IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

60 FIRST APPEAL NO. 345 OF 2005
WITH CA/2808/2015 IN FA/345/2005

DIVISIONAL CONTROLLER THE ORIENTAL INS CO LTD BEED
VERSUS
SUNITA VIKRAM HAWALE & ORS
...
Advocate for Appellant : Mr. Anil A Joshi
Advocate for Respondent No.4 : Mr. M. M. Patil

CORAM : A. M. BADAR, J.

DATE : 14th December, 2015

PER COURT :

1. This is an appeal by original respondent Insurance Company under section 173 of the Motor Vehicles Act, 1988 thereby challenging the judgment and award passed by the learned Member, Motor Accident claim Tribunal, Beed in MACP No. 206 of 2000 between the parties on 30.09.2004. Respondents 1 to 3 herein were original claimants before the learned Tribunal. Respondent No.4 herein was respondent No.1 before the learned Tribunal. He is owner of the Truck bearing registration No. MH-23-921. For the sake of convenience, the parties shall be referred to in their original capacity.

2. Brief facts are thus:

i. It is case of claimants/dependent legal representatives of deceased Vikram Raghunath Havale that on 12.07.2000 he had been to Kolhapur by Jeep bearing registration No. MH-03-H4387 for purchase of machineries for his shop named Pallavi Traders. On 13.07.2000, he, along-with his driver, undertaken return journey. When that jeep was in the vicinity of village Karewadi, a truck bearing registration No. MH-23-921 owned by respondent No.1 and insured with respondent No.2, came from opposite direction in rash and negligent manner. That truck gave dash to the Jeep causing instantaneous death of Vikram. The accident has resulted in registration of Crime No. 83/2000 against driver of the Truck. According to claimants, deceased Vikram was businessman. He was running machinery spare parts shop dealing with electrical articles at Beed by name and style “Pallavi Traders. He was also taking contract. Apart from this, he was an agriculturist holding irrigated land. Though in para 5 of the claim petition, claimants have pleaded his monthly income of Rs.7,000/-, in para 25, the claimants stated his income to be Rs.2 lakhs per annum. Claimants further contended that because of accidental death of Vikram, the shop is closed and contractor-ship business also came to an end. There is loss in occupation of agriculture. With these averments, claimants prayed for awarding compensation of R.7 lakhs from the respondents.

ii. The claim petition came to be opposed by filing written statement by respondent No.2 Insurance Company at Exh.13. It denied each and every adverse averments. According to respondent Insurance Company, the owner as well as insurer of the Jeep in which the deceased was travelling are necessary parties to the petition. Claimants will have to prove that driver of the jeep was holding valid driving licence and was not responsible for the accident. With these averments, the Insurance company prayed for dismissal of the claim.

iii. Respondent No.1/owner of the truck failed to participate in the proceedings.

iv. After framing necessary issues, the parties were put to the trial before the learned Tribunal.

v. In support of their claim, the claimants examined Claimant No.1 Sunita Havale/widow. In rebuttal, respondent did not enter into witness box. After hearing the parties, by the impugned judgment and award, the learned Tribunal assessed monthly income of the deceased at Rs.5000/- and deducted 1/3rd amount from the same towards personal and living expenses of the deceased. Multiplier of 17 was applied considering age of deceased as 29 years and accordingly loss of dependency was estimated to Rs.6,79,932/- After assessing compensation on conventional heads, the learned Tribunal, by the impugned judgment and award directed the respondents to pay compensation of Rs.6,94,932/- to claimants along-with interest @ 9% per annum from the date of filing of petition.

3. Heard Shri Joshi, learned counsel appearing for the appellant Insurance Company. He vehemently argued that the evidence on record does not show that either machinery shop of the deceased was closed or that his contractor-ship business could not be continued by claimants. He further argued that there is variance in pleadings about income of the deceased. Evidence on the aspect of income of deceased is not trustworthy and as such, the award of compensation is exorbitant.

4. Shri Patil, learned counsel appearing for respondent No.4 contended that the learned Tribunal has awarded just and reasonable compensation as per mandate of Motor Vehicles Act, 1988.

5. None appears for respondents 1 to 3/claimants.

6. Now let us examine whether the compensation awarded by the learned Tribunal to claimants on account

of death of Vikram represent just and reasonable amount to which they are entitled. As the learned counsel for the Appellant Insurance Company has pressed appeal so far as quantum of compensation awarded by the learned Tribunal, there is no necessity to traverse the other facts recorded by the Tribunal. Perusal of record and proceedings and particularly documentary evidence placed on record goes to show that the deceased Vikram was running shop in the name and style Pallavi Traders. The certificate of registration of that Shop under the Mumbai Shop and Establishment Act, 1948 is on record at Page 38. It shows that the shop was registered in the year 1995 and in the year 1999 the said shop registration was renewed. The claimants have placed on record the income tax clearance certificate issued in favour of deceased Vikram Rangnathrao Hawale at Exh.40. It shows that in the year 1995-96, income of deceased Vikram was around Rs.1.50 lakhs. His income for the year 1996-97 was Rs.1.60 lakhs as per this income tax clearance certificate Exh.40. Certificate at Exh.41 shows that the deceased was a registered contractor with Public Works Department of Beed. He was registered as contractor on 03.01.1998. It becomes thus clear that even for the assessment year 1996-97, income of the deceased, as per the record of income tax department, was Rs.12,500/- per month. It is a matter of common knowledge that by passage of time, income of self occupant persons increases. On this backdrop, the learned Tribunal has modestly estimated income of the deceased at Rs.5,000/- per month.

7. Considering the number of dependents on the deceased, 1/3rd amount was deducted towards personal living expenses of the deceased. Choice of multiplier 17 considering age of deceased as 29 years is also correct in view of the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation,** reported in **2009 (5) Mh.L.J. (S.C.) 775.** As such, the learned Tribunal is perfectly justified in assessing loss of dependency of claimants on account of death of Vikram. Award of compensation of Rs.6,94,932/-, by no stretch of imagination, can be said to be exorbitant or perverse warranting interference at the hands of this Court. In the result, appeal fails.

8. The First Appeal is dismissed with no order as to costs. Civil application also stands disposed of.

(A. M. BADAR, J.)

JPC