

Sachin Yallappa Usulkar & Ors.

v.

Vijayata & Ors.

(SLP (C) No(s). 1970-1971 of 2023)

28 February 2025

[B.V. Nagarathna and Satish Chandra Sharma,* JJ.]

Issue for Consideration

Whether the impugned judgment and order passed by the Courts below warrant any interference in so far as the award of compensation is concerned. Whether appellant no.2, who was minor at the time of incident, was actually involved in the accident.

Headnotes[†]

Motor Vehicle Accident – Victim-deceased went to meet one of his acquaintances, offending vehicle driven in rash and negligent manner dashed against the victim and he was dragged to some distance – Victim died on spot – Allegation that appellant no.2/minor was driving the offending vehicle – Claim petition by respondents – Tribunal granted compensation to the tune of Rs.7,74,088/- – However, the High Court enhanced the compensation to the tune of Rs.21,82,800/- – The enhanced the compensation with interest was directed to be paid by respondent no.4-Insurance company and thereafter to recover the same from appellants/owner – Correctness:

Held: The impugned judgment and order passed by the courts below do not warrant any interference in so far as the award of compensation is concerned – The compensation awarded by the courts below is upheld – The courts below have committed a grave error in failing to properly appreciate the evidence presented by the Appellants/Owner, in determining who was actually driving the offending Vehicle at the time of the accident – Taking into consideration the material evidence, it can be conclusively held that there is no substantive or direct evidence establishing the involvement of appellant no.2/Minor in the accident in question – No evidence can suggest any cogent or unequivocal proof linking

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Sachin Yallappa Usulkar & Ors. v. Vijayata & Ors.

appellant no.2/Minor as the actual driver of the offending Vehicle at the time of the incident – Accordingly, in the absence of even the slightest credible evidence pointing towards the direct involvement of appellant no.2/Minor in the alleged act, the claim against him remains untenable and unsubstantiated – Both the Tribunal as well as the High Court have committed grave error in not considering the evidence in true perspective and have misguided themselves to record perverse findings regarding involvement of appellant no.2/Minor in the accident – The findings recorded by the lower courts regarding the alleged involvement of appellant no.2/Minor in the accident are, therefore, unsustainable in law – Thus, appellant no.2/Minor is absolved of any liability and the respondent no.4/Company shall be liable to pay the quantum of compensation to respondent nos.1-2/Claimants – The Insurance Company shall not be entitled to any recovery from the owner and driver of the vehicle in question. [Paras 15, 15.1, 15.2, 15.3, 16.1]

Case Law Cited

Sajeena Ikhbal v. Mini Babu George, **2024 INSC 787 : [2024] 10 SCR 786 – relied on.**

Mangla Ram v. Oriental Insurance Co. Ltd. & Ors. **[2018] 5 SCR 287 : (2018) 5 SCC 656 – referred to.**

List of Keywords

Motor Vehicle Accident claim; Compensation; Material evidence; Substantive evidence; Direct evidence; Driver of vehicle; Examination of evidence on record.

Case Arising From

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No(s). 1970-1971 of 2023

From the Judgment and Order dated 25.05.2022 of the High Court of Karnataka Circuit Bench at Dharwad in MFA Nos. 101253 and 101435 of 2019

Appearances for Parties

Adv. for the Petitioners:
Charudatta Vijayrao Mahindrakar.

Supreme Court Reports

Advs. for the Respondents:

M/s. Krishna & Nishani Law Chambers, Anil C Nishani, Meenesh Dubey, Krishna M Singh, Vishwesh R Murnal, C. George Thomas, Aditya Kumar, Ms. Ila Nath.

Judgment / Order of the Supreme Court

Judgment

Satish Chandra Sharma, J.

1. Leave Granted.
2. The Appeal is arising out of the common impugned judgment and final order dated 25.05.2022 in M.F.A. No. 101253 of 2019 (MV-D) filed by Respondent Nos. 1-2/Claimants seeking enhancement of compensation and M.F.A. No. 101435 of 2019 (MV-D) filed by the Appellants/Owner of Vehicle. The High Court of Karnataka, Bench at Dharwad (*hereinafter "High Court"*), partly allowed the appeal filed by Respondent Nos. 1-2/Claimants and dismissed the appeal filed by Appellants/Owner.

FACTUAL MATRIX

3. The facts relevant for the disposal of the present case are that on 13.01.2016, deceased Vijay Jumalkar, husband of the 1st claimant, father of the 2nd claimant and son of the 3rd claimant along with his friend Shri Ravi s/o Vasanth Gurav had been to Vijaya Nagar, Belagavi to meet one of his acquaintances and when both of them reached the road near Atawadkar Layout, Vijaya Nagar, offending Bolero vehicle bearing registration No. KA-22-P-1449 (*hereinafter "Vehicle"*) being driven by its driver in a rash and negligent manner and in high speed came from Sainandan Residency towards Atawadkar layout and dashed against the deceased. The deceased was dragged to some distance and on account of the said impact, he died on the spot. Subsequently, an FIR was lodged by Shri Ravi/complainant, who stated that Appellant No. 2/Minor was driving the offending Vehicle. The aforesaid FIR was challenged by the owner of the offending Vehicle in a Criminal Petition, but the same was dismissed by the High Court.
4. A claim petition was filed by the Respondent Nos. 1-2/Claimants u/s 166 of the Motor Vehicle Act, 1988 before the Motor Accident

Sachin Yallappa Usulkar & Ors. v. Vijayata & Ors.

Claims Tribunal (*hereinafter "Tribunal"*) against the Appellants/ Owner seeking compensation to the tune of Rs. 50,00,000/- along with interest. The Tribunal after considering the evidence on record, concluded that the accident took place due to the actionable negligence on the part of Appellant No. 2/Minor who was driving the offending Vehicle. The Tribunal granted compensation to the tune of Rs. 7,74,088/- with interest thereon at 6% per annum from the date of claim petition till date of realization.

5. Being aggrieved and dissatisfied with the judgment and award dated 12.02.2019 passed by the Tribunal, Respondent Nos. 1-2/Claimants filed M.F.A. No. 101253 of 2019 (MV-D) seeking enhancement of compensation while Appellants/Owner filed M.F.A. No. 101435 of 2019 (MV-D) challenging the award and praying to set aside the order passed by the Tribunal.
6. The High Court, after appreciating the evidence on record, partly allowed the appeal filed by the Respondent Nos. 1-2/Claimants, thereby enhancing the compensation to the tune of Rs. 21,82,800/- with interest at the rate of 6% per annum from the date of petition till date of realization, as against Rs. 7,74,088/- awarded by the Tribunal and dismissed the appeal filed by the Appellants/Owner. The aforesaid enhanced compensation with interest was directed to be paid by Respondent No. 4, Insurance Company and thereafter to recover the same from the Appellants/Owner in the same proceedings under the principle of "Pay and Recover."
7. Being aggrieved and dissatisfied by the common impugned judgment and order dated 25.05.2022 passed by the High Court dismissing the appeal of Appellants/Owner, the instant appeals have been preferred by Appellants/Owner.
8. Learned counsel for Appellant Nos. 1 and 2 have vehemently argued that Appellant No. 1 was the registered owner of the offending vehicle, and it was being used by Appellant No. 1's friend, the father of Appellant No. 2 who had paid the insurance premium and held a valid driving license. While acknowledging the occurrence of the accident, the Appellants argued that the incident was caused due to negligence on part of the deceased himself.
 - 8.1 Additionally, it was contended that Appellant No. 2, who was a minor at the time of occurrence of incident, was not involved in the accident as he was merely seated beside the driver, being

Supreme Court Reports

the son of Appellant No. 3. It was further asserted that the father of Appellant No. 2 was the one who was driving the vehicle at the time of the accident. However, despite this, a false criminal case has been filed against Appellant No. 2/Minor and his father, accusing them of offences under Sections 279, 304-A of the Indian Penal Code, 1860, in addition to violations of Sections 5, 4, 180, 181 and 184 of the Motor Vehicles Act, 1988.

- 8.2 Further, it was argued that the Respondent Nos. 1-2/Claimants, in collusion with the police officials, have managed to file chargesheet against the Appellant No. 2/Minor. Moreover, Appellants/Owner claimed that Respondent Nos. 1-2/Claimants are entitled for reasonable compensation from Respondent No. 4 in view of the contributory negligence on the part of the deceased Vijay himself.
9. *Per contra*, learned counsel for Respondent No. 1 (the deceased's wife), Respondent No. 2 (the deceased's mentally disabled son), and the deceased's elderly mother submits that the findings of the courts below are well-founded and the courts below have rightly appreciated the evidence on record concerning the negligence of the Appellants/Owner, which directly resulted in the accident and the death of the deceased.
- 9.1 The Respondent Nos. 1-2/Claimants further contended that the quantum of compensation awarded by the courts below deserves enhancement. In this regard, it was further contended that Respondent No. 1, is the widow of the deceased, is unable to earn her livelihood, as she cannot leave Respondent No. 2, her mentally disabled son, unattended, as her disabled son requires constant care, attention, and service due to his condition. Moreover, the late elderly mother of the deceased, was in her advance stage of age and was unable to take care of herself and of Respondent No. 2. It is further contended that the deceased was the sole breadwinner of the family, and the Respondent Nos. 1-2/Claimants were entirely dependent upon him for their sustenance.
10. At this stage, we may profitably note that this Court earlier in ***Sajeena Ikhbal v. Mini Babu George***¹ had an occasion to examine

Sachin Yallappa Usulkar & Ors. v. Vijayata & Ors.

the evidence on record in an appeal filed under Article 136 of the Constitution of India. The relevant extract of the aforesaid case read as under:

“Before proceeding to dwell on the merits of the matter we remind ourselves that the present is an appeal under Article 136 of the Constitution of India wherein, ordinarily, this Court would not reappreciate the evidence. However, this Court in Mangla Ram v. Oriental Insurance Co. Ltd. & Ors.² has held that in an appeal under Article 136 of the Constitution of India, ordinarily this Court will not engage itself in reappreciation of the evidence as such but can certainly examine the evidence on record to consider the challenge to the findings recorded by Tribunal or the High Court, being perverse or replete with error apparent on the face of the record and being manifestly wrong.”

This being the legal position, we now proceed to examine the evidence on record to examine the correctness of the findings recorded by the courts below.

11. To our mind, the present controversy tasks us to address the main issue of whether the Appellant No. 2, who was a minor at the time of the accident, was involved in the accident or not. To arrive at a fair and just conclusion on this issue, it is necessary to undertake reappreciation and re-evaluation of the evidence presented before the Tribunal. The Appellants/Owner and Respondent Nos. 1-2/Claimants examined three witnesses each and exhibited number of documents in their evidence before the Tribunal.
12. It was the consistent case of the Appellants/Owner from the beginning that Appellant No. 2/Minor was not driving the vehicle at the time of the accident. It was asserted that Appellant No. 2/Minor had merely occupied a seat beside the driver, as a family member of the Appellant No. 3. In support of their case, the Appellant No. 1/ Owner examined himself as RW1 and father of Appellant No. 2 as RW2, respectively, and also produced one additional witness as RW3 before the Tribunal.

Supreme Court Reports

- 12.1 Appellant No. 1, who got himself examined as RW1 and father of Appellant No. 2 along with Appellant No. 2, has examined himself and on behalf of Appellant No. 2/Minor as RW2 have both admitted, during their respective chief-examination that RW1 was the registered owner of the offending vehicle, was being used by RW2. RW1 and RW2 have further deposed that RW2 was driving the Vehicle at the time of the unfortunate incident. It was further asserted that Appellant No. 2, who was the minor son of RW2, was not involved in the accident and had merely occupied the seat next to the driver as a family member of RW2.
- 12.2 Further, RW2 has deposed that the accident was caused on account of negligence of the deceased, Vijay, who, while talking on his mobile phone, abruptly appeared in front of the offending Vehicle. RW2 denied the allegations made by the Respondent Nos. 1-2/Claimants regarding the accident and maintains that neither he nor his minor son, Appellant No. 2, are responsible for the incident.
- 12.3 During the course of proceedings before the Tribunal, RW3, who has been cited as a chargesheet witness and is also an eyewitness to the incident in question, has been examined by Appellants/Owner. RW3 reiterated the version of Appellants/Owner in his chief-examination deposing that the accident in question occurred due to the negligence of the deceased. It was further asserted by RW3 that the offending Vehicle was being driven by an elderly individual, and Appellant No. 2, a minor, was seated by his side.
- 12.4 It was also argued before the Tribunal that Shri Ravi, a friend of the deceased who was accompanying the deceased on the date of the incident, being one of the eyewitnesses who registered the complaint, was examined by Respondent Nos. 1-2/Claimants. He has admitted in his cross-examination that on the date of the accident, Narayan Patil i.e. father of Appellant No. 2 was driving the Vehicle. Additionally, Shri Ravi testified that a complaint was registered against Appellant No. 2/Minor based on the statement provided by the police.
13. On the contrary, learned counsel for Respondent Nos. 1-2/Claimants submitted that the accident was caused due to the rash and negligent

Sachin Yallappa Usulkar & Ors. v. Vijayata & Ors.

driving of Appellant No. 2 who was a minor on the date of the accident. The Respondent Nos. 1-2/Claimants to prove their case got examined Respondent No. 1 as PW1 and two witnesses on their behalf as PW2 and PW3 before the Tribunal.

- 13.1 PW1, the wife of the deceased, has reiterated the material averments of the claim petition in her chief-examination affidavit. She deposed that on 13.01.2016, the deceased, accompanied by PW3 (Shri Ravi), had travelled to Vijaynagar, Belagavi, to meet an acquaintance. Upon reaching Atawadkar Layout, he stood on the roadside making a phone call. At that point of time, Appellant No. 2, a minor, was driving a Bolero vehicle from Sainandan Residency towards Atawadkar Layout in a rash and negligent manner, disregarding traffic regulations. Losing control, he struck the deceased with force, dragging him under the vehicle. As a direct consequence of this collision, the deceased sustained grievous and fatal injuries to his head, limbs, and other vital parts of his body. Despite efforts, he succumbed to the injuries.
- 13.2 During the course of trial, PW3, a friend of the deceased and an eyewitness to the incident, corroborated with the version of PW1. However, during cross examination, PW3 conceded that on the date of the accident, father of Appellant No. 2 i.e. Narayan Patil was driving the offending Vehicle.
- 13.3 In corroboration of her oral testimony, PW1 strongly relied upon various documents including (a) FIR in PS Crime No. 8/2016 which came to be registered against Appellant No. 2/ Minor and father of Appellant No. 2; (b) complaint lodged by PW3; (c) charge sheet filed against Appellant No. 1, Appellant No. 2/Minor and father of Appellant No. 2; (d) CC of the Memorandum of Criminal Petition No. 100603/2017 filed by Appellant No. 2/Minor against PW3 and another before the High Court praying to set-aside the proceedings initiated in PS No. 8/2016 in so far as the Appellant No. 2/Minor is concerned; (e) CC of the Order dated 05.07.2017 passed in Criminal Petition No. 100603/2017 by the High Court in rejecting the said Criminal Petition.

Supreme Court Reports

DISCUSSION AND FINDINGS

14. We have heard the learned counsels representing the respective parties at length and have meticulously examined the records presented before us. The arguments advanced by both sides have been duly considered, and all relevant materials, including witness testimonies and documentary evidence, have been thoroughly scrutinized.
15. Upon detailed evaluation, we find that the impugned judgment and order passed by the courts below do not warrant any interference in so far as the award of compensation is concerned. The compensation awarded by the courts below is upheld. However, the primary issue that necessitates further consideration is the question of whether Appellant No. 2, who was a minor at the time of the incident, was actually involved in the accident in question. In order to arrive at a just and fair conclusion on this issue, it becomes imperative to closely examine and analyse the statements of witnesses who were produced and examined before the Tribunal as well as other relevant pieces of evidence.
 - 15.1 In the present case, we observe that the courts below have committed a grave error in failing to properly appreciate the evidence presented by the Appellants/Owner, in determining who was actually driving the offending Vehicle at the time of the accident. A thorough examination of the record makes it clear that the following crucial aspects of the evidence indicates that it was the father of Appellant No. 2 who was driving the vehicle at the material time, and not Appellant No. 2/Minor:
 - (i) Testimony of PW1 (Wife of the Deceased):** During her cross-examination, PW1 categorically admitted that she had not witnessed the accident in question. Therefore, her testimony does not provide direct evidence regarding the identity of the driver of the offending Vehicle.
 - (ii) Testimony of PW3 (Friend Accompanying the Deceased):** PW3, who was accompanying the deceased at the time of the accident, also conceded during his cross-examination that Narayan Patil i.e. father of Appellant No. 2 was driving the offending Vehicle. His testimony,

Sachin Yallappa Usulkar & Ors. v. Vijayata & Ors.

therefore, establishes that Appellant No. 2/Minor was not the driver of the Vehicle.

(iii) Testimony of RW3 (Eyewitness Mentioned in the Charge Sheet): RW3, who was cited as an eyewitness in the charge sheet filed by the investigating agency, provided a critical statement. He affirmed that the offending Vehicle was being driven by an adult person at the time of the accident. Furthermore, he explicitly stated that Appellant No. 2/minor was merely sitting beside the driver as a family member and was not driving the offending vehicle.

(iv) Deposition of Appellants/Owner of the Vehicle: The Appellants, including the owner of the vehicle, have consistently maintained in their deposition that father of Appellant No. 2 was the one who was driving the offending vehicle at the time of the accident. They further asserted that Appellant No. 2/Minor had no role in the accident and was simply seated beside the driver as a family member.

- 15.2 Taking into consideration the aforesaid material evidence, we can conclusively hold that there is no substantive or direct evidence establishing the involvement of Appellant No. 2/ Minor in the accident in question. No evidence can suggest any cogent or unequivocal proof linking Appellant No. 2/Minor as the actual driver of the offending Vehicle at the time of the incident. Accordingly, in the absence of even the slightest credible evidence pointing towards the direct involvement of Appellant No. 2/Minor in the alleged act, the claim against him remains untenable and unsubstantiated.
- 15.3 In view of the above and for the reasons stated above, we are of the firm opinion that both the Tribunal as well as the High Court have committed grave error in not considering the evidence in true perspective and have misguided themselves to record perverse findings regarding involvement of Appellant No. 2/Minor in the accident. The findings recorded by the lower courts regarding the alleged involvement of Appellant No. 2/ Minor in the accident are, therefore, unsustainable in law.

Supreme Court Reports

- 15.4 In the light of the evidence on record, we set aside the finding of the courts below to the extent that Appellant No. 2/Minor was involved in the accident, and, therefore resultantly, the deceased lost his life due to the negligence on the part of father of Appellant No. 2 who was, in fact, driving the offending vehicle at the time of the incident. Appellant No. 2/Minor was merely a passenger seated beside the driver and had no role in the accident.
16. Therefore, we partly allow the appeals filed by the Appellants/ Owner, limiting our interference to the extent that Appellant No. 2/ Minor is absolved of any involvement in the accident. However, the Respondent Insurance Company shall not be absolved of its liability and the direction regarding recovery by it is set aside.
- 16.1 With respect to the compensation awarded for the loss suffered, we find no reason to interfere with the judgment and award passed by the High Court. The compensation awarded is upheld. However, Appellant No. 2/Minor is absolved of any liability and therefore, the Respondent No. 4/Company shall be liable to pay the quantum of compensation to Respondent Nos. 1-2/Claimants. The Insurance Company shall not be entitled to any recovery from the owner and driver of the vehicle in question.
17. No order as to costs.

Result of the case: Appeals partly allowed.

†Headnotes prepared by: Ankit Gyan