

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 39 OF 2000

The Oriental Insurance Co. Ltd.,
through the Branch Office at
Jalna, but now through the
Divisional Manager, "Prem-Prakash",
Adalat Road, Aurangabad

APPELLANT

VERSUS

1. Babulal s/o Seva Dholke,
Age : 45 years (actual age then
above 50 years) Occu. Nil,
R/o Barwar Mohalla, Jalna,
District Jalna
2. Kausabai w/o Babulal Dholke,
Age : 40 years (actual age then
above 45 years), Occu. Household,
R/o Barwar Mohalla, Jalna
3. C.S. Jaiswal,
Age : Major, Occu. Business,
R/o Adalat Road, Aurangabad,
District Aurangabad
(Owner of Truck No. MCA-3105)

RESPONDENTS

Mr. P.P. Bafna, Advocate for the appellant
Mr. S.P. Sonpawale, Advocate for respondents No. 1 and 2
None for respondent No.3, though served

CORAM : M.T. JOSHI, J.

DATE : 13/01/2015

ORAL JUDGEMENT :

1. Heard both sides.
2. Aggrieved by the grant of higher compensation in an application under section 166 of the Motor Vehicles Act, the present appeal is preferred by the original respondent No. 2 i.e. insurer of the goods truck involved in the accident.
3. Deceased Krishna met with accidental death on 24th April, 1998. According to the claimants i.e. present respondents No. 1 and 2, while the deceased was returning from duty by his bicycle by Jalna-Mantha bypass, at that time, a goods truck bearing registration No. MCA/3105 came from behind in high speed and gave dash to the bicycle of the deceased. In the situation, the deceased died on the spot. Therefore, the compensation is claimed from the owner of the truck i.e. original respondent No. 1 as well as the insurer i.e. the present appellant.
4. As regards the quantum of compensation, it was claimed in the petition that the deceased was 25 years

old unmarried son of both respondents No. 1 and 2. He was earning Rs. 2500/- per month by working with Ganga Kaveri Seeds, Jalna. He would have maintained his parents i.e. respondents No. 1 and 2 for a period of more than 35 years and therefore, the compensation of Rs. Three lacs was claimed.

5. The present appellant – insurer, in its written statement, has denied all the adverse allegations. It has also denied the quantum of compensation.

6. Before the learned Member of the Motor Accident Claims Tribunal, Jalna, the present respondent No. 1 i.e. the father of the deceased has examined himself at Exhibit-18. He pressed into service the certified copies of the FIR (Exh-4/1), panchanama of spot of occurrence (Exh-4/2), inquest panchanama (Exh-4/3), death certificate (Exh-4/4) and the salary certificate issued by one Winfarm Agro Industries Ltd., Bangalore (Exh-25). He deposed that the deceased was his only son. The age of the respondents No. 1 and 2 i.e. original claimants was shown as 45 years and 40 years, respectively, at the time of filing of the claim

petition in the year 1998. No evidence was led from the side of the present appellant-insurer or the owner of the truck.

7. The learned Member of the Motor Accident Claims Tribunal relied over the income certificate at Exhibit-25, showing monthly salary of the deceased at Rs. 3600/- per month, the deposition of the present respondent No. 1 and the age of both the respondents No. 1 and 2, as given in the claim petition. The multiplier of 16 was, therefore, applied. Multiplicand, on the basis of the income certificate, was arrived at Rs. 18,000/- per annum and the total compensation of Rs. 2,88,000/- was granted.

8. Mr. P.P. Bafna, learned counsel for the appellant, points towards the fact that while the age of the present respondent No.1 Babulal is shown as 45 years and respondent No. 2 Kausabai is shown as 40 years old in the petition that was filed in the year 1998, the certified copy of the FIR filed by them at Exhibit-4/1 would show that the said FIR was filed by the eldest son of these respondents No. 1 and 2, namely, Mohan Babulal

Dholke. His age in the FIR, filed on the date of accident i.e. 24th April, 1998, is shown as 31 years. Mr. Bafna, therefore, submitted that not only the respondent No.1/claimant – Babulal made a false statement on oath that the deceased was his only son, the very fact that his eldest son Mohan was 31 years old on the date of accident would falsify the case of the respondents that the mother of the deceased i.e. respondent No. 2 Kausabai was only 40 years old at the time of accident. He further points towards the statement in the FIR that the deceased was working with Ganga Kaveri Seeds Company and the pleadings in the claim petition that the salary of the deceased was Rs. 2500/- per month as against the certificate produced by the respondents No.1 and 2 at Exhibit-25, relied on by the learned Member, which would show that the monthly salary of the deceased then being received by him from Winfarm Agro Industries Limited, Bangalore was Rs. 3630/-, including the basic, D.A., H.R.A. and Special Allowance. Mr. Bafna further points that during the pendency of the petition, the present appellant had appointed Investigator. During investigation, he has recorded the statement of the relevant person and has

even collected the salary certificate of the deceased, which is annexed with the present appeal. It would show that the deceased was, in fact, working with one Mauni Agro Chemical Industries Private Limited and was drawing gross salary of Rs. 1300/- per month, including basic, D.A., H.R.A. and Special Allowance. Mr. Bafna submitted that liberty to adduce evidence of investigator may be given and the same may be directed to be considered by the learned Member of the M.A.C. Tribunal, if the matter is remanded to the Motor Accident Claims Tribunal.

. In the circumstances, Mr. Bafna submitted that the fact of utter falsehood in the pleadings of the respondents No. 1 and 2 has been believed by the learned Member of the M.A.C. Tribunal. He, therefore, submitted that the interference in the award by this Court is required.

9. On the other hand, Mr. S.P. Sonpawale, learned counsel for the respondents No. 1 and 2/claimants, submitted that the poor parents of the deceased had come before the learned Motor Accident Claims Tribunal. They were illiterate or semi-illiterate as could be seen from the thumb impression of the respondent No. 2 and the

manner of the signature of the respondent No. 1. In the circumstances, he submitted that though taking into consideration the material on record, there can be reduction in the compensation, there is no need for remand of the matter as the investigator appointed by the present appellant was not examined.

10. On the basis of above material on record and the submissions advanced on behalf of both the sides, the following points arise for my determination :-

- (I) Whether the compensation awarded by the learned Member of the Motor Accident Claims Tribunal is just ?
- (II) What order ?

My finding to the above point No. (I) is in the negative and the award passed by the learned Member of the Motor Accident Claims Tribunal is quashed and set aside and further the matter is remanded back to the learned M.A.C. Tribunal for the decision afresh, for the reasons to follow :

R E A S O N S

11. The fact of utter falsehood in the pleadings of the respondents No. 1 and 2 is exfacie proved from the contents of the FIR which shows the age of eldest son of these respondents as 31 years on the date of accident while in the claim petition, the age of the respondents No. 1 and 2 i.e. father and mother is shown as 45 years and 40 years, respectively during the same period. Further, the falsehood regarding income of the deceased has surfaced in view of the recitals in the FIR that the deceased was working with one Ganga Kaveri Seeds, has been repeated in the pleadings of the respondents No. 1 and 2 as against the salary certificate placed at Exhibit-25, as detailed supra. The certificate produced by the appellant, issued by one Mauni Agro Chemical Industries Private Limited, at this stage, cannot be considered as the same remained to be proved. According to Mr. Bafna, learned counsel for the appellant, during the pendency of the claim petition before the learned Motor Accident Claims Tribunal, the investigator,

appointed by the appellant, had collected the same and it remained to be forwarded to the concerned Advocate of the appellant – insurance company.

12. Though it requires to be considered that the claim petition was filed in the year 1998, which was decided in the year 1999 and the present first appeal, filed in the year 2000, is being heard and finally decided by this Court in the year 2015, the refusal to remand the matter to the learned Member, Motor Accident Claims Tribunal would amount to the misplaced sympathy in favour of the respondents No. 1 and 2. The utter falsehood on oath that the deceased was the only son of the respondents No. 1 and 2 as against the very recitals of the FIR that the deceased had two elder brothers are not only required to be reconsidered, even the real income of the deceased as is appreciated is also required to be reconsidered in view of the evidence that is being attempted to be produced at the appellate stage.

13. It is an admitted fact that the amount towards no fault liability under section 140 of the Motor

Vehicles Act is already received by the respondents No. 1 and 2. In the circumstances, therefore, the matter needs to be remanded to the learned Member, Motor Accident Claims Tribunal. Hence, the following order:-

14. The appeal is allowed, without any order as to costs. The award dated 01.11.1999, passed by the Member, Motor Accident Claims Tribunal, Jalna in Motor Accident Claims Petition No. 131/1998 is hereby quashed and set aside. Instead, the case is remanded back to the learned Member, Motor Accident Claims Tribunal, Jalna.

. The learned Member, Motor Accident Claims Tribunal, Jalna is requested to make efforts for expeditious hearing of the application and to decide the same afresh by granting the present appellant liberty to lead the evidence afresh.

. The amount deposited in this Court, if not disbursed to the appellant, be transmitted to the office of the Motor Accident Claims Tribunal, Jalna.

[M.T. JOSHI]
JUDGE