants submitted that there was no dispute that the claimant met with an accident and in fact, the respondents have not disputed the factum of accident. The learned Counsel further submitted that there was also no denial to the fact that the claimant had met with an accident.

9. Learned Counsel on behalf of the claimant has not been able to give an explanation as to why the claim petition was filed against the rickshaw driver in case the said rickshaw was driven on the proper side of the road. The claimant also did not examine the driver of the said rickshaw as well as the police officer who conducted the panchnama. Certainly, the panchnama could not be said to be proved by the evidence of a pancha witness who had stood as pancha in about 50 cases. The claimant in such a situation ought to have examined the Police Officer who conducted it. The evidence of Ramesh Korajkar was inconsistent with the evidence of the claimant himself and it is obvious that it is either of them who has not told the truth before the court. Only because the accident was not denied, it does not mean that the claimant has proved that it was caused due to rash or negligent driving of the motor cycle by the respondent No. 1. In fact the learned Motor Accidents Claims Tribunal has also observed that in case the claimant was sitting on the right side of the rickshaw and the said Ramesh was sitting on the left hand side of the rickshaw, it cannot be believed that claimant sitting on the right side could be thrown out through the left side door by

crossing Ramesh who was sitting near the left side door due to the impact. Learned Motor Accidents Claims Tribunal also observed that if the left door opened due to impact, it would be Ramesh who could be thrown out of the rickshaw. The case of the claimant was not in consonance with the case set out by him and was otherwise inconsistent with the version given by the claimant's own witness the said Ramesh and in such a situation, dismissal of the claim petition could not be faulted. It was necessary for the claimant not only to prove that an accident had taken place but it was due to rashness or negligence of the driver/owner of the said motor cycle. This claimant failed to prove.

10. In view of the above, I find no merits in the appeal and the same is hereby dismissed with no orders as to costs.