

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 96 OF 2000

- 1] Motiram S/o Hiralal Pardeshi
 Age : 68 years, Occu.: Nil,
 R/o : Burhannagar, Tq.: &
 Dist. : Ahmednagar
- 2] Alka D/o Motiram Pardeshi
 now married and known as
 Alka alias Laxmi Ujjainsing
 Pardeshi, Age : 24 years,
 Occu.: Household, R/o : Buldhana,
 Tq & Dist : Buldhana
- 3] Anita D/o Motiram Pardeshi,
 Age : 21 years, Occu. &
 R/o : Burhannagar, Tq. &
 Dist. : Ahmednagar

.. Appellants
 (Orig. Applicants)

VERSUS

- 1] M/s. Patel Roadways Ltd.,
 22-2-270, Dewan Diwadi,
 Hyderabad (A.P.)
- 2] National Insurance Co. Ltd.,
 Branch – Unity Building,
 Annexe, Third Floor, 72 Mission
 Road, Bangalore (Karnataka)

.. Respondents
 (Orig. Opponents)

Mr. C.K. Shinde, Advocate for the appellants
 Mr. A.R. Borulkar, Advocate for the respondent no.1
 Mr. D.S. Kulkarni, Advocate i/b. Mr. S.L. Kulkarni, Advocate
 for the respondent no.2

CORAM : M.T. JOSHI, J.
DATE : 09/01/2015

ORAL JUDGMENT :

1. Heard both sides.

2. Aggrieved by the award of the learned Member of Motor Accident Claims Tribunal, Ahmednagar holding the deceased equally rash and negligent in causing the accident and also the quantum of compensation, the original claimants in the Motor Accident Claim Petition have preferred the present appeal.

3. Deceased Prakash Pardeshi was 24 years old on 27/5/1996. He was driving jeep bearing no. MH-17-C-1145 on Ahmednagar-Manmad road near village Rahuri Khurd. At that time, truck bearing no. AP-12-T-2069 came from the opposite direction. The present respondent no.1 M/s. Patel Roadways Ltd. was the owner while the present respondent no.2 - National Insurance Company Ltd. was the insurer during the relevant period of the said goods truck. According to the appellants, there was accident between these two vehicles. According to the appellants i.e. the father and two sisters of the deceased, the accident has occurred solely due to the rash and negligent driving of the truck and, therefore, composite compensation of Rs.4,00,000/- was claimed.

4. The respondent no.1 - the owner did not appear in the proceedings. The claim was contested by respondent no.2 - the insurer. It was submitted that the accident has occurred solely due to the rash and negligent driving of the jeep. Further all other adverse pleadings were denied and, therefore, the respondent no.2 wanted that the petition be dismissed.

5. Before the learned Tribunal, witness no.2- Dattatraya Madane was examined as an eye witness. One Shashikant Jagdhane was examined as witness to the panchanama of spot of occurrence recorded during the investigation. The learned Member came to the conclusion that the accident has occurred due to the rash and negligent driving of the deceased as well as the truck driver. It was held that both were equally liable for the accident.

6. As regards the quantum of compensation, the learned Member considered the income of the deceased as Rs.1000/- per month. It was found that appellant no.1- Motiram i.e. father of the deceased was 65 years of age.

In the circumstances, monthly dependency was held as Rs.700/- per month i.e. Rs.8,400/- per annum. Multiplier of 6 was applied and the loss of dependency was calculated at Rs.50,400/-. As regards the case of the appellant no.2-Alka and appellant no.3-Anita, it was found that admittedly the deceased as well as these appellants has two elder brothers, who were already married and as such earning. In the circumstances, holding that even they are not the legal heirs as per the provisions of the Hindu Succession Act, they would not be liable to receive any compensation. Towards loss of dependency, an amount of Rs.50,400/- was granted. Further, an amount of Rs.15,000/- was granted towards loss of estate and Rs.3,000/- towards funeral expenses were granted. It was therefore held that the compensation of Rs.68,400/- would have been a reasonable compensation. Considering that the deceased was also equally liable for causing the accident, the amount was equally divided and, therefore, an amount of Rs.34,200/- was granted together with interest at the rate of 12% per annum.

7. Mr. C.K. Shinde, learned counsel for the

appellants submitted that the learned Member has wrongly held that the deceased was rash and negligent in driving the vehicle. He further submitted that the issue, as to whether, the appellant nos.2 and 3 would be entitled for compensation, is to be looked not from the angle of legal representativeness of the deceased but as to whether the deceased was the bread earner of these appellants and whether he would have contributed in the marriage expenses of these appellants, since it is proved that they were of marriagable age. In the circumstances, he submitted that the appeal be allowed and the entire liability be fastened on the present respondents.

8. On the other hand, Mr. D.S. Kulkarni i/b. Mr. S.L. Kulkarni appearing for respondent no.2-insurer submitted that the learned Member has correctly arrived at the conclusion regarding the rash and negligent driving of the respective vehicles. He took me through the oral as well as the documentary evidence in this regard. He further submitted that the compensation arrived at by the learned Member is borne out of the evidence on record. He therefore submitted that the

appeal be dismissed.

9. Mr. A.R. Borulkar, learned counsel for the respondent no.1 agrees with the submissions made by Mr. Kulkarni.

10. Upon considering the rival arguments and the material on record, in my view, the appeal needs to be partly allowed.

11. On the basis of the above material, following points arise for my determination :-

I) Whether the learned Tribunal has correctly held that both the vehicle drivers were jointly and severally negligent in driving the respective vehicles ?

II) Whether the compensation awarded by the learned Member is just compensation ?

My finding to point no.(I) is in the affirmative and to point no.(II) is in the negative. The appeal is partly allowed for the reasons to follow :

R E A S O N S

12. The panchanama of spot of occurrence is proved at Exhibit 41 that the accident has occurred in the middle of the road. The tar road was 22 feet while there were offsets of 9 feet from each side. It was the case of the appellant that the jeep was being proceeded from the left side and even witness no.2 Dattatraya Madane has deposed that the jeep was being driven in slow speed and the deceased – Prakash (driver of the jeep) signalled the truck driver to pass by the left side. His cross-examination would show that deceased Prakash was returning from Pune and was driving the jeep for whole night. Further, the witness definitely admitted that at the time of occurrence, he was sleeping and he awoke only after the impact. The learned Member therefore rightly dis-believed the version of this witness. The panchanama of the spot of occurrence was therefore taken into consideration which would show that the accident has occurred in the middle of the road. Therefore, the case of the appellants that the jeep was being driven on the left side of the road, was dis-

believed. Further, the fact that despite the heavy crash between these two vehicles, the jeep had proceeded 100 feet further despite it being a lighter vehicle compared to the goods truck, was considered and, therefore, it was held that the deceased as well as the truck driver were equally rash and negligent in driving the vehicles and contributing in the accident. Therefore, no fault with the reasoning can be found in this regard.

13. As regards the quantum of the compensation, while appellant no.1-father has deposed that deceased was earning Rs.1500/- to Rs.2000/- per month as driver of the jeep, in absence of any documentary evidence, the learned Member held the income of deceased as Rs.1000/- per month. Accordingly, the monthly dependency was calculated at Rs.700/-. It was however found that the deceased has left two elder already married brothers. It was also found that they were earning. Further, it was observed that the appellant nos.2-Alka and no.3-Anita - the sisters would not be the legal representativeness according to the provisions of the Hindu Succession Act and in the circumstances, the

compensation, as detailed supra came to be granted.

14. It is to be noted that the deceased was the third earning member in the family. Besides this, there were two elder brothers, appellants nos.2 and 3 i.e. the sisters, who were of marriagable age and as such all the earning male members would have to own the responsibility of marriage expenses of appellant nos.2 and 3. Learned Member did not took into consideration these facts. Considering the fact that the accident has occurred in the year 1996 and the appellant nos.2 and 3 were 21 years and 19 years old respectively at that time and taking into consideration the trend of economy at that time, in my view, the deceased would have contributed an amount of Rs.15,000/- each on the marriage of the appellant nos.2 and 3. In the circumstances, interference in the quantum of the compensation to that extent is required.

15. Mr. Kulkarni submitted that considering the present trend of economy, interest on the increased compensation may not be above 6% per annum and the interest may be made payable from the date of filing of the appeal.

16. Considering all the facts on record, the following order:-

I) The appeal is partly allowed with proportionate costs.

II) Respondent nos.1 and 2 are directed to jointly and severally pay additional compensation of Rs.30,000/- to the appellants with interest at the rate of 6% per annum from the date of filing of the appeal till the realization of the same.

17. First Appeal stands disposed of accordingly.

Sd/-
[M.T. JOSHI]
JUDGE

arp/