

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.123 OF 2005

Oriental Insurance Company Ltd.,
through its Divisional Manager,
Jalgaon, now, through Sr.
Divisional Manager, Having : Appellant
office at "Indraprakash", Adalat
Road, Aurangabad, Aurangabad
Division Aurangabad

V E R S U S

1 Zaibunissa Begum w/o.
Asadullakhan Pathan, Age 48
years, occ. household, r/o.
Aziziya Nagar, Behind Aziziya
nagar, Mazjeed, Parbhani, Tq.
and Dist.Parbhani

2 Amanulla Khan s/o. Asadullkhan
Pathan, age 30 years, occ.
Labour, as above

3 Ahesan Khan s/o. Asadullkhan
Pathan, age 27 years, occ.
Labour, r/o. As above

4 Gopaldas s/o. Mangilal Agrawal,
age 50 years, occ. Business,
r/o. Khadaki, Ghat Road, Tq. : Respondents
Chalisgaon, Dist.Jalgaon

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Mr.S.M.Godsay, advocate for appellants

Mr.B.R.Warma, advocate for respondent nos.1 to 3

Mr.D.B.Thoke, advocate for respondent no.4

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CORAM : M.T. JOSHI, J.

DATE : FEBRUARY 11, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the direction to pay the compensation to respondent nos.1 to 3 in a petition under Section 166 of the Motor Vehicles Act, present appeal is preferred by the original respondent no.2 – the insurer of the vehicle.

3] The record would show that the deceased Asadullah Khan Pathan met with a vehicular accident on 2nd November, 2000 at about 5:30 p.m. on the road to one village Pangaon. Initially, the offence was registered against an unknown vehicle.

However, during the investigation, it was found that a Bajaj Make motorcycle bearing registration no.MH-19-A-1749 was involved in the said accident. The police further carried investigation and came to the conclusion that the accident has occurred due to rash and negligent driving of the said motorcycle by one Kisan Bhoyar. Original respondent no.1 was the owner of the said motorcycle. In that view of the matter, the petition came to be filed against the owner of the motorcycle and the insurer i.e. present appellant.

4] Present appellant denied the involvement of the said motorcycle in the accident and the pleadings of the claimants regarding the compensation, were also denied. Learned Member, however, came to the conclusion that the said motorcycle was involved in the accident. As regards the compensation, considering that the deceased was working in the office of the Executive

Engineer, Sub-Division 4, Latur and the salary drawn by him, compensation of Rs.4,65,100/- on all counts was granted. Therefore, the present appeal is preferred by the insurer.

5] Mr.Godsay, learned counsel for the appellant, submits that the motorcycle bearing registration no.MH-19-A-1749 is not involved in the accident and therefore, he submits that the appeal may be allowed. He further submits that learned Member has made a mistake in excluding the amount of Rs.50,000/- towards the no fault liability, from the total compensation amount.

6] On the basis of the material on record and upon hearing submissions of both sides, following points arise for my determination :-

i) Whether the motorcycle bearing registration no.MH-19-A-1749 was involved in the said accident ?

ii) Whether the driver of the motorcycle was rash and negligent ?

iii) Whether the compensation amount awarded by the learned Member, Motor Accident Claims Tribunal, is just and proper ?

iv) Whether the amount granted towards the no fault liability could be excluded from the total compensation amount ?

. My findings to the above points (i) to (iii) are in the affirmative and as regards point (iv), it is in the negative and the appeal is, therefore, partly allowed, for the reasons to follow.

7] It is an admitted fact that the charge sheet was filed against the driver of the said motorcycle, which is one of the reasons of learned

member to come to the conclusion that though, initially, the offence was registered against an unknown vehicle, during investigation carried by the police, involvement of the said motorcycle was found. Additionally, from the record, it is found that at the time of seizure of the motorcycle, head-light of the same was found to be in broken condition. The same was also a piece of evidence which could have been considered by the learned Member.

8] As regards the rash and negligent driving of the said motorcycle, the learned Member has taken into consideration the panchnama as regards the spot of occurrence and came to the conclusion that the driver of the said motorcycle was rash and negligent. In my view, no fault can be found with the reasonings of the learned Member.

9] As regards the compensation amount, the salary

certificate of the deceased, would show that he was an employee in the office of the Executive Engineer, Sub-Division 4, Latur. He was getting salary of Rs.7,000/- per month. His net salary of Rs.5,198/- per month was taken into consideration by learned Member and considering the age of the deceased as 54 years at the time of the accident, multiplier of 11 was applied. Towards the non-pecuniary damages, an amount of Rs.7,500/- was awarded by the learned Member.

. In my view, no fault can be found as regards the compensation amount also, awarded by the learned Member.

10] However, in my view, the learned Member has committed a mistake by excluding the amount of Rs.50,000/- towards the no fault liability, from the total amount of compensation.

11] Hence, the following order :-

a) The appeal is partly allowed without any order as to costs.

b) It is hereby declared that the compensation amount of Rs.4,65,100/- awarded by the learned Member, Motor Accident Claims Tribunal, shall be inclusive of the interim compensation amount of Rs.50,000/-, which was already granted under Section 140 of the Motor Vehicles Act.

c) Liberty is hereby granted to respondent nos.1 to 3 herein, to withdraw the amount deposited in this Court.

d) Decree be drawn accordingly.

[M.T. JOSHI, J.]

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