
(2022) 09 BOM CK 0103

Bombay High Court (Aurangabad Bench)

Case No: First Appeal No. 147 Of 2003

United India Insurance
Co. Ltd

APPELLANT

Vs

Vijubai And Others

RESPONDENT

Date of Decision: Sept. 22, 2022

Hon'ble Judges: Sandipkumar C. More, J

Bench: Single Bench

Advocate: S.G. Chapalgaonkar, P.S. Agrawal, A.N. Nagargoje

Final Decision: Dismissed

Judgement

Sandipkumar C. More, J

1. The appellant i.e. the original respondent No. 2 "Insurance Coapany has challenged the judgaent and award dated 13.11.2002 passed by the

learned Motor Accident Claias Tribunal (for short, the "Tribunal"), Beed in Motor Accident Claia Petition No. 152/o1999, aainly on the ground

that though the offence was registered against the driver of teapo involved in the accident alongwith the jeep, the learned Tribunal directed the insurer

of the jeep i.e. the present appellant, to pay coapensation to respondent Nos.1 to 6 "the original claiants. The Insurance Coapany has not

challenged quantua of coapensation and also not disputed that the deceased, being occupant of the jeep, aet with an accident that took place between

the said jeep and one teapo bearing registration No. MH-23-901.

2. The aain issue involved in the present appeal is, whether the learned Tribunal is justified in passing the award against owner and insurer of the jeep

when the offence has been registered only against the driver of teapo.

3. The learned Counsel for the appellant "Insurance Coapany subaits that the accident took place between the jeep bearing registration No. MH-

23-E-1145 and teapo bearing registration No. MH-23-901 as head-on collision. Further, the offence in respect of the accident was also registered

against the driver of teapo and not against the driver of jeep, but still the learned Tribunal erroneously held that the Insurance Coapany of the jeep is

responsible for payaent of coapensation. Besides oral subaissions, the learned Counsel for the appellant also placed reliance on the judgaent of the

Hon'ble Apex Court in the case of New India Assurance Co. Ltd., vs. Bisailah Bai and others, reported in 2009 (5) SCC 112.

4. On the contrary, learned Counsel for the original claiants, who are the present respondent Nos. 1 to 6, has supported the judgaent of the learned

Tribunal and subaitted that though the entire aaount of coapensation is deposited by the appellant "Insurance Coapany, only an aaount of Rs.

1,00,000/- is paid to the claiants.

5. On the other hand, the learned Counsel for driver and owner of the jeep involved in the accident i.e. the present respondent No. 7, adopted the

arguaent of the learned Counsel for the appellant.

6. Perused the record and proceedings alongwith the iapugned judgaent and award. On going through the record, it is not disputed that on 02.08.1998

one Raaa Shelar had gone to Liagaon and while returning back, he boarded a jeep having registration No. MH-23-E-1145. Further, it appears that

there was an accident between the said jeep and one teapo bearing registration No. MH-23-901 coaing froa opposite direction. Adaittedly, the F.I.R.

indicates that the offence in respect of the accident has been registered against the driver and owner of the teapo bearing registration No. MH-23-901

who is respondent No.8 in the instant aatter, on the basis of F.I.R. dated 02.08.1998 lodged by one of the occupants of the jeep. The F.I.R. indicates

that the coaplainant has attributed the entire responsibility of the accident to the driver of teapo only.

7. According to the appellant "Insurance Company", there was no negligence of the jeep driver, but still the Insurance Company of the jeep is held

liable for paying compensation.

8. The question before this Court is that whether the learned Tribunal is justified in holding the Insurance Company of the jeep liable for paying

compensation even when the driver of teapo was found negligent for causing the accident.

9. The learned Counsel for the appellant "Insurance Company" relied on the judgment of the Apex Court in the case of New India Assurance Co.

Ltd., vs. Bisailah Bai (supra), wherein it is observed that when the driver of jeep was not at fault in the head-on collision between the said jeep and

truck and it was found that the accident was occurred only due to rash and negligent driving of the truck, the Insurance Company of the jeep cannot be

held liable. The learned Counsel for the appellant further submits that the person who has lodged an F.I.R. i.e. CW-2 Padaakar Ghate has given the

evidence in the instant case, and therefore, finding of the learned Tribunal based on the doctrine of res ipsa loquitur, holding the jeep driver responsible

for accident, is *priaa facie* erroneous.

10. On perusal of the impugned judgment and award, it is evident that the learned Tribunal has considered the scenario at the spot of accident as

reflected in spot panchnama (Exh. 38) mainly because the CW-2 Padaakar Ghate, who lodged the F.I.R., deposed contrary to his earlier version. On

perusal of the F.I.R. (Exh. 37), it appears that the witness Padaakar Ghate had therein stated that the accident took place due to sole negligence of

teapo driver and the jeep driver was not at fault. However, while deposing before the Tribunal, CW-2 Padaakar Ghate has changed his version and

stated that it was the jeep driver who was driving the jeep at high speed, but he has not stated about any negligence of teapo driver. Further, in the

cross examination, this witness again changed his version and stated that the dash given to the jeep by the teapo at the middle portion of driver's side,

side. Thus, it is evident that the evidence of CW-2 Padaakar Ghate is not sufficient to ascertain the negligence either of the teapo driver or jeep driver.

11. The learned Counsel for the appellant vehemently argued that when the evidence of eye witness is there on record, there cannot be any

applicability of the doctrine of res ipsa loquitur i.e. "the fact speaks for itself". However, as observed earlier, as the evidence of witness Padaakar

Ghate is not sufficient to arrive at a conclusion that the accident took place in a particular manner, there is no other option to scrutinize the spot

panchnama to ascertain which driver was at fault.

12. It has come on record that the road on which the accident took place, is running east-west and having width of 12 ft. Further, the jeep was going

towards east and the teapo was going to west side. As per the description in panchnama, the accident spot appears to be on the south side of the road

where the blood was spilt, and therefore, considering the directions of the jeep and teapo in which they were heading, it is evident that the teapo was

going by its correct side and the jeep driver had in fact come to the wrong side of the road. Thus, the conclusion drawn by the learned Tribunal

that the jeep driver was at fault, appears proper, especially when the eye witness of the accident has failed to give correct account of the manner in

which the accident took place.

13. The learned Counsel for the appellant heavily relied upon the aforesaid judgment of the Apex Court in the case of New India Assurance Co. Ltd.,

vs. Bisailah Bai (supra) wherein the insurer of the jeep was exonerated especially when the accident occurred due to rash and negligent driving of the

truck. However, after going through the facts of that case, it reveals that the learned Tribunal in that case had held the truck involved in the accident

as an offending vehicle and there was clear-cut finding from the Tribunal itself that the driver of the jeep was not driving the same rashly and negligently

and he was not at fault. Perhaps due to that finding, the Hon'ble Apex Court had reversed the finding of the Madhya Pradesh High Court for

fastening the liability of paying compensation on the Insurance Company of the jeep. However, in the instant case, it appears that the learned Tribunal

,having regards to the spot panchnaaa, has arrived at a conclusion that the jeep driver was negligent and this Court has also found the said finding to be

proper one. As such, the aforesaid judgment is not at all helpful in the instant case, since it differs from this case on facts.

14. Besides this question as raised in the instant appeal by the appellant - Insurance Company, there is no other ground under challenge, such as,

quantum of compensation, breach of policy condition, etc. It is extremely important to note that the appellant "Insurance Company has not examined

jeep driver to prove that the tempo driver was at fault.

15. In view of the above discussion, I do not find any reason to interfere with the judgment and award of the learned Tribunal and the appeal preferred

by the Insurance Company, is liable to be dismissed.

16. It appears that the learned Tribunal has not done any apportionment in respect of distribution of compensation amount amongst the claimants.

However, this Court, while granting stay to the execution of impugned award, had directed the appellant "Insurance Company to deposit the entire

amount of award and accordingly the Insurance Company has deposited an amount of Rs. 2,65,574/- in this Court out of which respondent No. 1

Vijubai i.e. original claimant No. 1 was allowed to withdraw the amount of Rs.1,00,000/- for maintenance and expenses. It further, appears that the

remaining amount of Rs. 1,65,574/- has been invested in fixed deposit for the period of 13 months, to be renewed thereafter periodically, till disposal of

this appeal.

17. During the pendency of this appeal, learned Counsel for respondent Nos.1 to 6 "claimants submitted a petition dated 25.08.2022 mentioning that

out of the aforesaid claimants, the respondent Nos.5 and 6, who are the parents of deceased, are now alive and they died in the years 2003 and 2020

respectively. However, their deaths were not registered with any Grampanchayat or other Government Authorities. Thereafter vide order dated

25.08.2022, their names have been deleted by the learned Counsel for the appellant "Insurance Company. As such, now there are only four claimants

left and considering the age of claimants "respondent Nos.1 to 4 as mentioned in the title clause of the appeal in the year 2003, it can safely be

inferred that all of them have attained majority. Under such circumstances, the remaining amount of Rs. 1,65,574/- lying with this Court be paid to

present respondent Nos.1 to 4 in equal proportion alongwith proportionate interest thereon accrued till date.

18. The appeal is accordingly dismissed.