

MHPA040000742014



Received on : 16-01-2014
Registered on: 16-01-2014
Decided on : 19-04-2022
Duration: 08Y. 3M.3D.

BEFORE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL, HINGOLI

(Presided over by N. B. Shinde D.J.1)

M.A.C.P. No. 07/2014
(CNR No.MHPA040000742014)

Exhibit No.63

- | | |
|---|-----------------|
| 1- Vimal W/o. Madhav Bhadange
Age:35 yrs. Occ. Household | ... Applicants |
| 2- Pushpa W/o. Madhav Bhadange
Age: 32 years, Occ.. Household | |
| 3- Rajesh S/o. Madhav Bhadange
Age: 19 years, Occ. Education | |
| 4- Omkesh S/o. Madhav Bhadange
Age:16 years Occ. Education
(Petitioners No. 4 U/g. of his
mother applicant No.1)
All R/o. Karewadi, Tq. & Dist. Hingoli | |
| <u>Versus</u> | |
| 1- Shaikh Javed S/o Shaikh Jalil
Age: Occ: Major, Occ. Driver
R/o. Khanapur Chitta, Tq. & Dist.Hingoli | ... Respondents |
| 2- Shaikh Mukhatar Shaikh Maheboob
Age: Occ: Major, Occ. Owner
R/o. Pensionpura, Hingoli,
Tq. & Dist.Hingoli | |
| 3- Branch Manager,
United India Insurance Co. Ltd.
R/o. 'Dayaram Complex', Parbhani,
Dist. Parbhani. (MS.) | |

Claim:- U/sec. 166 of M.V. Act for compensation of Rs.20,00,000/-.

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Advocate for petitioners: Shri S.R.Shinde.

Respondent Nos.1 and 2: Ex-parte

Advocate for Respondent No.3: Shri G. V. Narwade

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J U D G M E N T

(Delivered on 19th April, 2022)

(1) As per section 166 of Motor Vehicles Act, the applicants have requested for compensation amount of Rs.20,00,000/- on account of death of Madhav Ramji Bhadange, in vehicular accident.

(2) In brief, case of the applicants is as under:-

Applicants Nos.1 and 2 are wives of deceased Madhav Ramji Bhadange, and applicant Nos.3 & 4 are his sons. Madhav Ramaji Bhadange on 9.7.2013 about 10.30 p.m. while he was near Choudhari Petrol pump at Hingoli and walking through side of Hingoli to Kalamnurity road, an offending vehicle auto bearing registration No. MH-20-Y-5283 came from his backside in very high speed and in a rash and negligence manner and dashed him. Due to the accident, Madhav Bhadange sustained serious head injury. He was taken to Government Hospital at Hingoli and afterwards shifted to Yashoda Hospital at Nanded. The applicants have incurred medical expenses about Rs. 11,00,000/- for treatment of deceased Madhav Bhadange in Yashoda Hospital at Nanded. The doctor of Yashoda Hospital discharged deceased on 30.9.2013 as he was not responding to medical treatment. Due to accidental injuries, Madhav Bhandange died on 6.10.2013. Rajesh Bhadange, the brother of the deceased Madhav Bhandange, on 16.10.2013 filed the F.I.R bearing Cr. No. 89/2013 with Hingoli Rural Police Station for the offences under Section 279, 304(A) of Indian

Penal Code against the driver of the offending vehicle. Respondent No.1 is the driver, respondent No.2 is the owner of the offending vehicle, and respondent No.3 is the insurance company of the offending vehicle. Deceased Madhav Bhandange was having age about 42 years and doing agricultural work as also milk business and earning income about 4,00,000/- p.a. and maintaining the applicants.

Therefore, the applicants requested for compensation amount of Rs. 20,00,000/- from the respondents with interest 18% p.a.

(3) Respondents No.1 and 2 are served with notices Exh. Nos.7 and 8, but they have not appeared. Therefore, the claim proceeded ex-parte against respondent Nos.1 and 2.

(4) Respondent No.3 filed written statement Exh.13 and denied happening of accident of deceased Madhav Bhandange due to dash of the offending vehicle. It has also denied rashness and negligence on the part of the driver of the offending vehicle. Respondent No.3 claims that the applicants have falsely implicated the offending vehicle in collusion with the police, owner and driver of the offending vehicle to grab compensation amount from respondent No.3. Respondent No.3 further claims that the driver of the offending vehicle was not holding valid and effective driving licence, and there was no permit and fitness certificate for the offending vehicle. Therefore, there is breach of terms and conditions of the insurance policy. Thus, respondent No.3 prayed for dismissal of the claim.

(5) I heard learned Adv. Shri S.R.Shinde for the applicants and learned Adv. Shri G.V.Narwade for respondent No.3. I have framed issues vide Exh.19; and I record my findings thereon for the reasons stated below:-

<u>S.No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1	Do the petitioners prove that on 9.7.2013 about 10.30 p.m. deceased Madhav Ramji Bhandange sustained fatal injuries in the accident caused by the driver of Auto No MH-20-Y-5283, and he died on 6.10.2013 due to the accidental injuries?	Not proved.
2	Do the petitioners prove that the driver of offending vehicle Auto No. MH-20-Y-5283 drove it in a rash and negligent manner and caused the accident?	Not proved.
3	Does respondent No.3 prove that the driver-respondent No.1 was not holding valid driving licence to drive the offending vehicle and there was not permit and fitness certificate for the offending vehicle, and thereby respondent No.2- owner of the vehicle committed breach of terms and conditions of insurance policy?	Does not survive (If survives then Not Proved)
4	Whether the petitioners are entitled for compensation? If, yes what is quantum and from whom?	No
5	What order and award?	As per final order claim dismissed

Reasons As to Issue Nos.1 & 2:-

(6) A.W.1 Pushpa Madhav Bhandange has testified that on 9.7.2013 her husband Madhav Bhandange went at Sawarkheda from his village Karwadi and about 11.00 p.m. she came to know from her son Rajesh that the accident of her husband took place about 10.30 p.m. near Choudhari Petrol Pump on Hingoli to Kalamnuri road, and he was taken to the Government Hospital at Hingoli. She testified that she and her son went to the Government Hospital, where from they shifted

Madhav Bhandange at Yeshoda Hospital at Nanded, where he was treated from 10.7.2013 to 19.7.2013, thereafter at Vinayak Hospital Nanded from 19.7.2013 to 21.7.2013 and again from 21.7.2013 to 30.09.2013 at Yashoda Hospital at Nanded. Thereafter, the doctor discharged her husband even though he was not cured due to financial problem of the applicant as also due to no response by Madhav to the medical treatment, and he died on 6.10.2013.

(7) P.W.1 Pushpa further told that after the funeral of Mahadav, Namdeo Mahipati Haran told to her son and to herself that on 9.7.2013 the offending vehicle caused the accident of her husband. She testified that after post funeral rituals of her husband, her son Rajesh on 16.10.2013 filed the F.I.R. Exh. 28 with Hingoli Rural Police Station bearing Cr. No.89/2013. Thus, evidence of P.W.1 Pushpa Bhandange on the point of involvement of offending vehicle is hearsay. Therefore, evidence of P.W.1 Pushpa is not helpful to prove the involvement, although her evidence show that on 9.7.2013 her husband Mahadav sustained accidental injuries, and consequently died on 6.10.2013.

(8) The copy of the F.I.R. Exh. 28 filed by Rajesh Bhadange (applicant No.3) also shows that he had no personal knowledge about involvement of the offending vehicle; and he came to know about involvement of the offending vehicle only after the death of his father on 6.10.2013 from Namdeo Haran. After post rituals of deceased Mahadav, his son Rajesh on 16.10.2013, he filed the F.I.R. Exh.28 against the unknown driver of offending vehicle auto No. MH-20-Y-5283. The spot panchanama Exh.29 dated 17.10.2013 having been prepared after delay of more than 3 months from happening of the accident, is also not helpful. It only fix the place of incident on Kalamnuri to Hingoli road in front of Choudhari Petrol Pamp at

Karwadi/Hingoli. Therefore, spot panchanama Exh. 29 does not show presence of the offending vehicle on the spot of incident.

(9) The copy of the MLC letter Exh.34 dated 9.7.2013 issued by Medical Officer Hingoli to police station Hingoli City shows that Madhav Bhadange was brought to the hospital on 9.7.2013 about 11.40 p.m. with injuries in road traffic accident. Thus, MLC letter Exh.34 shows that Madhav Bhadange sustained injuries in the vehicular accident and afterwards he was taken to the Government hospital on 9.7.2013 about 11.40 p.m. Evidence of A.W.4 Dr. Raturaj Jadhav shows that Madhav Bhadange was shifted in his Yashoda Hospital at Nanded on 10.7.2013 and admitted till 19.7.2013 and again from 21.7.2013 to 30.9.2013 as shown in the hospital bills Exh. 56/1 and 56/2 which show that Madhav Bhadange was operated for serious head injury. The oral evidence of A.W.5 Dr. Rahul Rajendra Mahajan show that Madhav Bhadange was admitted from 19.7.2013 to 21.7.2013 in hospital namely Vinayak Hospital Private Ltd. as shown in the hospital bill Exh. 57/1. Oral evidence of A.W.1 Vimal also shows that on 30.9.2013 Madhav Bhadange was discharged from Yashodha Hospital as he was not responding to the treatment and the applicants were facing financial problems, but Mahadav died on 6.10.2013 at their house.

(10) Inquest panchanama and postmortem report Exhs. 30 and 31 dated 6.10.2013 show that deceased Madhav Bhadange died due to septicemia with old head injury (comatose with old injury (blunt) to abdomen in road traffic accident. Thus, deceased Madhav Bhadange sustained head injury about 10.30 p.m. on 9.7.2013 on Hingoli to Kalamnuri road, near Choudhari Petrol Pump within Karwadi area near Hingoli. Thus the applicants have proved that deceased Madhav died due to accidental injuries in road traffic accident. However, there is

serious dispute about the involvement of the offending vehicle Auto No. MH-20-Y-5283 in the accident.

(11) As discussed earlier, the oral evidence of A.W.1 Pushpa is not helpful to prove the involvement of the offending vehicle as she was not present on the spot of incident. A.W. 2 Namdeo Mahipati Haran testified that on 9.7.2013 about 10.15 p.m. at Savarkheda he boarded in Mini door auto M.H.20-Y-5283 (Offending vehicle) to proceed at Hingoli to see his relative patient at Nakade Hospital at Hingoli. He testified that about 10.30 p.m. on Kalamnuri to Hingoli road, near Choudhari Petrol Pump, the auto driver hit to one pedestrian who was walking through the road side and sustained serious injuries. He told that he asked the auto driver to stop there, but the auto driver did not stop, and thereafter he get down from the auto near Zilla Parishad Hingoli and also noted down the auto number and thereafter went to Nakade Hospital to see his relative.

(12) A.W. No.2 Namdev Haran further testified that after visiting to his relative in the hospital, he was returning through another auto to his village Sawarkheda and on the way near the spot of incident he saw gathering of several persons and heard from them that the offending vehicle hit to Madhav Bhadange who was taken to the hospital; and thereafter he returned to his village. A.W.2 Namdeo Haran further testified that on 6.10.2013 he came to know that Madhav Bhadange died and then he inquired with the wife and children of Madhav Bhadange as to whether they have filed police case, and when he came to know from them that no FIR was filed, he disclosed them that the offending vehicle hit had dashed to deceased Madhav Bhadange. He further told that on 17.10.2013 the police called him and he gave his statement Exh. 50 before the police disclosing the registration number of the offending vehicle and narrated the incident.

(13) A.W.3 Namdeo Rupsing Rathod, ASI, has made investigation. He has proved that on 17.10.2013 he prepared the spot panchanama Exh.29, the spot of incident was pointed out by eye witness A.W.2 Namdeo Haran. He also proved that on 17.10.2013 he recorded statement Exh.50 of A.W.No.2 Namdev Haran who disclosed that the offending vehicle hit to deceased Madhav Bhadange. He has prove the statement dated 17.10.2013 Exh.54 of respondent No.2 Sk.Mukhtar, the owner of the offending vehicle, who disclosed in the statement Exh.54 that from respondent No.1 he came to know that the accident of his auto took place near Chauhdar petrol pump on 09.07.2013. He testified that during investigation he found that Sk.Javed, respondent No.1, was the driver on the offending vehicle and he drove the offending vehicle in a rash and negligent manner and hit to Madhav Bhadange from backside. He also told that during investigation he seized the offending vehicle, and on 5.12.2013 he returned the custody of the auto (offending vehicle) to it's owner as per suprutnama Exh.48. He also told that since deceased was in hospital, there is delay in filing the F.I.R. He proved that he has filed the charge-sheet Exh. 45 against the driver of the offending vehicle.

(14) Thus, as per evidence of A.W.2 eye witness Namdeo Haran and A.W. 3 ASI Namdev Rathod, respondent No.1, the driver of the offending vehicle, drove it in a rash and negligent manner and hit to Madhav from backside resulting into serious head injury and consequently death of Madhav. A.W.3 Namdev Rathod although proved the spot panchanama Exh. 29, but the spot panchanama is not helpful to show involvement of the offending vehicle. He has proved the statement Exh.54 of respondent No.2 Sk. Muktar Sk. Maheboob, the owner of offending vehicle, wherein respondent No.2 told to ASI Namdev Rathod that on 9.7.2013 the driver respondent No.1 Sk. Javed

told him that about 10.30 p.m. the accident of his auto took place which hit to one person who was walking on the road near Choudhari Petrol Pump at Karwadi. Thus, O.W.2 has given admission Exh.54 that respondent No.1 told him about the accident. However, respondent No.2 has not entered into the witness box to prove that respondent No.1 admitted before him that his auto hit to deceased Madhav. Therefore, respondent No.2 is also not having personal knowledge. So also respondent No. 2 has not entered into the witness box therefore, his admission that his auto was involved in the accident as told to him by the driver respondent No.1, has not been proved. Therefore, Exh. 54 the statement of respondent No.2 before the police cannot be considered as his own admission about involvement of the offending vehicle.

(15) Cross-examination of A.W.3 Namdeo Rathod shows that, the accident happened on 9.7.2013, but the F.I.R. is filed on 16.10.2013 i.e. after 3 months and one week delay. Thereafter, A.W.No.3 prepared spot panchanama but, the offending vehicle was not present there. He admitted that A.W.2 Namdev was knowing the registration number of the offending vehicle and it's involvement in the accident, but he did not file any report. He admitted that except Namdev Haran, there is no other eye witness. He told that he seized the offending vehicle, but he has not got it's RTO inspection to show that there was any damages to the auto. Thus, evidence of A.W.3 Namdeo Rathod is of formal nature about carrying of the investigation, and filing formal charge-sheet Exh.45 against respondent No.1 the driver of the offending vehicle. The oral evidence of A.W.3 that he found involvement of the offending vehicle is based only on the statement Exh.50 of A.W.2 Namdeo Haran and so called admission or extra judicial confession by respondent No.1 before respondent No.2. However, respondent No.2 has not been

examined to prove so called admission or extra judicial confession given by respondent No.1. Further respondent Nos.1 and 2 have not filed written statement admitting the involvement of the accident. The statement Exh. 54 of respondent No.2, has no evidential value as respondent No.2 -the owner of the offending vehicle, has not entered into the witness box.

(16) A.W.2 Namdev Haran in the cross-examination admitted that on the spot of incident they used to be heavy traffic, since the day of the incident he was knowing the registration number of the auto but he has not filed any FIR, nor reported the accident to the police or the relatives of deceased. He told that for the first time on 17.10.2013 he told to the police in his statement Exh.50 about the registration number of the offending vehicle and happening of the incident. A.W.No.2 Namdev Haran after delay of 3 months and 8 days disclosed the incident to the police, which creates serious doubt about his credibility.

(17) A.W.No.2 Namdev Haran claims in his examination in chief that for the first time after the death of Madhav on 06.10.2013 he told to wife and son of deceased Madhav about the involvement of the offending vehicle which is also after delay of 3 months. However, A.W.No.1 Vimal in her cross-examination disclosed that she came to know about the incident from her brother in law Vitthal Bhadange, to whom Namdev Haran disclosed the incident. Thus, oral evidence of A.W.No.1 Pushpa show that A.W.No.2 Namdev Haran has not disclosed to her and her son about the happening of the accident of her husband and involvement of the offending vehicle. AW No.2 Namdev Haran in his cross-examination claims that immediately after the incident he told the happening of the incident and the involvement of the offending vehicle and it's registration number to Vitthal Bhadange, but Vitthal

Bhadange has also not filed any report. As such A.W.No.2 initially claims that after three months of the accident and after the death of Madhav Bhadange he told the incident to the wife and son of deceased Madhav but in the cross-examination he gave inconsistent statement that three months before that is immediately after happening of the incident he told the incident and the involvement of the offending vehicle to Vitthal Bhadange the brother of deceased.

(18) In fact as per affidavit of A.W.2 Namdeo Haran, the incident and registration number of the offending vehicle was known to him, but he has not reported the said incident either to the police or even to relatives of deceased Madhav. Had been the incident was disclosed by A.W.2 Namdeo Haran to Vitthal, the brother of the deceased, then Vitthal would have filed the report. Therefore, the denial of suggestion by A.W.2 Namdeo Haran that he did not inform the said incident for a period of 3 months to the relatives of the deceased, has no value. A.W.2 Namdeo Haran has also admitted that distance between his village Sawarkheda and the village Karwadi of the deceased Madhav is only about 4 Kms. He also admitted that Vitthal, the brother of deceased Madhav, is his relative. It means that even the deceased Madhav was relative of A.W.2 Namdeo Haran.

(19) It is also worth notable that A.W.2 Namdeo Haran was relative of the deceased Madhav (He also attended Madhav's funeral), still he did not stop on the spot of incident to take his relative deceased Madhav to the hospital, nor reported to the police or ambulance services. The statement of A.W. 2 Namdeo Haran that he asked the auto driver to stop, but he did not listen him and threatened not to disclose the said incident to any one, is also not reliable. If he was really threatened by the auto driver not to disclose the accident to any one, then natural conduct and responsive action of this witness should have

been that after he was alighted from the auto near Zilla Parishad office he would have approached to the police or at least on mobile inform this accident to the police, so that the police could have gone to the spot of incident to take injured Madhav to the hospital.

(20) A.W.2 Namdeo Haran further claims that while he was returning through another auto to his village, on the spot of incident he came to know about the name of the deceased and other persons who were present there were saying that the offending vehicle hit to the deceased. However, his statement that other witnesses saw the registration number of the offending vehicle at the time of accident, have not been examined. In fact, there is no such other eye witnesses as admitted by the Investigating Officer A.W.3. Therefore, in my view, the oral evidence of A.W.2 Namdeo is not at all reliable and trustworthy. Apart from unnatural conduct of A.W.2 Namdeo of not stopping at the spot of incident or returning to there after he was alighted through the offending vehicle at Hingoli which is at a distance not more than 2 to 3 Kms., to take the deceased in the hospital. He kept mum for a period of three months even though injured Madhav was his relative. Therefore, the delay of more than three months on the part of A.W.2 Namdeo Haran in not disclosing the accident and involvement of the offending vehicle to the police or any one, creates doubt about veracity of his evidence. There is every possibility that A.W.2 Namdeo Haran in collusion with his relatives applicants and the owner and driver of the offending vehicle, is trying to implicate the offending vehicle to get the compensation from the insurance company to his relative applicants.

(21) No doubt, respondent No. 3 has not examined respondent No.1, the driver of the offending vehicle. The fact that the respondent Nos. 1 and 2 are ex-parte and have not contested the application would shows that they are helping the applicants to get the compensation,

therefore, there is possibility of their collusion with the applicant. As such, the applicants have failed to prove involvement of the offending vehicle in the accident. In the facts and circumstances that the evidence of sole eye witness A.W.2 Namdeo Haran is not reliable and trustworthy, therefore, the non examination of any witness by respondent No.3 will not make any difference.

(22) Learned Advocate Shri Shinde for the applicants relied on *Kusum Lata Vs. Satbir* AIR 2011 SC 1234, *Ravi Vs. Badrinarayan* 2011(1) T.A.C. 867 (SC), *United India Insurance Company Ltd. Vs. Vaishali Deepak Pardeshi* 2019 (3) T.A.C. 282 (Bom), *Saroj Vs. Het Lal* AIR 2011 SC 671, *Manisha Vs. Umakant Marotrao Kolhe* 2016(3) T.A.C. 271 (Bom), *Nagma Shamu Dhotre Vs. Chandrakant Sakharam* 2016 (3) T.A.C. (Bom) 483, *National Insurance Company Ltd. Vs. Rakshaben Laxmansinh Thakur*. 2009 CJ(Guj)1132.

(23) As per ratio in *Kusum Lata*, *Ravi*, and *United India Insurance Company*, the delay in filing the F.I.R and recording statement of witnesses as also failure to mention the registration number of the offending vehicle in the F.I.R, was held to be not fatal to the claimants. In *Saroj* and *Rakshaben's* cases it is held that when the owner of the offending vehicle in the written statement admitted involvement of the offending vehicle, then such admission is sufficient to hold the involvement of the offending vehicle. In this case before me respondent No.2, the owner, is ex-parte and he has not filed written statement admitting involvement of the offending vehicle. The statement Exh. 54 of respondent No.2 before the police cannot be considered as his admission about the involvement of the offending vehicle. What he has stated in his statement Exh.54 before the police that respondent No.1 disclosed him about the involvement of the offending vehicle. Thus, this statement under Section 161 of Cr.P.C.

cannot be considered as admission like admission in written statement. Therefore, ratio in Saroj and Rakshaben's cases is not applicable. As regard the delay in filing the F.I.R., in the above authorities it is held that the delay in filing the F.I.R. is always not fatal and if delay is properly explained, then the witnesses can be relied. However, the facts of present case before me is quite different than the facts in above authorities.

(24) In Manisha's case the eye witness to the accident in the peculiar situation of sudden motor vehicle accident, was unable to remember exact registration number of the offending vehicle and the F.I.R. was filed against unknown vehicle. However, there was evidence of other eye witnesses as also admission in the written statement by the owner of the vehicle about the involvement of his vehicle. Thus, facts of this authority are different. In Nagma Sahamu Dhotre's case the delay on the part of Investigating Officer in recording the statements of eye witnesses was held not to be fatal. However, in this authority there were two eye witnesses to the accident, there was no delay in filing the F.I.R. In the present case before me A.W.2 is the relative of the deceased, still he has not taken any steps to admit injured in the hospital, nor reported the accident and involvement of the offending vehicle for a period of three months to the family members of the deceased or to the police. Therefore, in this case having regard to peculiar fact that A.W.2 Namdeo Haran was relative of deceased Madhav, still not taken any steps to take in the hospital and not reported the incident to any one for three month which makes his oral testimony unreliable.

(25) On the other hand, learned Advocate Shri G.V.Narwade for the respondent No.3 relied on *M/s Shrivam Insurance Company Ltd. Vs. Vanita*, First Appeal No. 606/2019, decided on 24.9.2019 wherein

the evidence of so called eye witness was discarded on the ground of 25 days delay in not reporting the accident to the police. *In New India Insurance Company Ltd. Vs. Ashalata*, First Appeal No.2829 of 2015 decided on 4.10.2018. it is held that the initial burden to prove the involvement of the offending vehicle is upon the claimants, and mere filing the charge-sheet is not sufficient proof of the involvement of the vehicle. In *Anil Vs. New India Assurance Company Ltd.* Civil Appeal No. 3291/2011 decided by the Hon'ble Apex Court on 19th January..2018 there was delay of one month in filing the F.I.R. and the tractor involved in the accident was belonging to the brother of the deceased. Therefore, evidence of the witnesses was disbelieved on the ground of delay and possibility of collusion.

(26) In *Faridabegum Vs. Daulatkahan.*, First Appeal No.3421/2011 decided on 11.02.2014, the Hon'ble Bombay High Court, disbelieved the evidence of the eye witness on so much delay about 21 months in disclosing the involvement of the offending vehicle to the police. In *National Insurance Company Ltd. Aurangabad Vs. Nandabai Prakash @ Pralhad Dhumal*, 2017(5) ABR 432 (Aurangabad Bench), the evidence of two eye witnesses was discarded on the ground of delay about 40 days in not reporting the involvement of the vehicle to the police or relatives of the deceased. In *M/s. I.C.I.C. Lombard Insurance Company Ltd. Vs. Hajratbee*, First Appeal No. 1366/2012 decided on 20 June 2019 by the Hon'ble Bombay High Court, the claim was dismissed on the ground that initial burden to prove the claim was not discharged by examining the witness.

(27) In *Pukh Raj Bumb. Vs. Jagannath Atchut Naik*, decided on 11 July 2013 by the Hon'ble Bombay High Court, it is held that the statement of witnesses before the police have no evidential value. In

G.D. Shivaswamy Vs G.P.Somashekar, 2021 AAC 1319 (Kar), there was no evidence about the damages to the auto rickshaw allegedly involved in the accident as also any other evidence, therefore, the claim was dismissed. In **Bajaj Alianz General Insurance Company Ltd. Vs. Ashok Raja** 2013 AAC 1424 (Kar) it was observed in the facts of that case that, it was calculated move on the part of the claimant and police with active connivance of doctors in implicating insured two wheeler vehicle in place of unknown vehicle for sole purpose of enabling victim of the accident to secure compensation from the insurance company.

(28) In **United India Insurance Company Vs. Manju Sharma**, FAO 4408/2010 decided on 5.11.2014 by the Hon'ble Panjab and Haryana High Court, wherein the evidence of eye witness was disbelieved for not filing the report with the police disclosing the registration number of the offending vehicle and name of the driver. In **United India Insurance Company Ltd. Vs. V.D. Hemavathy** 2017 AAC (MAD), the negligence was not proved on the part of the driver of the offending vehicle i.e. of motorcycle rider; therefore, claim was dismissed. In **Oriental Insurance Company Ltd. Vs. Premlata Shukla** Appeal No.2526/2007 decided on 15th May 2007 by the Hon'ble Apex Court, it was held that mere police papers are not sufficient to discharge initial burden to prove involvement of the offending vehicle.

(29) As such, in my view considering the unnatural conduct of A.W.2 Namdeo firstly not stopping at the spot of incident to provide medical aid to his relative injured Madhav who died later on or at least his failure to return back from Zilla Parishad to the spot of incident, secondly his failure to report the incident to the police or to the relatives of the deceased for a period about three months makes his evidence doubtful and unreliable. No doubt the offending vehicle was seized by A.W.3 ASI Namdeo Rathod, but he has not noticed any

damages to the auto, nor the auto was present at the spot of incident due to delay of three months in filing the report. Therefore, in my view the applicants have failed to prove involvement of the offending vehicle as also rashness and negligence on the part of the driver of the offending vehicle. Accordingly, I answer issue Nos. 1 and 2 as 'Not proved'.

As to issue No.3.

(30) As regard issue No.3 is concerned, the applicants have failed to prove involvement of the offending vehicle; therefore, this issue does not survive. However, in order to avoid further complications, in case in appeal the Hon'ble High Court takes different view on issue Nos. 1 and 2, I decide present issue, although the finding is redundant. Copy of the charge-sheet Exh.45 show that respondent No.1 was the driver on the offending vehicle. The copy of driving licence Exh.33 shows that respondent No.1 w.e.f from 30.4.2003 is having driving licence to drive three wheeler transport vehicle i.e. the auto, and said licence is lastly renewed on 16.10.2013. The accident occurred on 9.7.2013, therefore, I hold that respondent No.1 is holding valid driving licence.

(31) The claimants have also produced the copy of the R.C. book Exh. 42 and copy of the insurance policy Exh. 32 which show that the offending vehicle is transport vehicle having licence to carry 6+1 passengers. No doubt, the applicants have not produced the passenger's permit and fitness certificate of the offending vehicle. However, mere failure to have production of the fitness certificate and permit, does not mean that there is no fitness certificate and passengers permit for the offending vehicle. The respondent No.3 ought to have examined concerned R.T.O. to show absence of fitness certificate and the passenger permit. Therefore, in my view respondent No.3 failed to

prove that there is no fitness certificate, and passengers permit and driving licence with the driver. Therefore, respondent No.3 failed to prove breach of terms and conditions of the insurance policy. Accordingly, I answer issue No.3 as 'Not proved'.

As to issue Nos. 4 and 5.

(32) In view of above discussion, the applicants failed to prove involvement of the offending vehicle in the accident. Therefore, the applicants are not entitled for any compensation amount from the respondents. In my view considering the fact that the applicants have lost their beloved family member deceased Madhav Bhadange, it would not be just and proper to impose cost of the respondent No. 3 upon them and it would be just and proper to direct the parties to bear their own costs. In the result, I answer issue No.4 in the negative and pass following order.

O r d e r

- 1- M.A.C.P. No. 07/2014 is dismissed.
- 2- The Parties to bear their own costs.
- 3- Award be drawn up accordingly.

Date: 19/4/2022

Nandkumar B. Shinde
Member,
Motor Accident Claims Tribunal,
Hingoli.