(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 â€" Insurance Coapany has challenged the judgaent and award dated 13.11.2002 passed by the

learned Motor Accident Claias Tribunal (for short, the â€œTribunalâ€), 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 â€" the original claiaants. 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 justifed 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 â€" 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

Honâ€™ble Apex Court in the case of New India Assurance Co. Ltd., vs. Bisaillah Bai and others, reported in 2009 (5) SCC 112.

4. On the contrary, learned Counsel for the original claiaants, 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 â€" Insurance Coapany, only an aaount of Rs.

1,00,000/o- is paid to the claiaants.

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 â€" Insurance Coapany, there was no negligence of the jeep driver, but still the Insurance Coapany of the jeep is held

liable for paying coapensation.

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

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

9. The learned Counsel for the appellant â€" Insurance Coapany relied on the judgaent of the Apex Court in the case of New India Assurance Co.

Ltd., vs. Bisaillah 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 Coapany of the jeep cannot be

held liable. The learned Counsel for the appellant further subaits 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, fnding 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 iapugned judgaent and award, it is evident that the learned Tribunal has considered the scenario at the spot of accident as

refected in spot panchnaaa (Exh. 38) aainly 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 exaaination, this witness again changed his version and stated that the dash given to the jeep by the teapo at the aiddle portion of driverâ€™s

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

11. The learned Counsel for the appellant veheaently 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. â€œthe fact speaks for itselfâ€. However, as observed earlier, as the evidence of witness Padaakar

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

panchnaaa to ascertain which driver was at fault.

12. It has coae 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 panchnaaa, 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 teap in which they were heading, it is evident that the teapo was

going by itâ€™s correct side and the jeep driver had in fact coae 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 aanner in

which the accident took place.

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

vs. Bisaillah 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 fnding froa the Tribunal itself that the driver of the jeep was not driving the saae rashly and negligently

and he was not at fault. Perhaps due to that fnding, the Honâ€™ble Apex Court had reversed the fnding of the Madhya Pradesh High Court for

fastening the liability of paying coapensation on the Insurance Coapany 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 fnding to be

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

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

quantua of coapensation, breach of policy condition, etc. It is extreaely iaportant to note that the appellant â€" Insurance Coapany has not exaained

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

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

by the Insurance Coapany, is liable to be disaissed.

16. It appears that the learned Tribunal has not done any apportionaent in respect of distribution of coapensation aaount aaongst the claiaants.

However, this Court, while granting stay to the execution of iapugned award, had directed the appellant â€" Insurance Coapany to deposit the entire

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

Vijubai i.e. original claiaant No. 1 was allowed to withdraw the aaount of Rs.1,00,000/o- for aaintenance and expenses. It further, appears that the

reaaining aaount of Rs. 1,65,574/o- has been invested in fxed deposit for the period of 13 aonths, 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 â€" claiaants subaitted a purshis dated 25.08.2022 aentioning that

out of the aforesaid claiaants, the respondent Nos.5 and 6, who are the parents of deceased, are no aore and they died in the years 2003 and 2020

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

25.08.2022, their naaes have been deleted by the learned Counsel for the appellant â€" Insurance Coapany. As such, now there are only four claiaants

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

inferred that all of thea have attained aajority. Under such circuastances, the reaaining aaount of Rs. 1,65,574/o- 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.