

(2024) 12 SC CK 0051

Supreme Court Of India

Case No: Civil Appeal No. 14668 Of 2024 (@ Special Leave Petition (Civil) No. 8551 Of 2024)

Geeta Dubey & Ors

APPELLANT

Vs

United India Insurance Co. Ltd. &
Ors

RESPONDENT

Date of Decision: Dec. 18, 2024

Acts Referred:

- Code of Civil Procedure, 1908 - Section 96
- Indian Penal Code, 1860 - Section 279, 304A, 337, 338
- Motor Vehicles Act, 1988 - Section 133, 173
- Evidence Act, 1872 - Section 106

Hon'ble Judges: B.R. Gavai, J; K.V. Viswanathan, J

Bench: Division Bench

Advocate: Girijesh Pandey, Alpana Pandey, Ajay Kumar Tiwari, Sohan Lal Adak, Avanish Pandey, Sriram P., Nanita Sharma, Vivek Sharma, Deepanshu Rana, Harshit Shidhodia

Final Decision: Allowed

Judgement

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeal, filed by the claimants, assails the judgment and final order dated 24.08.2023 passed by the High Court of Madhya Pradesh at

Jabalpur in Misc. Appeal No. 68 of 2022. By the said appeal, the High Court, by a cryptic order, set aside the award of the First Additional Motor

Accident Claims Tribunal, Maihar, District Satna, Madhya Pradesh dated 25.03.2021 (in short "MACT"). The MACT had, by the said award,

allowed the claim of appellant no. 1 and 2 herein, who are the wife and son of the deceased Chakradhar Dubey and awarded a compensation of Rs.

50,41,289/- against the respondents jointly and severally.

3. The only ground on which the High Court has set aside the award is that the claimants have not adduced any evidence to prove the aspect of the accident taking place with the vehicle implicated in the case i.e. Truck bearing no. MP-19-HA-1197. So holding, the appeal of the insurance company was allowed and the award was completely set aside.

Brief facts :-

4. According to the claimants, Chakradhar Dubey - the deceased was posted as Assistant Post-Master, Post Office Sarlanagar, Tehsil Maihar. The deceased was returning to his house at Purani Basti, Maihar sitting in car bearing No. MP-19-CB-5879 of his friend Narayan Das Tiwari, after his duty, on 18.06.2018. At about 08:15 PM, one kilometer ahead of Sonwari Toll Plaza, respondent no. 2 herein, who was the driver of the vehicle of respondent no. 3, while driving the vehicle, (a truck bearing registration no. MP-19-HA-1197) in a rash and negligent manner hit the car in which the deceased was sitting. As a result, Chakradhar Dubey suffered serious injuries and his spine was broken. He was admitted in Civil Hospital, Maihar for treatment.

5. On 21.06.2018, the First Information Report in Crime No.352 of 2018 was registered at Maihar Police Station under Sections 279 and 337 of IPC.

We have perused the First Information Report and we find the following recorded therein:

¶12. First Information contents:

I am a resident of Housing Board Colony, Mehar, Police Station Mehar. I was coming with my father Narayan Das Tiwari son of Indramani Tiwari, aged 49 years, resident of Housing Board Colony Mehar, Chakradhar Dubey son of Late Liladhar Dubey, aged 49 years, resident of Chaurasia Mohalla, Purani Basti Mehar and Bharatlal Tiwari from Sarlanagar at around 08:15 p.m. of 18/06/18 in my car No. U.V. MP 19CB5879. As soon as we reached around 1 Km. ahead of Sonwari Toll Plaza, an unknown truck came from behind in high speed and hit the car. As a result of which, the car overturned and badly damaged. Due to hit, injured Chakradhar Dubey sustained injuries on his waist, throat and shoulder and Narayan Das Tiwari sustained serious injuries on his left palm. The driver of the truck ran away taking

the

truck from there. The injured were taken to CHC Mehar in an auto and were admitted there. After taking treatment, I have come at police station to lodge the report

today on 21.06.18. The report was registered for the offences punishable under Section 279, 337 IPC and investigation was taken up and handed over to beat

incharge.â€

(Emphasis supplied)

6. What is important to note is the FIR does mention material particulars like time of the accident, the place of the accident and also the fact that it

was an unknown truck which had hit the car, and about the injuries sustained by the deceased.

7. The claim petition thereafter sets out that after obtaining treatment at Maihar Civil Hospital, Chakradhar Dubey was treated at Nagpur Arneja

Institute of Cardiology Private Limited from 19.06.2018 and when he did not recover, he was taken back to Maihar, where he died on 28.06.2018.

8. The claimant widow further avers that since she was busy with the treatment and thereafter due to the death, the programs relating thereto, she

was not perfectly fit mentally to obtain particulars and file a claim. The claimant widow states that on being physically fit, she started collecting

information about the incident. She came to know that the accident was caused due to the rash and negligent driving of respondent no. 2 who drove

the truck of respondent no. 3. The claimant widow gave the information to the Superintendent of Police.

9. It further transpires from the record that the police had initially filed a closure report on 29.09.2018. However, thereafter the claimant widow

submitted an application stating that the accident has been witnessed by Ashutosh @ Sonu Shukla, Kapil Pandey and Janardan Paroha resident of

Sarlanagar. The charge-sheet avers that investigation was taken up again as per the order of S.D.O.P. Maihar and the statement of Sonu Shukla S/o

Ram Lakhan was recorded along with statements of Janardan Paroha, Kapil Pandey, Praful Dubey and Narayan Das Tiwari. It is stated in the

charge-sheet that as per their statements accident was caused by the driver of the truck bearing no. MP-19-HA-1197 by driving the truck in a rash

and negligent manner and hitting the car bearing No. MP-19-CB-5879; that Chakradhar Dubey, who was sitting in the car had died during the course

of treatment and that the vehicle-truck bearing no. MP-19-HA-1197 was seized. The truck was thereafter given on Supurdnama by the Court. The

charge-sheet states that on completion of investigation, Challan No. 656/2019 dated 25.08.2019 was prepared and filed in the court. In the charge-

sheet, 20 witnesses are listed and R-2 Ajay Kumar Saket S/o Harideen Saket was shown as accused.

10. The claimants made a claim for Rs. 59,30,000/- on the basis that the deceased was 55 years of age and he was working as Assistant Post Master

on a salary of Rs. 7,76,820/- per annum. A sum of Rs. 7,00,000/- was claimed towards compensation for treatment; loss of income of Rs. 51,00,000/-

and Rs. 1,00,000/-towards mental and physical agony was claimed. In all, the amount claimed was Rs. 59,30,000/-

11. The insurance company disputed the claim. Before the MACT, PW-2 Sonu Shukla was examined as an eyewitness who spoke about the accident

having happened. The insurance company examined Raj Kumar Kachhwah on their behalf. The challan of the Criminal case was also perused by the

MACT. The MACT held that the statement of the eye-witnesses had not been rebutted. It also recorded the following finding, particularly, on the

aspect of how no complaint was made about the involvement of the alleged truck in an illegal manner in an accident:-

“16. It is not disclosed in the perspective of above investigation and above case laws that the said motor vehicle has been involved in the case in false manner, in

that situation when any action or complaint is made to the higher police officer about involvement of the alleged truck in the case in illegal manner has been made by

the opposite party Insurance Company. Therefore, it is found proved on the basis of analysis that Car No. U.V.M.P. 19 CB/5879 was hit from behind by the driver of

Truck No. M.P. 19 HA 1197 on the date of accident while driving the said vehicle carelessly and negligently, as a result of which, Chakradhar Dubey who was sitting

in the said car was seriously injured and had died. It is contended by Opposite Party No.3 that there was contributory negligence on the part of Car No. M.P. 19 C.D.

5879 in which the deceased was sitting and contended that the accident took place due to the negligence of driver of the said car but no oral and documentary

evidence has been produced in this regard. Therefore, Issue No. 1 is concluded in the affirmative and Issue Nos. 4 and 5 are concluded in the negative.â€

12. It will be noticed that one of the pleas of the insurance company was that there was contributory negligence. Even the insurance company did not

dispute the factum of accident and the factum of the death of the deceased Chakradhar Dubey. The only dispute is about the involvement of the truck

bearing no. MP-19-HA-1197 on which the MACT found that there was adequate evidence to show its involvement in the accident. Thereafter, the

MACT, after applying the appropriate multiplier, awarded a compensation of Rs. 50,41,289/-.

13. The Insurance Company filed an appeal before the High Court. The two grounds that were raised were about the denial of the involvement of the

truck bearing no. MP-19-HA-1197 and the fact that the deceased was about 58 years of age and that the multiplier of 9 ought to have been applied

instead of 11. The High Court has, by a very summary order, allowed the appeal.

14. We have heard Mr. Girijesh Pandey, learned counsel for the appellants and Ms. Nanita Sharma, learned counsel for the insurance company who

have reiterated their respective contentions. We have perused the records and also the written submissions filed.

15. The only question that arises is, was the High Court justified in setting aside the order of the MACT. The High Court, in its cryptic order, has held

as under:-

â€œAfter hearing learned counsel for the parties and going through the record, few things needs elaboration. Praful Dubey, PW-1 has though said in para 3 of his

deposition that his mother had lost her mental balance at the time of the incident and his sister Pooja and Priyanka were residing in their in-laws house and he was

studying at Indore pursuing his B.E., but it has not come on record that when author of the FIR is the occupant of the car namely Narayan Das Tiwari who was

traveling in the car bearing No. M.P. No. 19 CB 5879 and he had lodged report against unknown vehicle and there is evidence of the star witness Sanu Shukla that he

had visited house of the deceased after 8-10 days of the incident when Chakradhar Dubey had passed away, then it is not evident that why number of the offending

vehicle was not given to the other relative including PW-1. There is no explanation for this lacuna.

It is true as submitted by Shri Sanjay Kumar Kushwaha that Insurance Company did not lead any cogent evidence of any eye witness but the fact of the matter is that claimants were required to prove their own case. There is long delay of about ten months in pursuing the case. Date of accident i.e. 18.06.2018 is not disputed, date of taking statements on 20.04.2019 is also not disputed. There is a long gap of often months in between.

Thus, when all these aspects are taken into consideration and also the fact that claimants never sought any investigation in regard to the CCTV footage or

production of CCTV footage to prove the aspect of accident taking place from the vehicle which has been implicated in the present case i.e. truck bearing No. MP19-

HA-1197, impugned award having been passed on misplaced sympathy and inappropriate appreciation of evidence available on record cannot be sustained in the

eyes of law.

Accordingly, impugned award is set aside. Appeal is allowed and disposed of.â€

16. We are surprised that in a First Appeal filed under Section 173 of the Motor Vehicles Act, 1988, the High Court has made a short shrift of the

matter and by a summary order reversed the detailed award passed by the MACT. An appeal under Section 173 of the Motor Vehicles Act is in the

nature of the First Appeal. In our considered view, the least that is expected is a careful

marshalling of the oral and documentary evidence produced before the MACT. Except for a fleeting reference to the evidence of PW-2, there is no

real discussion on the substance of his deposition. What is matter of concern is that there is no reference at all to Exh.P-1 final report, Exh.P-2 the

First Information Report, Exh.P-16 the seizure memo of the vehicle after the issuance of Section 133 notice under the Motor Vehicles Act and also no

discussion on the findings of the MACT.

17. It is well settled by several pronouncements of this Court that an appeal under Section 173 of the Motor Vehicles Act, is essentially in the nature

of the first appeal like Section 96 of the Civil Procedure Code. It has been held by this Court that the High Court is under a legal obligation to decide

all issues both on facts and law after appreciating the entire evidence. [See Sudarsan Puhan vs. Jayanta Ku. Mohanty and Others, (2018) 10 SCC

552, Uttar Pradesh State Road Transport Corporation vs. Mamta and Others, (2016) 4 SCC 172 and National Insurance Co. Ltd. vs. Naresh

Kumar and Others, (2000) 10 SCC 158]. This is a fortiori when the High Court proposes to reverse the well-reasoned award.

18. We were initially considering whether the matter should be remanded for fresh consideration by the High Court. However, since the incident is of

the year 2018, and already 6 years had elapsed, we felt that any further delay will only compound the agony of the already devastated family. Hence,

we have proceeded to analyse the facts ourselves.

19. Except for a bare assertion that the vehicle has been wrongly involved, the insurance company which has setup a plea of collusion has done

nothing to make good its case. We find that the judgment of the High Court is wholly untenable. We say so for the following reasons.

20. Firstly, it is well settled that in claim cases, in case the accident is disputed or the involvement of the vehicle concerned is put in issue, the claimant

is only expected to prove the same on a preponderance of probability and not beyond reasonable doubt. [See Sajeena Ikhbal and Others, V. Mini

Babu George and Others, (2024) SCC OnLine SC 2883]. We also deem it appropriate to extract the following paragraphs from the judgment of this

Court in Bimla Devi & Ors. V. Himachal Road Transport Corporation & Ors., (2009) 13 SCC 530. Repelling similar contentions raised

challenging the accident and the involvement of the vehicle in question, this Court held as follows:

“14. Some discrepancies in the evidence of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the

High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply

the principle underlying the burden of proof in terms of the provisions of Section 106 of the Evidence Act, 1872 as to whether a dead body wrapped in a blanket had

been found at the spot at such an early hour, which was required to be proved by Respondents 2 and 3.

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.

16. The judgment of the High Court to a great extent is based on conjectures and surmises. While holding that the police might have implicated the respondents, no reason has been assigned in support thereof. No material brought on record has been referred to for the said purpose.â€

21. Secondly, applying the test of preponderance of probability, we find that the claimants have established their case that it was the truck bearing registration no. MP-19-HA-1197 which was involved in the accident with car bearing no. MP-19-CB-5879 wherein the deceased was travelling. We

say so for the following reasons:-

a. The accident occurred on 18.06.2018 and the FIR was lodged on 21.06.2018 clearly giving the date, time and the place where the accident

happened. It was also mentioned that it was an unknown truck which came from behind in high speed and hit the car as at that point the claimants

were unaware of the number of the truck. It referred to the injuries suffered by the deceased.

b. It is also beyond dispute that the husband of the claimant no. 1, the deceased Chakradhar Dubey was treated at Nagpur Arneja Institute of Cardiology Private Limited and he died on 28.06.2018.

c. The claimants have explained the delay by clearly stating that after the death, they took time to regroup themselves and set about investigating and collecting information about the accident.

d. No sooner they obtained information, the claimant no. 1 submitted an application to the Superintendent of Police giving the list of persons including the name of PW-2 Sonu Shukla who had witnessed the accident.

e. Based on the application, the investigation which was originally closed was taken up again as per the order of S.D.O.P., Maihar and after recording

the statements of witnesses, a charge-sheet was filed for offences under Sections 279, 337, 338 & 304A, and the case is still pending against respondent no. 2- the driver.

f. It is also on record that after the application was given by claimant no. 1, a notice under Section 133 of the Motor Vehicles Act was issued to the owner and the vehicle was seized under Exh.P-16 by the police. It has also come on record that the truck was thereafter given on supurdnama by the court to the owner.

g. Sonu Shukla was examined as PW-2 and he has clearly deposed that on 18.06.2018, when he was going from Sarlanagar to Maihar with his colleague Kapil Pandey when respondent no. 2, who was driving the truck bearing registration no. MP-19-HA-1197 in a rash and negligent manner, at around 08:15 PM hit the car bearing registration no. MP-19-CB-5879 in which the deceased was travelling. No doubt, the witness states that he gave the information to claimant no. 1. The witness also states that he had taken Chakradhar Dubey to Civil Hospital, Maihar and on the same day informed the claimant's family about the incident. However, he states that he did not inform the police and went back home. The witness admits that his statement was recorded only on 20.04.2019. The witness, however, does not mention that he mentioned the truck number to the family when he conveyed the news of the accident. The witness was cross-examined but he stood by his statement. The witness also stated that on a specific question in cross that the front part of the vehicle bearing registration no. MP-19-HA-1197 was of white colour and the body was of red colour and the vehicle was of 12 wheels. The witness also stated that the truck belonged to Sanjeev Kumar Vyasi and denied that the said owner was his relative.

h. The insurance company examined Op.W.-1 Raj Kumar Kachhwah who admitted that till the date of his deposition, no information or complaint was given to the senior police officers stating that an attempt is being made by the claimants and the owner and driver of the vehicle to wrongly include the vehicle bearing No. MP-19-HA-1197 in the case. The witness also admitted that no steps to cancel the investigation of the police has been taken and no enquiry has been done into the veracity of the claim.

i. The MACT, on appreciation of the overall conspectus, particularly impressed by the fact that the insurance company did not lodge any complaint of collusion and about the involvement of the truck in an illegal manner concluded that it was truck bearing registration no. MP-19-HA-1197 which hit the car bearing no. MP-19-CB-5879 from behind.

22. Thirdly, the claimants having discharged the initial onus, if the insurance company had a case that there was collusion between the driver/owner of the truck and the claimants, it ought to discharge that burden. It is candidly admitted by the witness Raj Kumar Kachhwah that they had taken no steps in this regard.

23. As held in Sajeena Ikhbal (supra) and Bimla Devi (supra), we are convinced that on the principle of preponderance of probability, the claimants have established the involvement of vehicle bearing registration no. MP-19-HA-1197. The insurance company having set up a specific plea of collusion has not established the same. As was held in Bimla Devi (supra), here too, we feel that there was no reason for the police to falsely implicate the vehicle concerned in the matter and launch prosecution against the driver. If the insurance company had suspected collusion, they would have taken steps to file appropriate complaints including moving the higher police authorities or the court to order an investigation into the alleged wrongful involvement of the vehicle. There is no case for the insurance company that the police officer also colluded. The investigation by the police has resulted in charge-sheet being filed.

24. For all these reasons, we restore the findings of the MACT that death of the claimant no.1's husband was caused by the driving of the truck bearing registration no. MP-19-HA-1197 by respondent no. 2-Ajay Kumar in a rash and negligent manner at about 08:15 PM on 18.06.2018, in a place one kilometer ahead of Sonwari Toll Plaza at Maihar.

25. The only other point raised in the memo of appeal before the High Court by the insurance company is that the deceased was about 58 years of age and that the multiplier of 9 ought to have been applied instead of 11. The High Court had no occasion to discuss the same as it allowed the insurance company's appeal on the aspect of the vehicle not being involved in the accident. Before us also, no arguments were advanced on the

issue of the wrong application of the multiplier. The MACT has relied on the age, as mentioned in the postmortem report, as 55 years and has applied the appropriate multiplier. The insurance company claims that the school certificate and the Aadhar Card reveal the date of birth of the deceased as 01.08.1960.

26. No evidence has been adduced by the insurance company to show that the age was 58 years. The claimants have clearly pleaded in the claim petition that the age of the deceased was 55 years and proved the same. Hence, we reject the contention of the insurance company on this score also.

27. For the reasons stated above, the appeal is allowed. The judgment of the High Court dated 24.08.2023 in MA No. 68 of 2022 is quashed and set aside and the award passed by the MACT, Maihar, District Satna, Madhya Pradesh dated 25.03.2021 is restored. No order as to costs.