

(2015) 03 BOM CK 0125
In the Bombay High Court
Case No : First Appeal No. 22 of 2010

Sneha Saularam Bankar and Others	Vs	APPELLANT
Hanumant Vaman Pednekar and Others		RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 279, 304-A

Citation : (2015) 4 ABR 402 : (2015) 6 ALLMR 282 : (2016) 1 MhLj 200

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

Bench : Single Bench

Advocate : J.J. Mulgaonkar, for the Appellant

Final Decision : Allowed

Judgement

K.L. Wadane, J.—The present appeal is directed against the judgment and award dated 03.11.2009 passed by the learned Presiding Officer of the Motor Accident Claims Tribunal, Mapusa, by which the claim petition of the claimants has been dismissed. Therefore, the present appeal.

2. Brief facts of the case may be stated as follows :

3. The parties are referred to their original status.

4. The claimants have filed the petition under the provisions of Section 166 of the Motor Vehicles Act for compensation of Rs.6,40,000/-. The claimant no.1 is the widow of deceased Saularam and the claimant nos. 2 to 4 are his minor daughters.

5. On the day of the accident i.e. on 29.11.2006 at about 19.00 hours the deceased Saularam was walking on the road leading from Morjim to Tembwado-Mapusa after alighting from the bus. At the relevant time of the accident, the bus bearing registration No. GA-01-U-1262 came from opposite side in a very high speed in rash and negligent manner and gave tremendous dash to Saularam due

to which Saularam sustained grievous injuries and died.

6. According to the claimants, the accident occurred due to negligence of the bus driver who fled away after the accident. The respondent no.1 filed his written statement and he denied the fact of accident i.e. the involvement of the bus in the alleged accident. Alternatively, he has contended that he was holding a valid driving licence however, he has been falsely implicated in a criminal case by the police.

7. The respondent no.2 also denied almost all the contents of the petition at Exhibit 1. However, it has admitted the insurance of the vehicle at the relevant time of the accident. The age, occupation and income of the deceased has been denied. Looking to the rival contentions of both the parties, the learned Tribunal has framed the two issues. The first issue was relating to the rash and negligent and second was for the entitlement of compensation. Before the learned Tribunal, the claimant no.1 testified herself by filing affidavit at Exhibit 21 and the claimants have examined AW2 Anant Kenkre, ASI and AW3 Bablo Kannaik to prove the contents of the spot panchanama and sketch. To prove the factual aspect of the accident, the claimants have mostly relied upon the evidence of AW4 Shamsundar Kerkar and AW5 Gundu Naik, SDPO.

8. As against this, the respondent no.1 has examined himself. Considering the oral as well as the documentary evidence on record, the learned Tribunal has rejected the claim petition on the ground that the claimants have failed to prove that the accident took place due to rash and negligent driving of the driver/respondent no.1.

9. I have heard the arguments of Mr. J. Mulgaonkar, learned counsel appearing for the claimants/appellants and Mr. E. Afonso, learned counsel appearing for the respondent no.2.

10. With the help of the learned counsel appearing for the parties, I have also gone through the entire evidence on record. Considering the evidence on record and upon hearing both the sides, the following point arises for my determination.

11. Mr. Mulgaonkar, learned counsel appearing for the claimants/appellants by referring the evidence of AW1 and AW4 has argued that both the witnesses are the eye witnesses to the accident who have clearly deposed about the involvement of the bus in the accident by which the bus gave dash to the deceased. Therefore, according to Mr. Mulgaonkar, there is evidence in the present matter which is sufficient to establish the rash and negligent driving of the vehicle by respondent no.1. He further argued that after the accident the First Information Report was lodged against respondent no.1 and during the investigation, it was revealed that the accident occurred due to the negligence of respondent no.1. Therefore, the concerned police have charge sheeted him. During the cross examination, respondent no.1 has admitted that the criminal case was pending against him for the offence punishable under Sections 279, 304-A of the Indian Penal Code. So also the additional charge of Section 134-A

and B of M.V. Act was levelled against the respondent no.1.

12. As against this, Mr. E. Afonso, learned counsel appearing for respondent no.2 has argued that looking to the contents of the spot panchanama, no blood stains or any kind of signs were seen on the accident spot from which it is seen that the vehicle was not involved in the accident. Further more, according to Mr. Afonso, the deceased was on the wrong side at the relevant time. Therefore, the claimants were unable to establish the exact spot where the accident was occurred.

13. Before scrutiny of the entire evidence on record, it is material to note that the provisions for compensation contemplated under the provisions of Section 166 are social beneficial legislation. Therefore, no strict proof or procedure is contemplated in deciding the claim petition of compensation. The petitioners or claimants have to establish their claim on the basis of preponderance of probability and are not required to establish their claim of rash and negligent beyond the reasonable doubt as has been required in the criminal case. These are the broad principles which are to be adopted while deciding the claim petition. Apart from the oral evidence of the claimant no.1 i.e. widow of Saularam, there is material evidence of AW4 who happens to be present at the spot of the accident and is not related to the claimants or the deceased in any way.

14. On perusal of evidence of AW4 Shamsundar, it appears that he has deposed that the accident has taken place near the house of the deceased and at that time, the wife of the deceased was near her house so the presence of AW1 has been indicated by AW4 Shamsundar. In para 3 of the affidavit of AW4, he has stated that on the day of the accident, he was standing opposite to the chapel which is near the accident spot at a distance of 12 to 15 metres. He saw the deceased alighting from the bus from Mapusa and was waiting behind the bus to cross the road. At that time, mini bus bearing registration No. GA-01-U-1262 came from opposite direction i.e. from Tembwado and by going to the extreme right side of his way gave a dash to the deceased and fled away from the scene with mini bus without providing any medical assistance to the injured. During the cross examination, nothing is brought on record to disbelieve the version of this witness who seems to be an independent witness. Merely because he is neighbour of the claimants or deceased cannot be termed as an interested witness. So in the opinion of this Court the evidence of this witness is material and sufficient to establish the rash and negligent driving of the bus by respondent no.1.

15. Apart from the evidence of this witness, the Investigating Officer, Gundu Naik, AW5 has stated in his evidence that he recorded the statements of claimant no.1 Sneha and Shamsundar Kerkar i.e. AW4. So evidence from the record it is crystal clear that the statements of claimant no.1 and the witness Shamsundar were recorded by AW5. Therefore, the statements of the above witnesses were not surprised to the respondents.

16. The respondent no.1 came with a case that he has been falsely implicated by the police in a false case. I think this is merely the pleadings of respondent no.1 because no reason is given by the respondent no.1 for his implication in a false case nor there are circumstances appearing on record for the same. Furthermore, there was no reason for the police to implicate an innocent in a false case. This position has not been explained by respondent no.1.

17. Looking to the third aspect, it appears that the learned Tribunal has rejected the claim petition broadly on the ground that there were discrepancies in the First Information Report and the evidence on record. As per the sketch, the dead body was seen fallen on the right side of the road proceeding from Tembwado to Mapusa and there were discrepancies in the evidence of AW1 and AW4 eye witness. Further, the learned Tribunal has observed that if the deceased was walking on the road from correct side of the road then how the dead body was lying on the another side of the road. These are the reasons by which the learned Tribunal has rejected the petition. The learned Tribunal while recording the reason has observed that as per the para no.5 to the affidavit in evidence of AW1, the deceased was walking on the left side of the road leading from Mapusa to Morjim i.e. in the direction from Tembwado to Morjim and that the offending bus came from opposite direction i.e. from Morjim to Mapusa which means in the direction to Morjim to Tembwado. It is not her case that the bus came from Morjim Tembwado direction and went on wrong side and dashed against the deceased who was on the left side of the road proceeding from Mapusa to Morjim. No explanation has come on record as to how the dead body fell on the right side of the road proceeding from Mapusa to Morjim. It is the case of AW1 that the deceased was walking on left side of the road proceeding from Mapusa to Morjim. In short, the learned Tribunal has observed that if at all the deceased was walking on the correct side of the road then how the dead body was lying on the another edge of the road. This is the main reason by which the learned Tribunal has dismissed the petition.

18. It is pertinent to note that the respondent no.1 was prosecuted for the offence punishable under Sections 279, 304-A as well as under Section 134-A and B of the Motor Vehicles Act. This fact has been admitted by respondent no.1 during his cross examination. Therefore, I am of the opinion that while deciding the accident cases the Tribunal or Court shall bear in mind the caution struck by the Apex Court that the claim before the Motor Accident Claims Tribunal is neither criminal case nor a civil case. In a criminal case, in order to have a conviction the matter is to be proved beyond reasonable doubt and in the civil case the matter is to be decided on the basis of preponderance of probability, but in the claim petition before the Motor Accident Claims Tribunal, the standard of proof is much below than what is required in the criminal case as well as in the civil case. Undoubtedly, the inquiry before the Tribunal is a summary inquiry and therefore, does not require strict proof of liability.

19. In the present case, the FIR is lodged against the respondent no.1 and

charge sheet is also filed. It is further seen that after the accident, respondent no.1 fled away from the spot. Therefore, the documents referred to by the claimants are sufficient to establish the fact of the accident and the evidence adduced by the claimants is sufficient to establish the negligence on the part of respondent no.1 while driving the vehicle. Mr. Mulgaonkar, learned counsel appearing for the claimants/appellants has therefore rightly relied upon the observations in the case of Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others, wherein it has been observed at para 15 thus :

"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties." 20. Considering the broad principles which are to be kept in mind while deciding the claim for compensation and the observations of the Apex Court in this behalf, this Court is of the opinion that the learned Tribunal has wrongly disbelieved the evidence of the claimants on very hyper-technical ground. Therefore, the findings recorded by the learned Tribunal needs to be set aside.

21. The issue no.2 framed by the learned Tribunal is answered as "does not arise". In fact, it is for the learned Tribunal to frame proper issue considering the pleadings of the parties and to determine each of the issues. Therefore, for the determination of issue no.2, the matter needs to be remanded back to the learned Tribunal. Hence, the point for determination is answered accordingly. Therefore, the following order :

ORDER

(i) The appeal is allowed.

(ii) The judgment and award dated 03.11.2009 passed by the learned Tribunal is hereby set aside.

(iii) The matter is remanded back to the learned Tribunal to adjudicate issue no.2 after giving opportunity of being heard.

(iv) The learned Tribunal is directed to decide the claim petition as early as possible.

(v) The parties are directed to appear before the learned Tribunal on 27.04.2015 at 10.00 a.m.

(vi) The appeal stands disposed of accordingly.