

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3923 of 2008

The New India Assurance Company Ltd.,
Through : The Divisional Manager,
Yashovallabh Shopping Complex,
Near Mahanagarपालिका, Dhule, through
its authorised signatory Sr. Divisional
Manager at Aurangabad .. Appellant

VERSUS

1. Janabai W/o Ravindra Patil,
Age : 27 years, Occu. Household,
 2. Master Harshal S/o Ravindra Patil,
Age : 4 years, Occu.: Education,
- Applicant No.2 being minor
through legal guardian mother
respondent no. 1.
3. Bajirav S/o Devchand Patil,
Age : 57 years, Occu.: Agriculture,
 4. Kamlabai W/o Bajirao Patil,
Age : 52 years, Occu.: Household,

All R/o.: Vele,
Taluka Chopada, Dist. Jalgaon

5. Bhaskar S/o Vishwas Mahire,
Age : Major, Occu.: Driver,
R/o.: Chhadvel Pakhrun,
Taluka : Sakri, District Dhule
6. Bharati Bhimrao More,
Age : Major, Occu.: Jeep Car Owner,
R/o.: Bhagatwada, Sukapur,
Taluka : Panwel,
District Raigad .. Respondents

Mr. V.R. Mundada, Advocate for the appellant
Mr. P.C. Mayure, Advocate holding for Mr.S.S. Jadhavar,
Advocate for respondent nos.1 to 4
Mr. N.L. Choudhari, Advocate for respondent no.6
None for Respondent No. 5 though served through
paper publication.

CORAM : M.T. JOSHI, J.
DATE : 05/02/2015

ORAL JUDGEMENT :

1. Heard both sides.
2. Aggrieved by the grant of compensation in a Motor Accident Claims Petition under section 166 of the Motor Vehicles Act, the original respondent No. 3 – insurer of the vehicle is before this Court.
3. The respondents No. 1 to 4 i.e. the original claimants/petitioners are the dependents of deceased Ravindra Bajirao Patil who died in a motor vehicular accident on 4th February, 2006. He was travelling in a jeep bearing registration No. MH-03/H-9461, coming from Chandvel to Nijampur on Nandurbar-Sakri road. According to the claimants i.e. the present respondents No. 1 to 4, the accident has occurred due to the rash and

negligent driving of the jeep and therefore, the compensation was claimed from the driver, owner and insurer of the jeep.

4. The present appellant - insurer contested the claim inter alia on the ground that the jeep was insured as a private vehicle. The deceased was travelling in the jeep as a fare paying passenger. Therefore, there was breach of terms and conditions of the policy of insurance. Further, in the present appeal, alternatively, the quantum of compensation is debated.

5. Learned counsel for respondents No. 1 to 4 submits that the deceased was the gratuitous passenger in the jeep and the compensation arrived at by the learned Member is meager.

6. On the basis of above material on record and the submissions advanced on behalf of both sides, following points arise for my determination:-

(I) Whether the deceased was being carried in the jeep as fare paying passenger ?

(II) Whether the compensation awarded by the learned Chairman, Motor Accident Claims Tribunal is a just compensation ?

My finding to the above point No.(I) is in the negative and to the point No. (II) is in the affirmative. The appeal is, therefore, dismissed for the reasons to follow:-

R E A S O N S

7. The respondents No. 1 to 4 came with a case that the deceased was a gratuitous passenger in the jeep. On the other hand, the appellant - insurer claimed that he was a fare paying passenger. The FIR filed by the police officials (Exhibit-28) would not show that any passengers upon fare paying were carried in the said vehicle. The deposition of respondent No. 1 is also on the same line. There is nothing on record to show that the deceased had paid any fare to the vehicle driver.

8. The certified copy of the certificate of

insurance at Exhibit-32 would show that the limitation as to use was inter alia the use of the vehicle for any purpose other than "hire or reward". In that view of the matter, no fault is found with the reasoning of the learned Chairman of the Tribunal that the present appellant would be liable to indemnify the vehicle owner in payment of compensation.

9. The issue of rash or negligent driving of the vehicle is not before this Court. In the circumstances, we shall have to examine the material regarding the quantum of compensation.

10. The respondent No. 1 has deposed that the deceased had taken education upto M.A. He was earlier working with B.G. Shirke Construction Company for salary of Rs. 6000/- per month. He had left the said job and started working with Ashok T. Tatalatti, private contractor for a salary of Rs. 6,800/- per month. While the certificate issued by M/s B.G. Shirke Construction Company showed that the deceased was working for a salary of Rs. 6000/- per month, the certificate issued by the next of the employer-contractor would show that the

deceased was paid Rs. 4800/- per month, with additional amount of Rs. 2000/- towards H.R.A. The period of contract of service had ended just three days prior to the accident and there was nothing on record to show that the contract of service was extended. In all these circumstances, the learned Chairman of M.A.C. Tribunal has held that the income of the deceased can be estimated at Rs. 4800/- per month though it is wrongly worded as notional income. Accordingly, upon deduction of 1/3rd towards personal expenses of the deceased, the loss of dependency would come to Rs. 3200/- per month i.e. Rs. 38,400/- per year. In absence of any documentary evidence, the learned Chairman relied over the death certificate issued by the Medical Officer who has estimated the age of the deceased as 35 years. The multiplier of 16 was applied and towards loss of dependency, an amount of Rs. 6,14,400/- was granted. Towards the loss of consortium, an amount of Rs. 5000/- was granted. Additional amount of Rs. 5000/- towards funeral was granted. Thus, total compensation of Rs. 6,24,000/- was granted with interest of 7.5% per annum.

11. While Mr. Mundada, learned counsel for the

appellant, submits that the notional income cannot be more than Rs. 3000/- per month, Mr. Mayure, learned counsel appearing for respondents No. 1 to 4 submitted that the notional income means the estimated income in the situation, as detailed supra. Mr. Mayure further submitted that when the deceased was 35 years old at the time of accident, the multiplier of 17 ought to have been applied and on non-pecuniary head, merely an amount of Rs. 5000/- is awarded.

12. Taking into consideration all these aspects, in my view, the compensation granted by the learned Tribunal cannot be called as unreasonable one. In the circumstances, the following order:-

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

. The respondents No. 1 to 4 would be at liberty to withdraw the amount deposited in this Court in the proportion as directed by the learned Chairman of Motor Accident Claims Tribunal, Dhule, alongwith the proportionate interest which has accrued upto-date, subject to the investment of Rs. 2,00,000/- (rupees two

lacs) in the name of minor respondent No. 2, who is still minor, till he attains the majority.

. The appeal is accordingly disposed of.

[M.T. JOSHI]
JUDGE

npj/fa3923-2008