IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 177 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SANDEEP N. BHATT

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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HARDASBHAI RAYMALBHAI GOHIL
Versus
SANJAYBHAI ARVINDBHAI JABUANI & 2 other(s)

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Appearance:
MR MEHUL S SHAH(772) for the Appellant(s) No. 1
DHARMESH D NANAVATY(2396) for the Defendant(s) No. 2
MR MAULIK J SHELAT(2500) for the Defendant(s) No. 3
RULE SERVED for the Defendant(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

Date : 20/05/2022

CAV JUDGMENT

1. The present First Appeal is preferred by the Original Claimant-Hardasbhai Raymalbhai Gohil under Section 173 of the Motor Vehicles Act, 1988, by being aggrieved and dissatisfied with the judgment and

award passed in Motor Accident Claim Petition No.22 of 2010 by the Motor Accident Claims Tribunal (Auxiliary), Dhrangadhra dated 28th November, 2014, by which the Tribunal has dismissed the Claim Petition.

2. The brief facts of the case are as such that, on 26.09.2009, at about 10:00 hours claimant was riding his motorcycle in moderate speed on the right side of the road going to Halvad. When he reached near Maliya Four road, at that time, the Opponent No.2 came with his Santro car bearing registration number GJ-12-P-8428 with full speed and in rash and negligent manner and collided with the claimant. The Claimant had fallen down and received grievous and serious injuries. Therefore, the claimant has filed the Claim Petition to get compensation of Rs.11,00,000/- as he was earning Rs.1,50,000/- from his agricultural work.

3. The Tribunal has issued notices to the opponents. The Opponent Nos.1 & 2 have not filed their reply. The Opponent No.3 has appeared and filed written statement at Exh.19 wherein it has denied averments. Thereafter, the Tribunal has framed issues for its determination. The Claimant-Hardasbhai Raymalbhai Gohil has been examined at Exh.17, Babubhai Raymalbhai Gohil at Exh.22 and Savsibhai Keshabhai at Exh.23, who are also cross-examined by the rival advocate. The documentary evidence is also produced on the record; like photo copy of F.I.R. at Mark 6/1, copy of punchnama at Mark 6/2, copy of statement of witness at Mark 6/3, copy of injury at Mark 6/4, copy of charge-sheet at Mark 6/5, copy of R.C. Book at Mark 6/6, copy of driving license at Mark 6/7, copy of insurance policy at Mark 6/8, copy of disability certificate at Mark 13/1, copy of Disablement Certificate at Mark 16/1, copy of discharge card at Mark 16/3, copy of medical certificate at Mark 16/4, copy of city brain report at Mark 16/8 etc. The Tribunal has

thereafter heard arguments of the respective parties and dismissed the claim petition by holding that it appears that the victim was admitted on 29.09.2009 and the accident occurred on 26.9.2009. Therefore, a question arises where he was between the dates of 26.09.2009 to 29.09.2009 and on relying on the deposition of witness at Exh.23 that he has no personal knowledge about the accident. Therefore, the Tribunal has found that there is delay in filing F.I.R. of 27 days which is not satisfactorily explained. Therefore, the Tribunal has considered that there is no involvement of above stated vehicle by the claimant. Being aggrieved with this finding, the claimant has preferred the present appeal.

4. Learned advocate Mr. Vishal Mehta appearing for learned advocate Mr. Mehul S. Shah submitted that the Tribunal has committed gross error in not following the judgment cited at the bar though the Tribunal has recorded the judgment in Paras 16 and 17 cited by the rival parties, but the Tribunal has not properly considered those judgments. He has further submitted that if Para 16 of the judgment considered then the Tribunal has noted that the principle of *res-judicata* cannot be applicable in the present case as at the time of deciding NFL Application, the question of involvement of vehicle raised by the Insurance Company. But at that stage, the Tribunal was not agreed with the submissions of the Insurance Company but during the trial, sufficient evidences have come on the point of involvement of vehicle. Therefore, the Tribunal has opined that *res-judicata* would not be applied on the facts of the present case. On perusing the second citation, the Tribunal has found that there is a case of evidence of two eye-witnesses, moreover, there were reasons to file complaint in delay here in the present case in cross-examination of the witnesses evidence are not come on record regarding the number of involvement. The third citation which is relied by the claimant, it appears

that judgment of Criminal Courts are neither binding on the Civil Court nor relevant in the civil case or claim for compensation except for limited purpose. On perusing fourth judgment of the claimant, it appears that there were delay of four days in filing F.I.R. Moreover, sufficient evidence are there in the present case as there are 27 days delay in filing of F.I.R and not only that, examined witnesses have no knowledge regarding number of involved vehicle. Therefore, the Tribunal has proceeded further and believed that involvement of vehicle is not established. Therefore, the Tribunal dismissed the claim petition which is erroneous as per the submission made by Mr. Shah. He has submitted that the Tribunal has not properly considered the judgment of Hon'ble Apex Court in the case of ***Ravi v. Badrinaryan*** reported in ***(2011) 4 SCC 693.*** Para 21 of the above judgment is reproduced hereunder :

> "21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons."

Therefore, he has submitted that when there is delay in lodging F.I.R. of 27 days. It cannot be said that it is unexplained looking to the injury received by the claimant. The Tribunal has also observed its impugned judgment that the claimant had received injury prior to his hospitalization about 23 days. But there is no explanation that before

hospitalization, whether the claimant has taken any treatment or not. Therefore, the Tribunal has committed error. Mr. Shah has submitted that the F.I.R., which is lodged on 22.10.2009 by one Babubhai Raymalbhai Gohil that his brother has received serious injury in head and other parts of body with the black colour Santro car bearing registration No.GJ-12-P-8428 . He has stated in the complaint itself that his brother has received serious injuries in head and he was unconscious. Therefore, they have taken him to Hospital. Thereafter, he was taken into I.C.U. in sub-conscious situation and at that point of time, he was not able to lodge the complaint immediately. But he has given the statement before the Gandhigram Police Station and at that point of time he was not in a position to give the registration No. of the Santro car before the Gandhigram Police Station. Therefore, he has explained the entire situation. Even then the Tribunal has believed that the claimant has failed to explain the situation. He has further relied on the judgment reported in (***2020) ACJ 1072*** about the involvement of vehicle by relying on paras 7, 11 and 14 of the judgment. He has submitted that Hon'ble High Court has well discussed aspect of involvement of vehicle in the accident and he has relied on observation of that judgment which is similar to the facts of the present case. He has also relied on the judgment of this Court in the case of ***Pravinkumar M Bhatt & Anr.*** vs. ***Minor Dakshaben R Jasani Thro Guardian Ramjibhai R Jasani and Anr.*** reported in ***2008 (2) GLH (UJ),*** wherein para 3 of the judgment which speaks about that adverse inference should be drawn when the driver nor the owner of the vehicle in question has stepped into the witness box then the Tribunal should draw the adverse inference. He has also relied upon the judgment of Hon'ble Supreme Court in ***Anita Sharma and Ors. vs. New India Assurance Company Ltd. and Anr.*** reported in ***(2021) 1 SCC 171,*** more particularly paras 20, 21, 22, and 23 where the Hon'ble Supreme Court has discussed

the burden of proof in the case of accident claim cases. He has further relied on the judgment of Hon'ble Apex Court in ***Vimla Devi vs. The National Insurance Company*** reported in ***(2019) 2 SCC 186,*** and on relying on Paras 16, 25 to 33 he has submitted that involvement of vehicle, adverse inference as well as non exhibiting the document are discussed by the Hon'ble Supreme Court and in the present case, all these Judgments are squarely applicable. But the Tribunal has committed error in not considering these aspects. Therefore, he has submitted that the appeal deserves to be allowed by awarding the appropriate amount of compensation to the claimant.

5. *Per contra,* learned advocate Mr. Maulik Shelat for the Insurance Company has submitted that in view of the judgment reported in 2014 lawsuit Gujarat 1399, the present case of the claimant does not require any consideration. He has relied upon the paras 13 and 15 of the above judgment and has submitted that there is contradiction in the deposition of the eye-witness as well as there is a delay in lodging F.I.R. of 27 days which is not explained. Moreover, in the first version before the police, complainant has not given registration No. of the Santro car, more particularly, the Tribunal has correctly found that the conduct of the claimant does not inspire confidence about the involvement of vehicle. Therefore, claim petition is rightly dismissed and no interference is required under the provisions of Section 173 of Motor Vehicles Act. Therefore, he prays to dismiss the present appeal.

6. I have considered the rival submissions. I have also perused the record and proceedings. It clearly reveals that the document which is produced on the record is not exhibited by the Tribunal. It also clearly reveals that there is some inconsistency in the documentary evidence as

well as oral evidence produced on the record, but in the compensation cases the Court cannot take strict view when the charge-sheet is also filed against the driver of the offending vehicle though, the complaint is admittedly filed after 27 days. But if we look at the F.I.R itself, the complainant has tried to justify the delay in filing of F.I.R by stating that he has given some statement before the Gandhigram Police Station when they have admitted his brother to Virani Wockhardt Hospital. But since he was admitted in I.C.U. and his treatment was going on, therefore, there is justification of the circumstances for lodging late F.I.R. Involvement of vehicle also comes out from the F.I.R. itself where the No. of Santro car is specifically given by the complainant. It is admitted position that the claimant has received serious injuries due to the accident. He was taken to the Virani Wockhardt Hospital and all these aspects are available on the record. Merely one of the witnesses has said that he has given the deposition by signing the document without reading and he was not much aware about which car has caused the accident, is not that much fatal looking to the judgment of Hon'ble Supreme Court in the case of ***Anita Sharma (supra)*** wherein the aspect of burden of proof is discussed in detail. It is noteworthy to re-produce the Paras 21, 23 and 24 of that judgment, which are as under:

> *"21. Relying upon Kartar Singh (supra), in a MACT case this Court (1994) 3 SCC 569 Page | 11 in Sunita v. Rajasthan State Road Transport Corporation 3 considered the effect of nonexamination of the pillion rider as a witness in a claim petition filed by the deceased of the motorcyclist and held as follows:*
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> *"30. Clearly, the evidence given by Bhagchand withstood the respondents' scrutiny and the respondents were unable to shake his evidence. In turn, the High Court has failed to take note of the absence of cross examination of this witness by the respondents, leave alone the Tribunal's finding on the same, and instead, deliberated on the reliability of Bhagchand's (A.D.2) evidence from the viewpoint of him not being*

named in the list of eye witnesses in the criminal proceedings, without even mentioning as to why such absence from the list is fatal to the case of the appellants. This approach of the High Court is mystifying, especially in light of this Court's observation [as set out in Parmeshwari (supra) and reiterated in Mangla Ram (supra)] that the strict principles of proof in a criminal case will not be applicable in a claim for compensation under the Act and further, that the standard to be followed in such claims is one of preponderance of probability rather than one of proof beyond reasonable doubt. There is nothing in the Act to preclude citing of a witness in motor accident claim who has not been named in the list of witnesses in the criminal case. ***What is essential is that the opposite party should get a fair opportunity to cross examine the concerned witness. Once that is done, it will not be open to them to complain about any prejudice caused to them. If there was any doubt to be cast on the veracity of the witness, the same should have come out in cross examination, for which opportunity was granted to the respondents by the Tribunal.***

23. The observation of the High Court that the author of the FIR (as per its judgment, the ownercumdriver) had not been examined as a witness, and hence adverse inference ought to be drawn against the appellant-claimants, is wholly misconceived and misdirected. Not only is the owner-cumdriver not the author of the FIR, but instead he is one of the contesting respondents in the Claim Petition who, along with insurance company, is an interested party with a pecuniary stake in the result of the case. If the ownercumdriver of the car were setting up a defence plea that the accident was a result of not his but the truck driver's carelessness or rashness, then the onus was on him to step into the witness box and explain as to how the accident had taken place. The fact that Sanjeev Kapoor chose not to depose in support of what he has pleaded in his written statement, further suggests that he was himself at fault. The High Court, therefore, ought not to have shifted the burden of proof.

24. Further, little reliance can be placed on the contents of the FIR (Exh.-1) , and it is liable to be discarded for more than one reasons. First, the author of the FIR, that is, Praveen Kumar Aggarwal does not claim to have witnessed the accident himself. His version is hearsay and cannot be relied upon. Second, it appears from the illegible part of the FIR that the informant had some closeness with the ownercum driver of the car and there is thus a strong possibility that his version was influenced or at the behest of Sanjeev Kapoor. Third, the FIR was lodged two days after the accident, on 27.03.2009. The FIR recites that some of the injured including Sandeep Sharma were referred to BHU, Varanasi for treatment, even though as per the medical report this took place only on 26.03.2009, the day after the accident. Therefore the belated FIR appears to be an afterthought attempt to absolve Sanjeev Kapoor from his criminal or civil liabilities. Contrarily, the statement of AW3 does not suffer from any evil of suspicion and is worthy of reliance. The Tribunal rightly relied upon

> *his statement and decided issue No. 1 in favour of the claimants. The reasoning given by the High Court to disbelieve Ritesh Pandey AW3, on the other hand, cannot sustain and is liable to be overturned. We hold accordingly."*

Considering the judgment of the Hon'ble Apex court and considering the facts and circumstances of the present case and looking to the record where the documentary evidence of treatment and other papers are available, I found that Tribunal has committed some error in not considering the evidence available on the record in liberal manner and by considering the evidence in strict manner. Therefore, I found that this is the fit case where this Court should exercise under Section 173 of Motor Vehicles Act by quashing and setting aside the judgment of the Tribunal. But as the Tribunal has not quantified the amount of compensation, it is a fit case to remand back the case to the Tribunal for fresh consideration by giving proper opportunity to the respective parties by adducing any further evidence, if any, and by considering the rival aspects. Thereafter, considering the quantum of the compensation appropriately.

7. For the reasons recorded above, the following order is passed:

7.1 The Appeal is ***allowed*** to the aforesaid extent, with no order as to costs, by remanding back the matter to the Tribunal, and by quashing and setting aside the impugned judgement and award passed by the Tribunal In M.A.C.P. No. 22 of 2010 dated 28th November, 2014 by the Motor Accident Claims Tribunal, Dhrangadhra.

7.2 The Tribunal shall re-consider the claim petition No.22 of 2010 filed before the Motor Accident Claims Tribunal, Dhrangadhra afresh

after giving proper opportunity to the parties and thereafter, considering relevant evidence available on the record by quantifying the amount of compensation.

7.3 The Tribunal shall conclude this exercise within ***nine months*** from the date of receipt of this order and respective parties shall cooperate with the Tribunal in proceeding of the present claim petition.

7.4 The record and proceedings be sent back to the concerned Tribunal forthwith.

(SANDEEP N. BHATT,J)

MANISH MISHRA