	MHPA100002902019

ORDER BELOW EXH. 5. IN M.A.C.P. No.20/2019

Ram Manik Mundhe & 1 .. Claimants

Vs.

Balaji Yadrao Mundhe & 1 .. Respondents

1. The petitioners have taken out the present application under section 140 of the Motor Vehicles Act, 1988 seeking compensation on the principle of No Fault, on account of the death of Gopinath Ram Mundhe (for short "the deceased") resulted from an accident occurred out of the use of a motor vehicle I.e Truck bearing registration No.MH-22/AA-2711 (for short offending vehicle).

2. The brief facts leading to the present application may be delineated as follows;

The petitioners are claiming to be the heirs and legal representatives of the deceased. The petitioners are the parents of the deceased. They asserted that the deceased was working as a driver on the offending vehicle, which was owned by respondent No.1. They further asserted that on 13/04/2019 the deceased drove the offending vehicle to village Holandi which is located near Kolhapur. He was accompanied by another driver Shivraj Cholappa Malshetti. They had taken that truck to village Holandi for loading the goods. However, they did not get the load. Hence, they stayed at Shrinath Transport. On 16/04/2019 they got the load of sugar which was to be transported to Nagpur. So, they were making the truck ready for loading the sugar by fastening the rope. The deceased had climbed on cabin of the offending vehicle. He was tying the tarpaulin to the offending vehicle with a rope. While he was doing such work, he fell upon the bumper of another truck bearing No.MH-35/K-1029, which was standing adjacent to the offending vehicle. In that accident, he sustained severe injuries on his head, face and chest and died on the spot.

3. Another driver Shivraj Cholappa Malshetti lodged the information of the accident to Shiroli police station, MIDC, Kolhapur. Accordingly, police registered accidental death No.22/2019 under section 174 of the Cr.P.C. Police prepared the spot panchnama, referred the body of the deceased for post mortem by preparing the inquest panchnama.

4. Respondent No.2 Cholamandalam MS General Insurance company opposed the application by filing its say at Exh.18. It is contended by the

respondent/ Insurance Company that the deceased himself was standing on the roof of the offending vehicle, which is contrary to the provisions of Motor Vehicles Act. It is further contended that the offending vehicle was not in the motion on the road. There was negligence on the part of the deceased. So, according to the respondent/ Insurance Company, the person who has committed wrong is not entitled for any compensation. The respondent/ Insurance Company therefore prayed for rejection of the application.

5. Respondent No.1 admitted the petitioners' claim by filing his affidavit-cum-say at Exh.17.

6. I have perused the documents filed on record. The said documents are, AA-form, copy of statement of Shivraj Mallappa Malshetti recorded by the police, copy of spot panchnama, copy of inquest panchnama, copy of post- mortem report, copy of registration certificate of the offending vehicle, copy of insurance policy of the offending vehicle, copy of driving license of the deceased, copy of transportation permit and fitness certificate of the offending vehicle and copies of Aadhar cards of the petitioners.

7. The aforesaid documents particularly police papers reveal that the accident occurred on

16/04/2019 while the deceased was tying the tarpaulin to the offending vehicle with a rope. The said documents further reveals that the police registered accidental death vide entry No.22/2019.

8. The copy of insurance policy reveals that the offending vehicle was duly insured with respondent No.2. The said policy was valid at the time of accident. It further reveals that respondent No.1 is the owner of the offending vehicle and duly insured with respondent No.2.

9. I have heard the arguments of the Ld. Advocate for the petitioners. He emphasised that the accident occurred out of the use of the offending vehicle, though it was not in motion. In this regard he relied upon the judgment of the Hon'ble Supreme Court in the case of **Kalim Khan Vs. Fimidabee dt.03/07/2011, Civil Appeal Nos.8785-8786 of 2015.** In this case, the Hon'ble Supreme Court has observed as follows;

> *"From the aforesaid authorities, it is limpid that the expression use of the vehicle under certain circumstances can be attracted when the vehicle is stationary or static".*

10. The Ld. Advocate for the petitioner further relied upon the another judgment of the

Hon'ble Supreme Court in the case of **Smt. Rita Devi and Ors Vs. New India Assurance Co. Ltd and Anr. dt. 27/04/2000.** The facts of the said case are thus, one Dashrath Singh was a driver of auto-rickshaw owned by Lalit Singh. The vehicle in question was registered as a public carrier vehicle used for hire by the passengers. This vehicle was insured with the respondent-Insurance Company. On 22nd of March, 1995, it is stated that some unknown passengers hired the above auto rickshaw from rickshaw stand at Dimapur between 5 to 6 p.m. It was also not in dispute that the said auto rickshaw was reported stolen and the dead body of driver Dasarath Singh was recovered by the police on the next day, the auto rickshaw was never recovered and the claim of the owner for the loss of auto rickshaw was accepted by the respondent-Insurance Company and a sum of Rs.47,220/- was settled by the said company towards the loss suffered by the owner. One Darshan Singh claiming to be a Power of Attorney holder of the present appellants filed a claim petition along with the present appellants under Section 163 A of the Motor Vehicles Act,1988 claiming damages for the death caused to the deceased Dasarath Singh during the course of his employment under Lalit Singh as a death caused in an accident arising out of the use of vehicle. The Motor Accidents Claims Tribunal, Nagaland as per its judgment dated 24th of June, 1996 came to the conclusion that the death of the driver of the auto rickshaw (Dasarath Singh) was caused by an accident coming within the purview of the Motor Vehicles Act, therefore, held that the owner of the vehicle was liable to compensate the death of the driver in money value. Since there was an agreement between the vehicle owner and the respondent-Insurance Company to compensate the employer of the vehicle, said legal and statutory liability stood fastened on the respondent - Insurance Company. The tribunal also held that the quantum of claim of the claimants stood established and consequently it awarded a sum of Rs.2,81,500/- against the Insurance Company with interest @ 12% on the amount awarded from the date of application till payment. The Insurance Company preferred an appeal by itself before the Gauhati High Court (Kohima Bench) in M.A.(F) No.8(K)96. The High Court by its judgment dated 9.3.1998 came to the conclusion that there was no motor accident as contemplated under the Act. The High Court further held that the case in hand was a case of murder and not of an accident, hence a petition for claim under the provisions of the Act did not arise. The High Court, accordingly, allowed the appeal and set aside the judgment and the award made by the tribunal. In light of the said facts, the Hon'ble Supreme Court held as follows:

"In the instant case, we have noticed the facts, we have no hesitation in coming to the conclusion that the murder of the deceased (Dashrath Singh) was due to an accident arising out of the use of the motor vehicle".

11. The Ld. Advocate for the respondent/ Insurance Company submitted the written notes of arguments. The main thrust of his arguments is that the offending vehicle was not in motion on the road. The deceased himself was standing on the cabin of the offending vehicle which is contrary to the provisions of the Motor Vehicles Act. It is argued that the deceased was self negligent while working on the offending vehicle. As such, according to the Ld. Advocate for the Insurance Company the accident is not occurred out of the use of motor vehicle.

12. The Ld. Advocate for the respondent/ Insurance Company relied upon the following authorities:

(1) **Yallwwa Vs. National Insurance Company, AIR 2007 SC 2582.** In this case, it is observed by the Hon'ble Supreme Court that even when objections are raised by the Insurance Company in regard to its liability, the Tribunal is required to render a decision upon the issue which could attain

finality and thus the same would be an award within the meaning of Sec.173 of the Motor Vehicles Act.

(2) **Lombard GIC Vs. Ran Singh, 2008 (6) M.L.J. 278 (Aurangabad Bench)**. “In this case, it is observed that while deciding claim petition under section 140 of the Act, the defences available under sub Sec.2 of Sec.149 of the M.V.Act are always for insurer of the vehicle. Therefore, if such contention is raised the Tribunal will have to decide it while disposing of the application under section 140 of the said Act”.

(3) **Bajaj Allianze GIC Vs. Malekabai, First Appeal No.2041/2011 Hon'ble Bombay High Court (Bench Aurangabad) dt. 04/07/2019**. “In this case, it is held that on the basis of the documents, which were produced on record, the Ld. Tribunal ought to have considered as to whether *prima-facie* case has been made out regarding involvement of the vehicle”.

13. Thus, the main thrust of the arguments of the Ld. Advocate for the respondent/ Insurance Company is that the offending vehicle was not in motion on road at the time of accident. However, in this regard, to my mind, it is clear from the documents placed on record that the deceased was working as a driver on the offending vehicle. It is further clear that he fell from the offending vehicle while he was working on the offending vehicle and

sustained the injuries and resultantly died on the spot. So, in view of the observation made by the Hon'ble Supreme Court in the case of **Smt. Rita Devi and Ors. Vs. New India Assurance Co. Ltd. t**he accident in the case in hand also occurred out of the use of the motor vehicle.

14. It is well settled that so far as the claim under section 140 of the Motor Vehicle Act is concerned, the claimants are not required to plead and establish that the death in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner of the offending vehicle. Further, the claim shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death the claim has been made. So, the petitioners have made out the *prima-facie* case regarding involvement of the offending vehicle in the accident. In this view of the matter, the present application deserves to be allowed. Hence the following order is passed -

O R D E R

1. Application (Exh.05) is allowed.

2. Respondent Nos.1 and 2 do pay to the petitioners jointly and severally a sum of Rs.50,000/- (Rs. Fifty Thousand only). The

said amount be equally given to both the petitioners within one month from the date of order, in default of which the petitioners shall be entitled to interest on the said amount at the rate of 7% per annum from the date of order.

3. The respondents shall deposit the amount of N.F.L. amount by R.T.G.S. or N.E.F.T. into the Account Name : Ex Officio Member Motor Accident Claim Tribunal Gangakhed, Customer Name: Dist & Sessions Judge Gangakhed bearing A/c No. : 40791205612 having IFSC Code No.SBIN0020023 maintained by Tribunal in the State Bank of India.

4. The petitioners shall provide the details of PAN Card, *Aadhar* Card and Saving Bank Account/s for transfer of compensation amount.

DISTRICT COURTS MAHARASHTRA

Digitally signed by LAXMAN DEORAM GAIKWAD
Date: 2023.09.07 16:52:30 +0530

(L.D.Gaikwad)
Member, M.A.C. Tribunal,
Gangakhed, Dist. Parbhani.

Dated :07/09/2023.