

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.116 OF 2000

- 1] United India Insurance Co.
Ltd., through Branch Jalna ..Appellant

Versus

- Kesarbai w/o. Damodhar Adhude,
age 52 years, occ. household,
r/o. Dhakalgaon, Tq.Ambad,
Dist.Jalna
- 2] Dhondiram Damodhar Adhude,
age 32 years, occ.agri.,
r/o. As above.
- 3] Renikindi Prakash Dathaiah,
age Major, occ.Businesss,
Truck Owner, r/o. Mama Reddy,
Nizamabad (A.P.)
- 4] Rukhminibai @ Vgarti Baburao
Adhude
age 25 years, occ. household,
r/o.Dhakalgaon, Tq.Ambad,
Dist.Jalna
- 5] Sitabai d/o. Baburao Adhude,
age 2 years, minor,
u/g. Of respondent NO.4 ..Respondents

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Mr.D.V.Soman, advocate for appellants

Mr.Deepak Rajput, advocate i/b. Mr.V.I.Thole,
advocate for respondent nos.1 and 2

Mr.A.T.Kanawade, advocate for respondent nos.4 and 5

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CORAM : M.T. JOSHI, J.

DATE : JANUARY 14, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the direction to pay compensation of Rs.9,10,000/-, to the original claimants i.e. present respondent nos.1 and 2 and 4 and 5, original respondent no.2 – Insurance Company has preferred present appeal.

3] Deceased – Baburao was the son of original petitioner no.1 – Kesarbai and brother of original petitioner no.2 – Dhondiram. Original respondent no.3 – Rukhminbai @ Bharti was his wife and original respondent no.4 – Sitabai was his two years old daughter.

4] The deceased was owner of a truck bearing registration No.MH-21-A-5917. On 23rd December, 1997, the deceased was driving his own truck in order to carry certain sugarcane to Samarthnagar Sahakari Sakhar Karkhana. The truck was proceeding on Jalna-Ambad road. At that time, another truck bearing registration no. AP-7-T-3014 came from opposite side. Original respondent no.1 was the owner of the said truck, which was during the relevant period, insured with present appellant – Insurance Company. Both the trucks met with an accident.

5] It is the case of the original petitioners that the accident has occurred due to solely rash and negligent driving of the driver of truck bearing registration no.AP-7-T-3014 which was insured with the present appellant. After ten days, the deceased died in the hospital due to head injury received in the accident.

6] According to the original petitioners, the deceased had purchased the said truck prior to eleven months by obtaining loan from a bank. The deceased was earning Rs.40,000/- to Rs.50,000/- from the business of transportation. The truck was also damaged. The deceased had married with original respondent no.3 about 5 to 6 years prior to the accident. In the circumstances, a compensation of Rs.10 lakhs was claimed by the original petitioners as well as for the proforma respondents.

7] The present appellant denied the claim of the claimants. The appellant alleged that none of the drivers were holding valid and effective driving license at the time of the accident. It is alleged that the accident has occurred due to solely rash and negligent driving of the deceased. The other pleadings regarding the income of the deceased were also denied by the

present appellant and it was claimed that the claim petition be dismissed.

8] However, learned Member of the Motor Accident Claims Tribunal came to the conclusion that the accident has occurred due to solely rash and negligent driving of the driver of truck which was insured with the present appellant and therefore, held that present appellant is liable to pay the compensation to the claimants. Further, learned Member took into consideration the statements of account placed on record from the sugar factory showing the income of the deceased for certain period. Learned Member, therefore, observed that an amount of Rs.7,500/- per month can be guessed as income of the deceased. Learned Member held that the age of the deceased was 35 years at the time of the accident on the basis of the post mortem note and accordingly, the claim came to be awarded.

9] Mr.Soman, learned counsel for the appellant, submits that original petitioner no.2 i.e. brother of the deceased, cannot be called as dependent. He submits that learned Member did not advert to the pleadings of present appellant that none of the drivers were holding valid and effective driving license. He submits that learned Member has wrongly held that the driver of the truck insured with the present appellant, was solely rashly and negligently driving the truck. He further submits that the compensation awarded by learned Member is merely on the presumptions and assumptions and without any direct proof. In the circumstances, he submits that present appeal may be allowed and the claim of the original petitioners – claimants may be dismissed.

10] On the other hand, learned counsel for respondent nos.1 and 2 and 4 and 5 support the conclusion arrived at by learned Member.

11] On the basis of above, following points arise for determination :-

1) Whether, the driver of the truck bearing registration no.AP-7-T-3014 was not holding valid and effective driving license?

2) Whether, the accident has occurred solely due to the rash and negligent driving of truck bearing registration no.AP-7-T-3014 ?

3) Whether the compensation awarded by learned Member is just compensation ?

. My answers to the points as regards Nos.1 is in the negative and as regards Nos.2 and 3 is in affirmative and the appeal is hereby dismissed for the reasons to follow.

R E A S O N S

12] The appellant has claimed that the accident has occurred solely due to the rash and negligent driving of the truck by the deceased. However, learned Member took into consideration the F.I.R. and the charge sheet filed against the driver of the truck bearing registration no.AP-7-T-3014 i.e. for the offences punishable under Section 279, 337, 338 and 304-A of Indian Penal Code and that no offence was registered against the deceased. Further, no evidence was led showing that the

deceased was rashly and negligently driving the truck and therefore, learned Member found that the driver of the truck bearing registration no.AP-7-T-3014 was responsible for the accident. In my view, no infirmity can be found with the reasoning of the learned Member in this regard.

13] The issue as to whether, the brother of the deceased, was dependent or not, is not required to be considered as the mother as well as the widow and minor daughter of the deceased are before us to whom the amount of compensation has been apportioned by learned Member in the final order. The issue of apportionment of the amount between them cannot be a matter of grievance by the insurance company in the appeal.

14] The issue as to whether, any of the drivers was not holding valid and effective driving license during the relevant period, was required

to be pleaded and proved. The appellant has merely pleaded that none of the drivers was holding valid and effective driving licenses. As noted earlier, the crime was registered against the driver of the truck bearing registration no.AP-7-T-3014 for the offences punishable under Section 279, 337, 338 and 304-A of Indian Penal Code and no crime for not holding effective and valid driving license was registered against the deceased. In absence of any material on record, the plea of the present appellant, that both the drivers were not holding valid and effective driving license, cannot be sustained.

15] Lastly, as regards the quantum of the compensation, learned Member considered the statements of account issued by the sugar factory at Exhibit 39/1, which would show that between 15th November, 1997 and 15th December, 1997, the

sugar factory has paid an amount of Rs.20,652/- to the deceased by deducting an amount of Rs.9,205.90 ps. towards repayment of the loan to State of Bank of India. Further, for the period from 16th December, 1997 to 31st December, 1997, an amount of Rs.5,651/- was paid to the deceased, out of which, an amount of Rs.1,633.80 ps. was deducted towards the loan. Learned Member has made certain calculations towards deduction of amount for fuel and maintenance of the truck and came to the conclusion that the deceased was earning an amount of Rs.7,500/- per month. Further, his contribution in the family expenditure was held at Rs.5,000/- per month. The deceased was 35 years old at the time of the accident. In view of this, multiplier of 15 was applied and thus, compensation of an amount of Rs.9,00,000/- was awarded. Further, towards the loss of consortium, an amount of Rs.10,000/- was awarded to respondent nos.3 and 4.

16] Mr.Soman, learned counsel for the appellants, submits that the figure of earning of Rs.7,500/- per month is arrived at by the learned Member, merely on the basis of conjectures and there is no evidence in this regard. The statements of account issued by the sugar factory only reflects the peak season of carrying sugar canes to the sugar factory, however the lean period of carrying the sugarcane in the area, has not been considered.

17] It should be noted that the truck was purchased by the deceased before 11 months prior to his unfortunate death. For the period between 15th November, 1997 and 15th December, 1997, the deceased earned Rs.11,000/- and odd after deduction of the amount towards the repayment of loan of State Bank of India. For next 15 days, his take-home amount was around Rs.4,000/-.

In the circumstances, the estimate of learned Member, that the deceased was earning Rs.7,500/- per month, cannot be faulted with. Here, in the present case, there cannot be any definite evidence regarding definite monthly income from the business of transportation. Hence, in my view, the total compensation arrived at by learned Member of Motor Accident Claims Tribunal cannot be called as shockingly disproportionate to the material on record. In that view of the matter, no interference is warranted in the said conclusion.

18] The appeal is therefore dismissed without any order as to costs.

[M.T. JOSHI, J.]