
(2012) 11 BOM CK 0096
In the Bombay High Court
Case No : First Appeal No. 56 of 1996

State of Maharashtra and Ramdas Ganpat Gadekar	APPELLANT
Vs	
Bhagwat Ughade and Others	RESPONDENT

Date of Decision : 19-11-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2012) 11 BOM CK 0096

Hon'ble Judges : M.N. Gilani, J

Bench : Single Bench

Advocate : D.B. Yengal, AGP, for the Appellant; Tejas Patil h/f Mr. Anand Parchure, Advocate for R-2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Gilani, J.—This appeal arises from the judgment and award dated 21.8.1995 passed by the Motor Accident Claims Tribunal, Wardha in Motor Accident Case No. 48/1988, whereby the learned Tribunal awarded the total amount of compensation of Rs. 50,000/- to the respondent no. 1 on account of the injuries sustained by him in the motor vehicular accident occurred on 9.6.1988 on Ashti Drugwada road district Wardha, involving motor cycle bearing registration no. MGU-6473 and jeep bearing registration no. MHV-5743. It was the case of the respondent that on 9.6.1988 he was proceeding from village Ashti to village Sahur by riding pillion on the motorcycle driven by respondent no. 3. When their motor cycle was negotiating through the forest area, the truck driven by the appellant no. 2 dashed against the motor cycle. He and respondent no. 3 sustained injuries. He was required to undergo prolonged treatment and therefore under all the heads he claimed compensation of Rs. 50,000/-.

2. The appellant resisted the petition by alleging that the respondent no. 3 while driving motor cycle could not control the same and dashed against the stone lying by the side of the road. According to them there was no negligence on the part of the appellant No. 2

3. The respondent no. 1 entered witness box. On behalf of the appellants, appellant no. 2 was examined. The respondent no. 3 also entered witness box to explain the manner in which the accident occurred. After considering the evidence brought on record, the learned Tribunal held that because of sole negligence of the appellant no. 2 accident occurred.

4. Mr. Yengal the learned A G P contended that the learned Tribunal was not right in discarding evidence of the appellant no. 2 and relying upon the evidence of respondent no. 1. According to him, the evidence brought on record does not justify the finding attributing the negligence to the appellant no. 2.

5. None appeared for the respondent no. 1. Mr. Patil h/f for Mr. Parchure, for respondent no. 2 & 3 supported the judgment and award. None appeared for the respondent no. 4 & 5.

6. The points that arise for my consideration are:

A) Whether the finding reached by the learned Tribunal holding appellant no. 2 Ramdas Gadekar responsible for causing accident is supported by evidence on record?

B) Whether the quantum of compensation fixed by the learned Tribunal is fair and just?

7. It has come in the evidence of the respondent no. 1 that when they reached the spot of accident, the truck coming from the opposite direction, dashed against the motorcycle. He explained that for them the road ahead was steep high and they were ascending the same, whereas for the truck it was a slope and it was descending in a high speed. In his cross examination it was suggested to him that at the actual place where the accident occurred the road was straight and he admitted the same. However, he denied suggestion that when driver of the truck blew horn the respondent no. 3 was confused and then dashed the motorcycle against stone. In rebuttal the appellant no. 2 entered the witness box. According to him, he was driving the truck in slow speed, whereas the motorcycle was being driven in a fast speed. He admitted that on the spot, the road is curved and because of that he blew horn. When the respondent no. 3 saw the truck coming from opposite direction, he was confused and jumbled and severed the motorcycle to his left side. In the process, the motorcycle dashed against stones and the accident occurred. He was a person who had carried both the injured to the hospital. In cross-examination he admitted that "it is true that truck was running on slope while coming towards Ashti." He also admitted that the width of the road where the accident occurred was 12 feet. It has also come in his evidence that he was taking left turn. It therefore, appears that road was not straight, although it has a width of 12 feet. The respondent no. 3 whose evidence is at exhibit 25 deposed that the truck driven by the appellant no. 2 was in a fast speed. Although on the spot there was turn, he (appellant no. 2) did not blow horn. Seeing the truck coming from the opposite direction he went to his extreme left. Despite this the truck dashed against the motorcycle. He

denied the suggestion that the motorcycle dashed against the stone and because of that only the accident occurred. The learned Tribunal and rightly so found the evidence of respondent no. 1 and 3 consistent and reliable as against evidence of appellant no. 2. The observations made by the learned Tribunal in paragraph 14 being relevant are reproduced below:

Even otherwise, the applicant in paras 5 & 6 of his cross-examination maintains that the non-applicant no. 2 gave a forceful dash of his truck to the motorcycle due to which the N.A. No. 4 fell down and the applicant himself was thrown away. Under these circumstances, it is rather difficult to accept the case of the non-applicant no. 2 that the accident resulted on account of rash and negligent driving of the motor-cycle by the non-applicant no. 4. At the same time, I find that there is no substance in the case put up by the non-applicants nos. 1 and 2 that the truck was not involved in the accident and it is the motorcycle which dashed against a big stone standing by the side of the road due to which the accident took place.

8. From the evidence brought on record, the defence raised by the appellant that truck was not involved at all in the accident since respondent no. 3 dashed the motorcycle against the stone, does not appear probable and hence the Tribunal was right in holding appellant no. 2 responsible for causing the accident. This is apart from the fact that police during investigation found the appellant no. 2 responsible for causing accident and charge-sheeted him. The matter does not end here. The learned Magistrate at Ashti in Criminal Case No. 141/1992 held the appellant no. 2 guilty for the offence punishable u/s 279 and 338 of the Indian Penal Code.

9. The next point raised is about the ownership of the vehicle. Even from the evidence adduced by the appellant, it appears that the vehicle belonged to them and was engaged on the work site of Upper Wardha Dam Project. It was the case of the appellant that at the relevant time the truck was placed in charge of Vishnumaya Construction, engaged for constructing the said project. Even assuming that vehicle was given on hire to the said construction company, the ownership continued with the appellant. This is apart from the fact that the Tribunal did not believe the case of the appellant that there was any such contract between the appellant and the said construction company.

10. As regards the injuries sustained by the respondent no. 1, there is overwhelming evidence placed on record. The appellant had sustained compound fracture of right femur and tibia right. He was required to be an indoor patient and underwent prolonged treatment. This is evident from the documentary evidence exhibit 64 to 65. Good deal of evidence was led to justify the claim of Rs. 50,000/-. Thus, the appeal lacks merits on all counts. Accordingly, the appeal is dismissed. There shall be no order as to costs.