

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 424 OF 1999

- 1] Bharatabai W/o Damu @ Damodhar Jagdhane,
Age 21 years, Occupation – Household
R/o Murmi (Dahigaon Bangla) Taluka
Gangapur, District Aurangabad
 - 2] Ravi S/o Damodhar Jagdhane,
Age : 2 years, Minor
 - 3] Subhash S/o Damodhar Jagdhane,
Age 4 months, Minor,
Appellants Nos.2 & 3 u/g of
their mother appellant no.1
- .. Appellants

VERSUS

- 1] Dadarao S/o Sakharam Dhongre,
Age 40 years, Occu.: Driver,
R/o Karmad, Taluka and Dist.
Aurangabad
 - 2] Tukaram S/o Narayan Thombre,
Age Major, Occupation Transport
Business, R/o Jamgaon,
Taluka – Gangapur,
Dist. Aurnagabad
 - 3] The National Insurance Co. Ltd.,
Regional Office, Shivaji Nagar,
Deccan Gyamkhana, Pune
- .. Respondents

Mr. D.A. Naik, Advocate for the appellants
 Mr. V.N. Upadhye, Advocate for the respondent no.3
 None present for respondent nos.1 and 2 though served.

CORAM : M.T. JOSHI, J.
DATE : 15/01/2015

ORAL JUDGMENT :

1. Heard both sides.
2. Aggrieved by the direction to pay compensation lesser than claimed by the present appellants in a Motor Accident Claim Petition, the present appeal is preferred.
3. Deceased Damu the husband of appellant no.1-Bhartabai and father of appellant nos.2 and 3 has died in a motor vehicular accident on 16/2/1994 at about 11.00 pm. He was sitting as a pillion rider over a moped of Hero Puch make and was proceeding towards his village Murmi, Tq. Gangapur from M.I.D.C. Waluj. At that time, the goods truck bearing registration no. MH-20-A-2115 came from the opposite direction. The accident occurred between these two vehicles. According to the appellants, the accident has occurred solely due to the rash and negligent driving of the truck, therefore, compensation was claimed from its driver, owner and respondent no.3 - the insurer of the truck.
4. As regards the compensation, the appellants claimed that the deceased was 24 years old. He was

getting salary of Rs.3,000/- per month and was the only earning member in the family and, therefore, composite compensation of Rs.3,00,000/- was claimed.

Only respondent no.3-insurer had contested the claim petition. It denied all the adverse allegations. It was submitted that the accident has occurred solely due to the rash and negligent driving of the moped as three persons were travelling by the same. Further, all other adverse allegations were denied and the respondent no.3 wanted that the application be dismissed.

5. After trial, the learned Member came to the conclusion that the deceased was 25% liable for causing the accident. As regards the quantum, in absence of any documentary evidence, it was held that the deceased was earning Rs.1,000/- per month. Multiplier of 16 was applied as the deceased was 24 years old at the time of his accident. Towards the non-pecuniary damages, an amount of Rs.25,000/- was granted and thus, the total amount of compensation was arrived at Rs.2,17,000/-. 25% amount was deducted in view of the fact that the deceased was held liable in that proportion. Thus, total compensation of Rs.1,37,750/- with interest at the

rate of 12% per annum was granted.

6. Mr. D.A. Naik, learned counsel for the appellants submitted that though the panchanama of the spot of occurrence would clearly show that the moped was dragged by the truck for a distance of 30 feet, the learned Member has wrongly held that the deceased was 25% liable for the accident. He further submitted that when the deceased was working with Wockhardt Company and his widow i.e. appellant no.1 has stated that he was drawing salary of Rs.3,000/- per month plus certain amount towards the overtime, the learned Member has wrongly come to the conclusion that the deceased was earning Rs.1,000/- per month. Further, the multiplier applied is wrong. In the circumstances, he submitted that enhancement in the compensation may be granted.

7. Learned counsel for respondent no.3 Mr. Upadhye submitted that finding of the learned Member regarding the contribution in the accident of the deceased cannot be faulted with, the multiplier would have been 18 instead of 16. He further pointed out that in absence of any documentary evidence, the learned Member has estimated the income of the deceased as Rs.1,000/- per

month as his father and mother i.e. proforma respondent nos.4 and 5 to the petition were also earning wages at the same rate. He further submitted that though the multiplier applied by the Court is on the lower side, ultimately as no deduction towards the personal expenses of the deceased were made, there is no need to interfere in the award of the learned Member.

8. On the basis of this material, following points arise for my determination:-

I) Whether the deceased has contributed in causing the accident and to what extent?

II) Whether the compensation awarded by the learned Member of the Motor Accident Claims Tribunal is just ?

My answer to both the points is on the line of finding of the Tribunal. The appeal is therefore dismissed for the reasons to follow.

R E A S O N S

9. It is to be noted that the deceased alongwith

two others were travelling by a moped i.e. Hero Puch model. The learned Member has therefore observed that at the most two persons can be carried over a moped but carrying of three persons itself is a rash and negligent act. Further, panchanama of spot of occurrence would show that moped was dragged for a distance of 30 feet. Taking into consideration the overall facts, the learned Member concluded that the truck driver was 75% rash and negligent in causing the accident. Taking into consideration all these facts, in my view, no fault can be found with the said findings.

10. As regards the quantum of compensation, though the appellant claimed that the deceased was working with a Company and drawing salary, no document was filed in this regard nor any witness from the said Company was called. The appellant no.1 in cross-examination deposed that the parents of the deceased were working at that time and were earning wages at the rate of Rs.1,000/- per month. In absence of any documentary evidence, the learned Member has rightly estimated the earning of the deceased as Rs.1,000/- per month. Thereafter, multiplier of 16 was applied and 25% amount was deducted

towards the negligence of the deceased. Though, in view of the age of the deceased being 24 years, the multiplier of 18 should have been applied in place of 16, ultimately, no deduction towards the personal expenses were made by the learned Member.

11. In that view of the matter, the compensation awarded by the learned Member of the Motor Accident Claims Tribunal cannot be called as unjust one. In the circumstances, the following order:-

12. The appeal is hereby dismissed without any order as to costs.

[M.T. JOSHI]
JUDGE

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