

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.1117 OF 2014
WITH
CIVIL APPLICATION NO.4082 OF 2014

M/s. National Insurance Co.
Ltd. ..Appellant

Versus

Smt.Shilaben w/o. Brijlal
Patil and ors. ..Respondents

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Mr.V.N.Upadhye, advocate for appellant

Mr.L.S.Mahajan, advocate for respondent nos.1 to 3

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CORAM : M.T. JOSHI, J.
DATE : FEBRUARY 03, 2015

ORAL JUDGMENT :

Heard both sides.

2] Being aggrieved by grant of compensation in the petition under Section 166 of the Motor Vehicles Act, in a motor vehicle accident case, the insurer of the vehicle involved in accident, is before this Court.

3] The accident in question has occurred on 22nd March, 2010 while the deceased – Brijlal along with his family members, was proceeding by a car i.e. Maruti Suzuki make WagonR near village Nivalda-Dediyapada. It was the case of the claimants that the truck bearing registration No. GJ-12-V-7429 came from other side in high speed in rash and negligent manner and thereafter and it dashed the car. The deceased has died on the spot. Therefore, claim against the owner and the insurer of truck was made in the Claim Petition before the trial Court.

4] As regards the compensation, it was claimed that the deceased was serving as a Manager in Guj Rath Rubber Company at Ankleshwar, Gujrat. His salary was Rs.48,000/- per month. He was 48 years old at the time of the accident. It was claimed that all the claimants were dependents of the deceased. Besides this, they had suffered non-

pecuniary damages towards loss of love and affection and loss of consortium etc. and therefore, compensation of Rs.50 lakhs was claimed from the truck owner as well as present appellant.

5] The present appellant has denied all the adverse allegations of the claimants. It was submitted that the accident has occurred solely due to the rash and negligent driving of the car by the deceased or at least it was a case of contributory negligence of both the drivers. In the circumstances, as the driver and owner of the car were not joined, the plea that the petition was bad for non-joinder of the the necessary parties was made. Further, the plea regarding loss of dependency was also denied by the present appellant.

6] Before the learned Tribunal, present respondent no.1 namely Shilaben widow of deceased

was examined as a witness of the accident. The documentary evidence like salary certificate, Form No. 16 issued by the employer under the Income Tax Rules were placed on record along with the school leaving certificate. Learned Member of the Tribunal came to the conclusion that the car driver was 40% liable in causing the accident. In the circumstances, the truck driver was held 60% liable in causing the accident. As regards the compensation, learned Member took into consideration the documentary evidence and came to the conclusion that the present appellant along with the proforma respondent no.4 -truck owner would be liable to pay the compensation of Rs.24,58,193/-.

7] Mr.Upadhye, learned counsel for the appellant submits that in fact, the accident is a result of sole rash and negligent driving of the car, however, neither the driver of the car nor

the owner of the car were joined as parties. In the alternative, he submits that the compensation arrived at by the learned Member is not fair.

8] On the other hand, learned counsel for respondent nos.1 to 3 i.e. original claimants submits that the reasons forwarded by the learned Member are proper.

9] On the basis of above material, following points arise for my determination :-

i) Whether the accident has occurred due to rash and negligent driving of both the vehicles equally ?

ii) Whether compensation arrived at by learned Member is just compensation ?

. My finding to both the points is as per the reasoning given by learned Member of the Motor Accident Claims Tribunal. The appeal is, therefore, dismissed for the reasons to follow.

R E A S O N S

10] While from the side of respondent nos.1 to 3 i.e. original claimants, respondent no.1 – widow of deceased, had entered into the witness box not only to place the oral evidence regarding the quantum of the compensation but also as an eye witness, from the side of the original respondents, nobody had entered into the witness box and except the certified copy of the spot panchnama, there was nothing to show as to how, the accident has occurred, to support the case of present appellant.

11] Learned Member has, on the basis of the documentary as well as the oral evidence, come to the conclusion that the truck driver was 60% liable and car driver was 40% liable for causing the accident. In the circumstances, the reasoning of learned Member cannot be called as improper.

12] As regards the compensation, school leaving certificate at Exhibit 28 showing that the deceased was 55 years old at the time of the accident, was taken into consideration by learned member. The salary certificate at Exhibit 29 coupled with Form No. 16 issued by his employer under the relevant Rules of the Income Tax Act were also placed on record by the claimants. Though respondent nos.1 to 3 claimed that the deceased was 48 years old, taking into consideration his school leaving certificate, learned Member held that the deceased was 55 years

old and therefore, proper multiplier of 11 was applied to the multiplicand of Rs.1,84,659/-. Thereafter, upon calculating the loss of dependency, additionally Rs.34,500/- towards non-pecuniary damages was added and loss of Rs.40,96,987 was computed. Thereafter, deduction of 40% from from the said amount was made and accordingly, the compensation was arrived at Rs.24,58,193.

13] In the result, the appeal is dismissed without any order as to costs.

14] Civil Application no.4082 of 2014 for stay therefore does not survive and the same is also dismissed.

15] The statutory amount deposited by the appellant in this Court be paid to respondent

nos.1 to 3. Rest of the amount be paid by the appellant to respondent nos.1 to 3 within a period of ninety day from the date of this judgment.

[M.T. JOSHI, J.]

kbp