

(1986) 11 BOM CK 0002
In the Bombay High Court

Narayan Hiralal Pardeshi and Another	APPELLANT
Vs	
Eknath Ghanashyam Galphade and Others	RESPONDENT

Date of Decision : 04-11-1986

Acts Referred:

Citation : (1988) 1 ACC 226

Hon'ble Judges : Tated, J;Desai, J

Bench : Division Bench

Judgement

Desaj, J.—This is an Appeal filed by original Opponent Nos. 2 and 3, against the award made by the Member, Motor Accidents Claims Tribunal Pune in Application No. 214 of 1981.

2. The Application was made by the parents, widow, minor child and the brother of one Lahu Eknath Galphade, a young man of about 25 years of age and according to the Applicants, he, whilst riding a cycle, was involved in an accident with a truck bearing registration No. BYW 2724 belonging to Opponent No. 2 and driven at the material time by Opponent No. 1 to the application. The said truck was insured with Opponent No. 3 and it may be presumed that both during the trial and in the Appeal it is really Opponent No. 3, the insurance company, who is fighting the litigation.

3. The Applicants had examined three witnesses, of whom only one. claimed to be an eye witness to the accident. On behalf of the Opponents, three witnesses were examined, of whom two witnesses were the driver and the labourer riding in the truck ; the third witness claimed to be an independent eye witness.

4. The version as to how the accident occurred differs. According to the eye witness Rajaram, examined on behalf of the Applicants, the truck came from behind and struck the cycle at its rear with the result that the deceased Lahu suffered injuries as a result of which he expired. The version given by the three witnesses on behalf of the Opponents was totally different. However each one gave a different version than the other two. The Member of the Motor Accidents

Claims Tribunal, Pune, found the version given by Rajaram to be consistent with the damage to the cycle as recorded in the panchanama and rejected the testimony given by the three witnesses of the Opponents as having internal contradictions and to that extent not worthy of acceptance. The internal contradictions are manifest and it appears to us that witness No. 3 has been got up and brought to Court to explain the contradictions between the versions given by the first two witnesses. According to the driver of the truck, at the relevant time, two cyclists came from the opposite side and dashed against one another with the result that one of the cyclists fell towards the truck driven by him. According to this driver he stopped the truck immediately. He maintained that he had not given any dash to the cyclist at all. When we perused the panchanama we found that the panchanama mentioned that the cyclist was lying between the two front wheels of the truck. That this driver is not very reliable is also borne out by the fact that according to him the width of the road was 25 to 30 ft. at the relevant spot whereas according to the panchanama the road is 55 ft. wide at the spot with a divider in between. The driver, apart from his version of the accident which is not reliable, is obviously an interested witness as also an unreliable witness as already indicated.

5. The next witness for the Opponents changed the version as to how the accident occurred. According to him there was a dash between the cyclist and a woman on the right side of the truck. According to this labourer, Ramesh Namdev Ohal, both the woman and the cyclist fell down and the cyclist fell in front of the truck. The version given by the labourer apart from being different from that given by the driver earlier, does not indicate as to how the cyclist came to be lying between the wheels of the truck and does not inspire confidence.

6. We then have the third "independent" witness who has obviously tried to reconcile the contradictions between the woman and the cyclist by making the other cyclist a woman cyclist. Any person with a good sense could see how this testimony of the Opponents has been improving at every stage and a change has been effected to get over the difficulty created by the previous witness. We agree with the trial Judge that the panchanama is a very eloquent panchanama and supports the witness Rajaram. The third witness of the Opponents is unreliable and has been got up only for the purpose of the trial.

7. Thus, on the question as to how the death occurred and whether the same was as a result of negligence of the driver of the truck, our conclusion must be same as that of the trial Court. There were two parties involved viz., the cyclist who is no longer with us and the driver who has given his testimony in the most unsatisfactory manner. If the driver gives evidence in this unsatisfactory manner and whose version is totally at variance with the panchanama, it can be presumed that there was negligence of the truck driver and it is immaterial whether the truck was driven at high speed or at low speed. If the truck is properly driven, cycle and cyclist do not come within its wheels. *Res ipsa loquitur*. This discussion takes care of the question of negligence.

8. On the award we have had a very curious argument advanced on behalf of the Appellants that the amount awarded should be reduced by the figure of Rs. 15,000/- since the widow has remarried. According to the Appellants' Advocate the widow remarried immediately after the accident and was, therefore, disentitled to receive any amount. We asked him whether he was in a position to lead any satisfactory evidence before us to establish the fact of the widow's remarriage. This was apart from the fact that no amendment of the memo of appeal had been sought to add this as a ground of appeal. The Advocate for the Appellants frankly conceded that the Appellants did not have any evidence in their possession to substantiate this plea. This plea must be negatived as being without any factual substance either on the record or otherwise. Such factual pleas could not be taken note of unless there is some material on record and it is not possible, according to his submission, for the Appellants to bring any material on record to establish the fact of remarriage or about point of time at which the remarriage took place.

9. There is one similar plea advanced, viz., that the award of Rs. 3,000/- to the brother of the deceased was not proper. If the award is properly perused and understood we find in the first place a discussion as to what damages would arise from the death of the said Lahu. No argument has been advanced before us questioning the calculations made on the quantum of damages. If the calculation of damages is correct, then we are of opinion that it would not be open for the Appellants to question the apportionment and claim reduction of the award of damages on the ground of improper award to some relatives. It is only the other relatives entitled to some part of the monetary claim who can question the apportionment. The applicants or the widow or the child could have questioned the award of Rs. 3,000/- made to the brother but not the owner of the truck or the driver or the insurance company. Thus, on neither count is the plea of the Appellants acceptable to us.

10. As far as appreciation of evidence is concerned the learned Member of the Motor Accidents Claims Tribunal, Pune, has not misdirected himself in any manner nor is the judgment perverse. If that be so, the Appellate Court is bound to accept the conclusion based on appreciation of testimony before the Court. Even otherwise we are inclined to concur with this appreciation and reject the contentions advanced on behalf of the Appellants.

11. Thus, we find no substance in the Appeal and the same will stand dismissed with costs.

12. We are told that an amount of Rs. 30,000/- has been deposited with the Motor Accidents Claims Tribunal at Pune. This amount will first go towards the directions made in favour of the parents and the minor child. The Tribunal will therefore steps to execute the award in respect of the balance amount and as and when the execution takes place it will deal with the amount as already directed.

13. Mr. Kamat says that the Company will be depositing the balance amount within a reasonable time. The amount is directed to be deposited with the Lower Court, on or before 31st December 1986. Execution to issue thereafter only on failure to do so. Other directions given by the trial Court regarding investments, payment of interest and payment of the amount at the expiry of proper period to be maintained.