

(2015) 02 BOM CK 0136
In the Bombay High Court
Case No : First Appeal No. 1 of 2012

Sangappa V. Tenginakai

APPELLANT

Vs

The Branch Manager, Bajaj Alliance General Insurance Co.
Ltd. and Others

RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 184

Citation : (2015) 02 BOM CK 0136

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

Bench : Single Bench

Advocate : Shambhu S. Kakodkar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.L. Wadane, J.—Present appeal is preferred by the claimant against the Judgment and Award passed by the Presiding Officer, M. A. C. T., Mapusa dated 17th October, 2011, in Motor Accident Claim Petition No. 35 of 2009. The facts leading to the present appeal may be summarized as follows:

(Parties are referred to their original status) 2. On 04/11/2007 at about 10.30 a.m. the applicant was proceeding from Camarcazana to Mapusa market by walk. When he reached near Bamboo Palace Hotel at Bhilwan, Mapusa, at that time one Honda motorcycle bearing No. GA - 03 - D - 1106 driven by respondent No. 3 came with a high speed and dashed against the backside of the applicant and therefore the applicant thrown away on the road and sustained waist pain and leg pen. After the accident applicant had taken treatment in Asilo Hospital, Mapusa.

3. The accident occurred due to rash and negligent driving of the motorcycle by respondent No. 3. The respondent No. 2 was the owner and respondent No. 1 was the insurer of the vehicle involved in the accident.

4. Prior to the accident, the applicant was doing milk business and was earning

Rs. 2,000/- per month. Due to the accident the applicant is unable to carry on his business personally. The applicant is unable to walk properly. Hence, he has claimed an amount of Rs.1,50,000/- by way of compensation on account of all permissible heads. The respondent No. 1 Company filed its written statement at Exh.11 and denied almost all contents of the petitioner Exh.1. It denied the age, occupation and income of the applicant and the negligence of the motorcyclist. The applicant has not sustained any type of injury. The pains were preexisting therefore this respondent has lastly prays to dismiss the petition. The respondent No. 2 also denied almost all contents of the petition by filing written statement at Exh.35. However he has admitted the ownership and insurance of the vehicle.

5. In the trial Court the applicant has filed affidavit at Exh.27 in view of his oral evidence. Besides this he has led the evidence by examining AW-2 Ulhas Khot witness, AW-3 Abhimanyu Padwal panch witness, AW-4 Prakash Prabhu witness, AW-5 Dr. Ulhas Sawkar. Besides the oral evidence, the applicant has produced on record copy of complaint, panchnama, medical record, insurance policy, details of motorcycle accident report form, election I card, hurt certificate, disability certificate vide exhibit Nos. 28 to 36 respectively. Considering pleadings of the parties the learned trial Court has framed necessary issues and dismissed the petition holding that the applicant failed to establish the negligence on the part of the respondent No. 3, driver of the motorcycle (since deleted).

6. I have heard the arguments of applicant Mr. Sangappa Tenginakai in person and Mr. S. Kakodkar, learned counsel for the respondent No. 1. I have also gone through the entire evidence on record. Considering the rival pleadings of the parties following points needs to be determined. Points Findings

: REASONS :

7. As to point No. 1 :

At the outset, it is material to note that the petition before the learned Tribunal was based upon the liability of default under Section 166 of the Motor Vehicle Act. So, looking to the nature of the pleadings and claim and relief claimed by the applicant, the applicant has to establish first that an accident occurred due to negligence of the respondent No. 3. Unfortunately the respondent No. 3 was deleted from the above petition, therefore the respondent No. 3 did not enter into witness box.

8. The applicant filed his affidavit in view of his oral evidence and in Para No. 2 he says that on 04/11/2007 at about 10.30 a.m. he was proceeding from Camarcazana to Mapusa market by walk and at the relevant time the motorcycle bearing registration No. GA - 03 - D- 1106 driven by Kamruddin Choudary came with fast speed and dashed to waist (backside) and right leg, hence he was thrown away on the road and received pains in his waist and leg. This is the evidence led by the applicant to show the negligence of the respondent No. 3. Looking to the evidence of the applicant, it appears that the applicant has claimed that the motorcyclist struck to him from backside, obviously there was

no occasion to see the motorcyclist and the speed of the motorcycle. To know the situation as on the spot of accident the applicant has produced on the record the spot panchanam coupled with map. The panch witness Abhimanyu Padwal has not stated anything about the situation existing at the time of panchnama. The Police Officer i.e. AW-2 Mr. Ulhas Khot has stated about filing of the report of an accident and thereafter he went to draw the spot panchnama and sketch however motorcycle was not at the seen. So, in fact, there is absolutely no evidence on record to show the exact spot of the accident, from which direction the applicant was proceeding, from which direction the motorcyclist reached at the spot and the correct side of the applicant as well as the motorcyclist. AW-2 Ulhas Khot stated in his evidence that the rider of the motorcyclist has paid fine of Rs. 600/- through challan for violation of Section 184 of Motor Vehicle Act and during cross examination he has stated that no charge sheet has been filed in this accident matter. In such circumstances, it was possible for the applicant to collect the documents of the payment of fine paid by the respondent No. 3, if any. Thus considering the evidence on record, I am of the opinion that there is no sufficient evidence on record to establish the negligence of the respondent No. 3. The evidence of AW-4 Prakash Prabhu is also not sufficient to prove the negligence merely he has deposed that the applicant met with an accident.

9. The applicant in person has relied upon the observations made in the case reported in 2010 ACJ 2698 (Baldeo Prasad and another vs. Manoj and others). On perusal of the facts and observation of this case, it appears that the case was relating to the death of a child aged about 6 years. The observations in the above cited authority are inapplicable to the facts of the present case simply because the negligence in the case of major cannot be equitted with the minor.

10. As to point No. 2:-

The applicant has pleaded and deposed that in the accident he received pains in waist and leg. To prove the alleged disability the applicant has examined Dr. Ulhas Sawkar. To prove the injuries and disablement the applicant has relied upon the oral evidence of Dr. Sawkar coupled with the medical report as referred above. This witness has examined the applicant on 02/07/2009 much prior to the date of an accident i.e. 04/11/2007 and he was treated till 29/05/2008. He issued disability certificate Exh.36. Disability certificate shows that the applicant had no disability. The medical record produced on record shows the medical treatment given to the applicant since 08/10/2007 much prior to the accident. The entries in such medical record has nothing to do with the injury mentioned in the above record and has no relevance to decide the application of the applicant. From the evidence on record it is seen that the applicant had not sustained any type of injury nor he is permanently disabled due to the accident. Hence, the petitioner has failed to establish that in the accident he received injuries due to which he became permanently disabled.

11. Considering the evidence on record, I am of the opinion that, the learned Presiding Officer, Motor Accident Claims Tribunal has rightly assessed the

evidence and has dismissed the petition. Hence, there is no substance in the present appeal. Therefore, the present appeal is dismissed with no order as to costs.