

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

58 FIRST APPEAL NO. 252 OF 2007

RAMNATH BALAJI SHINDE

VERSUS

SHILA BABARAJE DONGARE AND ORS

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Advocate for Appellant : Mr. K S Bhore

Advocate for Respondents 1 to 4: Mr. S. K. Shinde

Advocate for Respondent No.5: Mr. S. K. Deshpande

CORAM : A. M. BADAR, J.

DATE : 14th December, 2015

PER COURT :

1. This is an appeal by Original respondent No.1/owner-cum-driver under section 173 of the Motor Vehicles Act, 1988 challenging the judgment and award dated 10.10.2006 passed by the Learned Member of Motor Accident Claim Tribunal, Samgamner in MACP No. 645 of 2002 between the parties. Respondents 1 to 4 herein were original claimants, whereas respondent No.5 Insurance Company was original respondent No.2 in the said claim petition. For the sake of convenience, the parties shall be referred to in their original capacity.

2. Brief facts leading to the institution of the present appeal can be summarized thus:

i. Claim under section 166 of the Motor Vehicles Act, 1988 came to be lodged by claimants/legal representatives of Deceased Babaraje Dongre for claiming compensation of Rs.4.50 lakhs from respondents on account of death of said Babaraje in the vehicular accident which took place on 29.05.2001. It is case of claimants that on 29.05.2001 at about 3.00 a.m., Babaraje boarded truck bearing registration No. MH-17-A-5075 owned and driven by respondent No.1 and insured with respondent No.2. When that truck came at Loni Engineering College, because of rash and negligent driving of respondent No.1, Babaraje fell down from the truck. He sustained multiple injuries and was admitted to Lifeline Hospital Nashik and subsequently to Amrut Vahini Hospital, Samgamner where he succumbed to the injuries on 04.06.2001. It is case of claimants that deceased Babaraje was modern agriculturist and his family was having three acres irrigated land apart from two cows. Deceased Babaraje was doing business of dairy apart from occupation as an agriculturist. Claimants contended that deceased Babaraje was earning Rs.2 lakhs per year by taking cash crops. He was 39 years old at the time of accidental death. With this averments, claimants prayed for award of compensation.

ii. The claim petition came to be opposed by respondents by filing written statement at Exh.10, Respondent No.1 contended that he was driving truck in very moderate speed and observing all rules of Traffic. However, he was required to operate brakes because another vehicle suddenly came on the road. According to respondent No.1, deceased Babaraje was not sitting in the truck with taking due caution. Respondent No.1 contended that accident took place because of mistake on the part of the deceased.

iii. Respondent No.2 insurance company opposed the claim by filing written statement at Exh.14. It contended that the accident took place because of negligence of deceased himself. Insurance company further contended that the vehicle insured is a goods vehicle and neither gratuitous nor fare paying passengers are allowed to be travelled in it. Deceased was travelling in the goods vehicle as a fare paying passenger and therefore on account of breach of terms and conditions of insurance policy, the Insurance Company is not liable to indemnify the insured.

iv. On the basis of rival pleadings, issues were framed and parties went for trial.

v. In support of their claim, claimant No.1 Shila Dongre was examined at Exh.25. Reliance was placed on documentary evidence by claimants. Respondent No.2 Insurance Company examined its Administrative Officer Suresh Pawar at Exh. 38.

vi. After hearing the parties, the Learned Tribunal came to the conclusion that accident in question happened because of rash and negligent driving of the truck bearing registration No. MH-17-A-5075 but the deceased also contributed 20% in the happening of the said accident. The learned Tribunal assessed the compensation payable on account of death of Babaraje Dongare of Rs.3.54 lakhs after deducting 20% from the total amount of compensation towards contributory negligence of the deceased. The learned Tribunal, by the impugned award, had directed respondent no.1 owner to pay compensation but simultaneously directed the Insurance Company to pay the amount of compensation initially to claimants and then to recover the same from Respondent No.1/owner of the Truck.

3. This appeal at the instance of respondent No.1/ Owner-cum-driver of the truck in question is directed against the quantum of compensation assessed by the

learned Tribunal on account of death of Babaraje Dongare.

4. Shri Bhore, learned counsel appearing for appellant/respondent No.1 vehemently argued that the learned Tribunal erred in assessing supervision charges at Rs.1500/- per month though it has come to conclusion that agricultural income of claimants is increased even after death of Babaraje. He further argued that the learned Tribunal erred in treating monthly loss of income in respect of his dairy business at Rs.625/-. In submission of Shri Bhore, no such loss is incurred by claimants. He further argued that the learned Tribunal, after considering the income of the deceased at Rs.2125/- per month further erred in not deducting any amount therefrom towards personal and living expenses of the deceased and thereby committed error in assessing compensation on account of death of Babaraje. Shri Dhanjay Deshpande, learned counsel appearing for respondent No.5 Insurance Company contended that learned Tribunal has rightly permitted respondent No.5 Insurance Company to recover the amount of compensation from owner of the truck.

5. As the present appeal is directed against assessment of compensation on account of death of

Babaraje, there is no need to traverse the other facts and evidence in respect of rash and negligent driving of the truck involved in the accident as well as contribution of the deceased in happening of the accident. Those findings have attained finality and as such, need not be reopened.

6. Now let us examine whether the learned Tribunal has correctly assessed the compensation payable to claimants on account of death of Babaraje in the vehicular accident. Provisions of Motor Vehicles Act, 1988 mandates that the award must be just and it should fully and adequately restore claimants to the position prior to the accident. The Tribunal is enjoined with duty to assess compensation objectively. As such, it becomes duty of the Tribunal to award just and reasonable compensation to victims of the vehicular accident.

7. In the matter of **Laxmidevi Vs. Mohamad Tabbar, reported in 2008 (2) TAC 394**, it is held by the Honble Supreme Court that income of unskilled labourer should be taken at least Rs.3000/- per month. In the case in hand, deceased Babaraje was doing occupation as an Agriculturist apart from having dairy business. Evidence of claimant Shila on this aspect is well supported by the

documentary evidence placed on record in the form of 7/12 extract of the agricultural field as well as receipts issued by Virbhadra Sahakari Dood Utpadak Sanstha, Nimaj. In this backdrop, the learned Tribunal assessed the income of the deceased at Rs.2125/- by holding that because of his death, claimants suffered lack of his expertize in supervision of agricultural operation to the tune of Rs.1500/- per month as well as loss of income from milk business at Rs.625/- per month. This, in my opinion, ought not to be less than Rs.3000/- per month.

8. Section 168 mandates award of fair and reasonable compensation. As such, even if claimants have not filed appeal, this Court can adjudicate just and reasonable compensation even in the appeal filed by the parties other than claimants. Valuable reference can be had to this proposition from the judgment of the Supreme Court in the matter of **Jitendra Trivedi and others Vs. Kashim Daud reported in 2015(4) SCC 237**. As such assessment of loss of dependency by the learned Tribunal by calculating monthly loss to the family because of death of Babaraje at Rs.2125/- was itself on very much lower side. That should have been minimum at Rs.3000/- per month.

Therefore, even if no deduction on account of personal and living expenses of the deceased was made, still yearly loss of dependency or Rs.21500/- (2125x 12) is modest and needs no interference. Then, there was deduction of 20% from this amount towards contribution of the deceased in causing the accident. So, modest amount of Rs.3,26,400/- was awarded by the learned Tribunal to claimants on account of loss of dependency. This amount needs no interference at the hands of this Court. The award of compensation on other heads is proper and correct. Thus, no fault can be found in assessment of compensation by the learned Tribunal. No other points are canvassed.

9. In view of forgoing discussion, the appeal is devoid of merit and therefore the same is dismissed with no order as to costs.

(A. M. BADAR, J.)

JPC