

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 245 OF 2000

The New India Insurance Company Ltd.,
MIDC, Waluj, Aurangabad, through
its Dist. Manager, Divisional Office
D.O. No. I, Adalat Road, Aurangabad,
through its Assistant Manager
Shri Pralhad s/o Deochand Janwal,
Age : 46 years, Occu. Service,
New India Assurance Co. Ltd.,
R/o Aurangabad

APPELLANT

VERSUS

1. Smt. Sunanda w/o Prabhakar Sonwane,
Age : 42 years, Occu. Household,
R/o 18, Sneh Ankita Housing Society,
General Vaidya Nagar, Near Nasardi
Bridge, Pune Road, Nasik - 422 001
2. Kumar Arinjay Prabhakar Sonwane,
Age : 22 years, Occu. Education,
R/o as above
3. Kumari Rutuji d/o Prabhakar Sonwane,
Age : 18 years, Occu & R/o as above
(Present respondents No. 2 and 3 were
minor u/g of their mother i.e. the
respondent No.1 Smt. Sunanda)
4. Shri Rangnath Assaram Kalwane,
Age : Major, Occu. Business,
Residing at Post Gajgaon, Tq.
Gangapur, District Aurangabad
5. Bharat Vasantrao Nilgulkar,
Age : Major, Occu. Driver,
R/o CIDCO, Aurangabad

RESPONDENTS

Mr. M.M. Ambhore, Advocate for the appellant
Mr. R.L. Chintalwar, Advocate for respondents
No. 1 to 3
Mr. S.G. Sangle, Advocate for respondent No. 4.
Appeal dismissed as against respondent No. 5
vide Registrar's order dated 09.03.2004

CORAM : M.T. JOSHI, J.

DATE : 12/02/2015

ORAL JUDGEMENT :

1. Heard both sides.
2. Aggrieved by the direction to pay compensation in a Motor Accident Claims Petition under section 166 of the Motor Vehicles Act, the present appeal is preferred by the original respondent No. 3 – insurer.
3. The submissions from both the sides would show that the present appellant has challenged the fact as to whether the deceased was legal passenger in the bus which was involved in the accident which took place on 07.11.1994 and the said bus was not insured with the present appellant. Further, in the alternative, the amount of compensation granted by the learned Member, Motor Accident Claims Tribunal,

Aurangabad of Rs. 5,90,000/- is challenged.

4. Upon hearing both sides, the following point arises for my determination :-

- (I) Whether the deceased - Prabhakar has died due to motor vehicular accident on 07.11.1994 involving a bus bearing registration No. MH-20/F-9046 between Nasik and Aurangabad ?
- (II) Whether the compensation awarded by the learned Member, Motor Accident Claims Tribunal is a just compensation ?

My finding to the above point No. (I) is in the affirmative and to the point No. (II) is partly in the affirmative and hence, the appeal is partly allowed as regards the quantum of compensation, without any order as to costs, for the reasons to follow :-

R E A S O N S

5. The evidence on record and more particularly the copy of the chargesheet filed on record would show that on 7th November, 1994, a bus bearing registration

No. MH-20/F-9046 was proceeding from Nasik to Aurangabad. In all eighteen persons were injured in the said accident. According to the claimants i.e. present respondents No. 1 to 3, the deceased was taken to the private hospital as he had suffered fracture to his parietal bone and while taking treatment at the private hospital of one Dr. Ladda, he died on 18.11.1994. The appellant-insurer has denied that the deceased was even travelling by the said bus.

6. At Exhibit-69, we have the extract of medico-legal cases register, brought by the respondents No. 1 to 3 from the chargesheet, besides Exhibit-42, the discharge summary of the deceased, issued by the Government hospital, which is dated 08.11.1994. It would show that deceased Prabhakar had suffered injuries i.e. contused lacerated wound on his scalp and thereafter, was discharged from the said Government hospital. The history note in Exhibit-42 is that of vehicular accidental injuries. Besides this, the respondents No. 1 to 3 have examined Dr. Shende as PW2 and Dr. Ladda as PW3. The deposition of PW3 Dr. Ladda would show that the deceased was treated by him and

eventually, he died. The very fact that the deceased was admitted to the Government hospital by the relatives of the deceased on the day of accident with a history of vehicular accident and the injuries mentioned in the medical papers, matches with the deposition of private doctor, which would definitely go to show that the deceased was travelling in the bus and due to fracture to parietal bone, he ultimately died.

7. As regards the quantum of compensation, the claimants/ present respondents No. 1 to 3 relied upon the photocopy of a certificate, which would show that the annual gross salary of the deceased was Rs. 72,960/-. However, the employer was not examined. On the basis of the photocopy of the certificate, the learned Member of the Tribunal came to the conclusion that the maximum earning of the deceased was Rs. 6000/- per month. 1/3rd amount was deducted towards the personal expenses of the deceased and the loss of dependency was calculated at Rs. 4000/- per month.

8. The learned counsel for the respondents No. 1 to 3 relies on the ratio in the case of "**Urviben**

Chiragbhai Sheth Vs. Vijaybhai Shambhubhai Joranputra and others" reported in **AIR 2011 S.C. 2502**, in which it is reiterated that the Motor Accident Claims Tribunal is a Civil Court of limited jurisdiction and is not a Court of records and therefore, principle of sanctity of recitals in Court proceedings available to the Court of records is not applicable to the proceedings of Tribunal.

9. While there cannot be any dispute regarding the principle of sanctity, not applicable to the record of the Court proceedings of the Motor Accident Claims Tribunal, still issue of proof will have to be considered and facts would be tested on the touchstone of the principle of preponderance of probability.

10. In the present case, there was nothing on record to show the exact income of the deceased. Hence, it will have to be taken as Rs. 3000/- per month. 1/3rd amount will have to be deducted towards personal expenses of the deceased. The loss of dependency would thus come to Rs. 2000/- per month i.e. Rs. 24,000/- per year. The deceased was proved to be of 42 years old at

the time of his accidental death. In the circumstances, though the learned Member of the Tribunal has applied multiplier of 12, in view of the ratio laid down in the case of **"Sarla Verma and others Vs. Delhi Transport Corporation and another"**, reported in **2009 AIR (SC) 3104**, the proper multiplier would be 15. Thus, towards the loss of dependency, an amount of Rs. 3,60,000/- (Rs. 24,000 x 15) would be a just compensation.

11. On non-pecuniary head, the learned Member has granted an amount of Rs. 14,000/-. Amount that was prevailing at the relevant period for non-pecuniary head was Rs. 20,000/-. Thus, the total compensation of Rs. 3,80,000/- would be just compensation. In the result, the following order:-

12. The appeal is hereby partly allowed, without any order as to costs.

. The award of the learned Member of Motor Accident Claims Tribunal, Aurangabad, dated 30.12.1999, passed in Motor Accident Claims Petition No. 95/1995, directing the original respondents No. 1 to 3 to jointly and severally pay to the claimants an amount of Rs.

5,90,000/- together with proportionate costs and interest at the rate of 12% per annum from the date of application, is hereby quashed and set aside.

13. Instead, it is hereby directed that the original respondents No. 1 to 3 i.e. the present appellant and the respondents No. 4 shall jointly and severally pay to the present respondents No. 1 to 3/original claimants an amount of Rs. 3,80,000/- with proportionate costs and with interest at the rate of 12% per annum from the date of filing of the claim petition/application till the realization of the amount.

. The present appeal is accordingly disposed of.

[M.T. JOSHI]
JUDGE

npj/fa245-2000