

(2014) 02 BOM CK 0151

Bombay High Court (Aurangabad Bench)

Case No: First Appeal No. 3421 of 2011

Faridabegum and Others

APPELLANT

Vs

Daulat Khan Through L.Rs.

Azamat Khan and The Oriental

Insurance Co. Ltd.

RESPONDENT

Date of Decision: Feb. 11, 2014

Acts Referred:

- Motor Vehicles Act, 1988 - Section 134 166
- Penal Code, 1860 (IPC) - Section 279 304A

Citation: (2015) 4 ACC 803 : (2014) 5 ALLMR 696 : (2015) 5 BomCR 194 : (2014) 6 MhLj 751

Hon'ble Judges: K.U. Chandiwal, J

Bench: Single Bench

Advocate: H.I. Pathan, for the Appellant; V.N. Upadhye, for the Respondent

Final Decision: Dismissed

Judgement

K.U. Chandiwal, J.

Heard. Admit. Heard finally.

2. Dismissal of MACP No. 728/2005, by learned Ex Officio Member, Motor Accident Claims Tribunal, Nanded, by order dated 18.7.2011 is questioned by the appellants/claimants.

3. FACTS:

a) Shaikh Yunus, 39 years old, a teacher, drawing monthly salary of Rs. 9276/- (Exh. 46), suffered fatal accident in the night of 21.12.2003, while he was plying his Bajaj M-80 vehicle bearing No. MH-26-A-6261. This gave rise to lodging of FIR Exh. 32 against an unknown vehicle by brother of the deceased.

b) The case of the claimant was, the driver of the truck ran away and Crime bearing No. 303/2003 was registered by Police Station, Nanded (Rural), under Sections 279,

304A of IPC read with Section 134 of the Motor Vehicles Act.

4. CASE:

The claimant Smt. Faridabegum, widow of Shaikh Yousuf, asserts that after the accident, she had been to Nanded to her aunt where she came in contact with one Mohd. Rafiq, landlord of her aunt, who learnt from either her aunt or Faridabegum about peculiar accident and death of husband of Faridabegum. At such time, it is her case, Mohd. Rafiq disclosed her about the incident wherein her husband's vehicle bearing No. MH-26-A-6261 was knocked down by offending truck bearing No. MH-26-8336. Consequent upon such revelation, investigator recorded further statement of said Mohd. Rafiq and also his friend Sk. Karimoddin who, at the material time, allegedly, witnessed the incident. Before the learned Tribunal, evidence of Sk. Karimoddin was recorded while Mohd. Rafiq did not turn up. Learned Judge, on evaluation of evidence found that Police statement of Sk. Karimoddin was not tendered; Mohd. Rafiq was plausibly kept behind. He assessed the evidence and though found entitlement of the claimant/appellant for a sum certain owing to death of Sk. Yusuf, however, ultimately, recorded that the truck in question (No. MH-26-8336) was not an offending vehicle nor it was involved in the accident and dismissed the claim petition.

5. Mr. Pathan, learned Counsel for the appellant/claimant says, the scrutiny of evidence by the learned Judge is not in proper tune. The proceedings u/s 166 of the Motor Vehicles Act are summary; there could not be a full-fledge trial as required under the Code of Criminal Procedure. He has ultimately urged that the flaws recorded by the learned Member at the time of dismissing the petition can be cured. To meet ends of justice, his submission, is to allow to lead additional evidence and to remand the matter.

6. Mr. V.N. Upadhye, learned Counsel for the Insurance Company has objected for such excuse and pointed that the claim petition was of the year 2005. Evidence is recorded spread over for more than one and half year. Written notes by the petitioner before the learned Member were tendered on 24th Feb., 2011. The judgment is dated 18.7.2011 and no steps were taken during long duration; the slumber of the appellant, cannot be allowed to be patched up.

7. Reading the entire evidence, perusal of original record and text of the order, following point arises for my consideration:

(a) Whether the claimants/appellants have proved that the truck (No. Mh.26-8336) was involved in vehicular accident dated 21.12.2003, causing death of Sk. Yousuf.

My answer to above point is in the negative for following reasons:

Before the learned Member, evidence of claimant Faridabegum was adduced. She has narrated in tune with claim petition. She is not an eye witness to the events. There is no controversy about status of deceased Sk. Yousuf to be a teacher as the

salary certificate is established by Headmaster of the school.

8. The appellant has examined Sk. Karimuddin as witness No. 2. His Police statement was recorded after 21 months of the incident. The basic fact that is revealed is, the Truck No. MH-26-8336 is reflected for the first time based on the statement of Sk. Karimuddin; his evidence before the Court is dated 16.12.2010. There was no plausible reason for Sk. Karimuddin to keep in track the truck number of the offending truck from 21.12.2003 to 22.9.2005 i.e. the date of statement or upto 16.12.2010. If, indeed, the accident was witnessed either by Sk. Karimuddin or Mohd. Rafiq, while they were repairing their truck, and after it got in order, they moved ahead, there was no inhibition for them to have informed the accident at nearest Police Station about offending truck fleeing away, including giving registration number of the truck. It is not that they were apprehending to be involved as the apparent reason of their witnessing is, they were totally on opposite direction of the vehicle in accident or the spot.

9. Sk. Karimuddin though vibrantly refers to remembering the offending truck number, however, though he has driven at least 15 trucks during his tenure as a driver but, he was not in a position to tell number of any truck. This blasts his evidence as to his presence at the material time or that he having witnessed the accident having been caused by the truck in question. Sk. Karimuddin had occasion even to pass at Octroi point. If he was, indeed, at the spot, relevant record dated 21.12.2003 either from the Municipal Council or from the Octroi Department or by way of octroi receipts or entry receipts could have been produced.

10. The truck driver involved in the accident, from the final Police report is illustrated to be from Nanded. Sk. Karimuddin and Mohd. Rafiq are resident of Nanded. Considering their vocation, it is again incomprehensible that they will miss the truck number or owner of the truck or driver being from the same place and small transport vicinity.

11. Mohd. Rafiq was not examined. His statement recorded by the Police is not a evidence.

12. An impression is generated, on evaluation of evidence of appellant claimant visa-vis Sk. Karimuddin that manipulation excels the truth to ensure free passage for claim by wrongly showing involvement of truck No. MH-26-8336.

13. Mr. Pathan, learned Counsel for the appellant has placed reliance to the judgment in the matter of Kusum Lata and others Vs. Satbir and others (2010-EQ-0-1674). In that case, witness with the deceased was in a traumatic condition and though lodged FIR immediately did not refer the offending truck number and Honourable Supreme Court found his conduct to be natural.

14. In the matter of Ravi vs. Badrinarayan and others (2010-EQ-O-1705), Hon"ble Supreme Court, while dealing with a case where belated FIR was lodged has

observed that if the Court finds that there is no indication of fabrication then even if there is delay in the FIR, the claim case cannot be dismissed simply on that ground.

To repeat, in the instant case, the evidence suggests of fabrication and embroidery than actual involvement of the truck.

15. Learned Counsel relied to the judgment in the matter of Harshadrai Mohanlal Bhammar vs. Anil Baburao Ghodeswar and others (2005 (12) LJSOFT 213). The facts in the said case are totally divergent; it was a case of death of a pillion rider on account of rash driving of metadoor. There was dearth of direct eye witness, however, case was considered in the light of the available material and learned Single Judge criticized the approach of the learned Member of the Tribunal.

16. Mr. Pathan has also relied to the judgment of [Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others,](#) . Hon"ble Supreme Court observed, 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.

There cannot be a contest on observation of Hon"ble Supreme Court in the said matter. In the said matter deceased was a constable. Death took place near a Police Station. Place of accident was not far from the Police Station. Supreme Court, therefore, found it difficult to believe the story of the driver of the Bus that he slept in the Bus and, in the morning found dead body of constable wrapped in a blanket. Supreme Court observed that death of the constable in a small town like Dharampur would not remain undetected throughout the night particularly when it was lying at a Bus Stand and near a Police Station, and in such an event, the court can presume that the police officers themselves should have taken possession of the dead body.

17. In the result, I record a finding that the Truck No. MH-26-8336 is not proved to be involved in the accident. Consequently, the entitlement, quantum, loss of estate, consortium need not be discussed as the very purpose of the claim petition has been frustrated, involvement of the truck is not established. The appeal is dismissed with costs. Civil Application disposed of.