

(1992) 08 BOM CK 0051
In the Bombay High Court

Savitribai Chandrakant Gawade

APPELLANT

Vs

Mahesh Trading Company and Others

RESPONDENT

Date of Decision : 26-08-1992

Acts Referred:

Citation : (1992) 2 ACC 612

Hon'ble Judges : P.S. Patankar, J

Bench : Single Bench

Judgement

P.S. Patankar, J.—The appellant herein filed application claiming compensation to the tune of Rs. 25,000/- as she suffered serious injuries to her right foot due to the accident which occurred on 30th March, 1982.

2. On 30th March, 1982 at about 5.30 a.m. the appellant was proceeding in the Rickshaw No. MT'S 4920 along with her husband and child. She was proceeding from Thane Railway Station towards Kalwa side it was the case of the appellant that when the Rickshaw came near the Kalwa Police Outpost on Bombay-Pune Road, Truck No MTT-8415 came from the opposite side. It was driven in a high speed and rashly. The truck brushed against the rickshaw causing serious injury to her right foot due to which she was required to be hospitalised and to take long treatment. The said truck was owned by respondent No. 1 and was insured with respondent No. 3 at the relevant time. The claim made by the appellant came to be resisted on behalf of the appellant and respondent No. 3 inter alia on the grounds that the said truck was not at all involved in the accident. The claim was in the nature of fraudulent one. The rickshaw driver begged lift from the truck for going to Bhandup and when he reached Bhandup he raised an alarm and informed the police. The truck was not concerned with the accident at all and there was no negligence on the part of the driver of the truck.

3. The learned Member of the Motor Accidents Claims Tribunal, Thane, after going through the entire evidence on record came to the conclusion that the driver of the truck was negligent/rash in driving the same due to which rash/negligent driving the appellant suffered injuries. He held that the case tried to be

made out by respondents 1 and 3 that the truck was not involved in the accident was not at all true and the truck driver was responsible for the accident. He further held that the appellant was entitled to get Rs. 16,000/- as compensation. However, he recorded a finding that there might have been contributory negligence on the part of the appellant and therefore she was entitled to get only Rs. 8,000/- as compensation. Therefore, the learned Member allowed the application to the extent of Rs. 8,000/- holding that respondents 1 and 3 were liable to pay the same with interest at the rate of 8 per cent per annum from the date of the application i.e. 26th August, 1982. It seems that there is some error in the order in holding Respondent No. 2 liable jointly and severally along with respondent No. 1. Originally the appellant joined respondent No. 2 as insurer of the truck. However, respondent No. 1 pointed out that the truck was not insured with respondent No. 2 but with respondent No. 3 and hence an application came to be filed by the appellant joining respondent No. 3 as a party and respondent No. 3 came to be added.

4. The learned Advocate for the appellant submitted that the learned Member has committed an error in holding that there was any contributory negligence on the part of the appellant and it was an error to order reduction of 50% of compensation on that basis. He submitted that the learned Member has merely gone on surmise and there was no evidence whatsoever suggesting any contributory negligence on the part of the appellant. Therefore, the only point that is to be decided by me in this Appeal is whether there was any contributory negligence on the part of the appellant.

5. At the outset, it can be noted that the defence raised by respondents 1 and 3 was that the truck was not at all involved in the accident. There was a total denial regarding involvement of the truck in the accident. A case was tried to be made out that the claim made regarding the accident was false or fraudulent and was made by the appellant at the behest of the driver of the rickshaw. It was not at all the case that the appellant was putting her right foot outside the body of the rickshaw. It was not averred that she was sitting in the rickshaw in any negligent manner.

6. On behalf of the appellant, the appellant entered the witness box at Exhibit 22. She has deposed in the examination-in-chief that the truck brushed against the right side of the rickshaw on which side she was sitting and due to the same, she received injury on the right leg. She has further deposed that the damage done to the rickshaw was due to brushing. In the cross-examination, not one question was asked to her about this brushing or that she was keeping her right foot outside the rickshaw or that she was negligent. The appellant also examined on her behalf the rickshaw driver at Exhibit 33. He has stated in examination-in-chief that he was passing normally by keeping right side. However, the truck came in the opposite direction and turned towards his rickshaw and collided with it. He has stated that the truck dashed against the body of the rickshaw on the right side and due to which the appellant suffered injury to her leg. He has

further deposed that the right side of the rickshaw was damaged and there was a damage of about Rs. 1,000/-. He has also stated that sound was caused because of the collision of a brushing type. Again I find that in the cross-examination, not one question was asked regarding this brushing or the truck was driven in a rash and negligent manner. The entire cross-examination was directed regarding non-involvement of the truck in the accident.

7. On behalf of the respondent No. 1, the driver Venkat was examined at Exhibit 35. He has only tried to make out the case that was put up in the written statement. He has merely denied that he had taken the truck from Kalwa Reti Bunder and dashed against the rickshaw by taking the vehicle on the wrong side of the road. Considering the evidence on record, this leaves no manner of doubt that no case of contributory negligence was at all made out by respondent No. 1 or 3. Therefore, in my opinion, the learned Advocate for the appellant was right in submitting that there was no evidence and the respondents 1 and 3 have totally failed to discharge the burden to prove that there was any contributory negligence on the part of the appellant. The finding recorded by the learned Judge, that the possibility cannot be ruled out that the appellant might have kept her foot outside the margin of the body of the rickshaw was based on mere surmise. There was no evidence to support the same and there was no foundation for holding the appellant as guilty of contributory negligence. It was not even the case of the Respondent No. 1 or 3. There was no contribution whatsoever of the appellant for the accident. Hence, I hold that the appellant was entitled to get compensation of Rs. 16,000/- from respondents 1 and 3.

8. Hence, the Appeal is allowed. The Respondents Nos. 1 and 3 shall be liable to pay the additional amount of Rs. 8,000/- to the appellant along with interest at the rate of 12% per annum from the date of application i.e., 26th August, 1982. The respondent No. 3 is directed to deposit the said amount in the trial Court within a period of two months from today. In the facts and circumstances of the case, there shall be no order as to costs.