

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.235 OF 2001

The Oriental Insurance Company Limited
Ahmednagar Brach,
Kisan Kranti Building,
Market Yard, Station Road, Ahmednagar

APPELLANT

Now Through : Divisional Manager,
Oriental Insurance Co. Ltd.,
Inder Prakash, Adalat Road,
Aurangabad

VERSUS

1. Vimal Ashok Bhagwat
Age-32 years, Occ – Household
2. Navnit Ashok Bhagwat,
Age-13 years, Occ – Education
3. Urmila Ashok Bhagwat
Age-11 years, Occ – Education
4. Archana Ashok Bhagwat,
Age-8 years, Occ- Education
5. Sandip Ashok Bhagwat,
Age-5 years, Occ- Nil

RESPONDENTS

Nos. 2 to 5 are minor their guardian
is mother – appellant No.1

6. Baburao Raghuji Bhagwat,
Age-82 years, Occ – Nil
7. Gangubai Baburao Bhagwat,
Age-75 years, Occ – Household

Nos. 1 to 5 R/o Kanhur Pathar,
and Nos 6 and 7 R/o Viroli Post,
Kanhur Pathar, Taluka-Parner,
District – Ahmednagar

8. Chandrakant Vishnu Mulay,
Age-41 years, Occ-Driver
9. Laxman Mahadu Belote,
Age-55 years, Occ – Business
Both R/o Devi Bhoyare,
Taluka-Parner, District-Ahmednagar

.....
Mr. S. M. Godsay, Advocate for the appellant
Mr. D. R. Jaybhar, Advocate for respondents No.1 to 7
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[CORAM : M. T. JOSHI, J.]

DATE : 9th MARCH, 2015

ORAL JUDGMENT :

1. Heard both the sides.
2. Aggrieved by the direction to pay compensation in motor accident claim petition under section 166 of the Motor Vehicles Act, present appeal is preferred by original respondent No.3 i.e. the insurer of tractor and trolley involved in the accident.
3. Original petitioners i.e. present respondents No. 1 to 7 claimed to be dependents of deceased Ashok Baburao Bhagwat. According to them, on 17th January, 1995, at about 5.30 pm

while deceased Ashok was coming on his M-50 motorcycle from Pippri Pathar to Kanhur Pathar at that time, tractor driver i.e. original respondent No.1 - Chandrakant drove tractor bearing registration No.MH-16/C-8083 with trolley bearing registration No.MH-15/ B-8697 which was coming from Pimpalgaon Rotha and was going towards Devi Bhoyare, in very rash and negligent manner and gave dash to the motor cycle of the deceased and fled away with his vehicle. The deceased was taken to the hospital by passersby. Relatives had gathered near the deceased, who was injured. At that time, the deceased told that the accident has occurred due to the tractor and trolley, which went towards Pippri Pathar. After making inquiry, the relatives came to know that present tractor and trolley was involved in the accident and, therefore, FIR came to be filed on the second day i.e. on 19th January, 1995.

4. As regards the compensation, they claimed that the deceased was 11th Standard pass, he was agriculturist as well as was running a grocery shop and he was also in the business of brick kiln and thus was earning around Rs.60,000/- per annum. He would have survived for 15 more years and thus composite compensation of Rs.5 lac was claimed.

5. Tractor owner, respondent No.2 - Laxman as well as present appellant - insurer filed joint written statement. They denied that the vehicle was involved in the accident. According to them, on the date of the incident, since 1.30 pm the Tractor was very well involved in ploughing operation and before that it had returned from a fair and was not involved in the accident. In the alternative, pleadings regarding compensation were denied.

6. Learned Member, on the basis of the material before him, came to the conclusion that the Tractor and the trolley were involved in the accident and the accident was caused due to rash and negligent driving of the same and, therefore, compensation was granted.

7. As regards compensation, learned Member came to the conclusion that the annual income of the deceased was of Rs.40,000/-. The the loss of dependency was arrived at Rs.24,000/- per annum and multiplier of 16 was applied and thus, compensation was awarded at Rs.3,00,000/- including compensation towards medical expenses, funeral expenses, mental shock and loss of consortium etc.

8. Mr. Godsay, learned counsel for the appellant submits that there is vast contradiction between the alleged statements said

to have made by the deceased to his relatives and the actual registration number of the vehicle. He further submits that in fact original respondent No.1 – Driver is acquitted by the concerned JMFC, as involvement of the tractor in the accident was not proved beyond reasonable doubt. He further took me through various contradictions regarding involvement of the vehicle in the accident and submits that the appeal be allowed.

9. On the other hand, Mr. Jaybhar, learned advocate for respondents No.1 to 7, submits that in a motor accident claims petition, stringent rules regarding standard of evidence are not required to be followed. He further submits that the learned JMFC has acquitted original respondent No.1 – Driver, as the case was not proved beyond reasonable doubt. Here the case is required to be proved even below the preponderance of probabilities. He submits that the accident has occurred on 17th January, 1995 and within 48 hours it was disclosed to the investigating officer by the relatives that the present vehicles were involved and thus, the FIR came to be filed on 19th January, 1995. He, therefore, submits that the appeal be dismissed.

10. On the basis of the material following points arise for my determination-

POINTS

I) Whether the accident in question has occurred due to rash and negligent driving of the vehicle by original respondent No.1 on the given date, time and place?

II) What would be the just compensation?

11. My findings to point No.1 is in the affirmative and to point No.2, as awarded by the learned Member, for the reasons to follow.

REASONS

12. Evidence on record would show that the deceased had made a statement to his relatives regarding involvement of the tractor and trolley. There is some contradiction as to whether the deceased has given details of the registration number either of the tractor or trolley and those numbers were correct or not. There is some contradiction as to whether deceased on his own made the statement to his relatives or as to whether upon asking by his brother he narrated the incident.

13. It is to be noted that the FIR and Panchanama of spot of occurrence would show that the accident had occurred at a lonely place, where the deceased was found in injured condition by one of the witnesses whose evidence was recorded in the criminal case, copy of which is at Exhibit-23. This would show that the accident has occurred at a lonely place. PW-1 Vimal widow of the deceased, PW-2 Mahadeo and PW-3 Subhash, villagers deposed that in their presence the deceased had made narration. There is slight variance between the versions given by them. However, immediately within forty eight hours, it was found by the police that the present tractor and trolley was involved in the accident. In the proceedings under the Motor Vehicles Act, in my view, it is sufficiently proved that the accident has occurred due to involvement of tractor and trolley. Considering the Panchanama of the spot of occurrence and the fact that the accident has occurred in a broad day light, over a road, it is sufficiently clear that it was due to rash and negligent driving of original respondent No.1.

14. As regards compensation, it is to be noted that the deceased had left behind him two hectare and 31 Are land as is proved at Exhibit-34. He was having his own Bajaj M-50 vehicle. The postmortem report shows that the deceased was 45 years

old at the time of the accident. In the circumstances, the earning of the deceased computed at Rs.40,000/- per annum by the learned Member, cannot be called as unreasonable. In that view of the matter, following order.

ORDER

Appeal is hereby dismissed without any order as to costs.

[M. T. JOSHI, J.]

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