

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.1209 OF 2014

Smt. Lalitabai w/o. Ravindra
Patil (Salunke), and five others ..Appellants

Versus

United India Insurance Company
Ltd., through its Divisional
Office, Divisional Manager,
Jalgaon and ors. ..Respondents

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Mr.L.S.Mahajan, advocate for appellants
Mr.S.V.Kulkarni, advocate for respondent no.1
Mr.B.R.Warma, advocate for respondent no.2

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WITH
FIRST APPEAL NO.1726 OF 2012

United India Insurance Company
Ltd., through its Divisional
Office, Divisional Manager,
Jalgaon ..Appellants

Versus

Smt. Lalitabai w/o. Ravindra
Patil (Salunke) and others ..Respondents

--

Mr.S.V.Kulkarni, advocate for appellants
Mr.L.S.Mahajan, advocate for respondent nos.1 to 6
Mr.Girish Rane, advocate for respondent no.7

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CORAM : M.T. JOSHI, J.

DATE : FEBRUARY 24, 2015

ORAL JUDGMENT :

Heard both sides.

2] Admit. Heard finally by consent of the parties.

3] Both the present first appeals arise out of the same Motor Accident Claim Petition filed in the learned Tribunal.

. First Appeal No.1726 of 2012 is filed by the insurer of the vehicle involved in the accident, on the ground that the driver of the vehicle insured by it was not rash or negligent and consequently, no compensation could have been awarded.

. First Appeal No.1209 of 2014 is filed by the original claimants for the death of Ravindra Patil i.e. their bread winner, for enhancement of the compensation.

4] The claimants had come with a case that on 25th August, 2004, the deceased Ravindra Patil was proceeding on the motorcycle on Bombay – Agra road, from Dhule to Shirpur. At about 7:50 p.m., when the deceased was proceeding on the motorcycle, suddenly, the tractor bearing registration No.MH-18-N-1098 and the trolley bearing registration No.MH-18-N-1099 was located parked on the wrong side of the road without observing traffic rules and as sudden dash occurred between the motorcycle of the deceased and the parked tractor and trolley, the deceased met with the unfortunate death.

5] The claimants claimed that the accident has occurred solely due to improper parking of the tractor and trolley. Therefore, they claimed that the insurer of the tractor and trolley (appellant in First Appeal No.1726 of 2012) is liable to pay the compensation. As regards the compensation, the claimants claimed that the deceased was 36 years old; he was a Contractor by profession and an income tax payer. He was earning Rs.1,00,000/- to 1,50,000/- per annum. In the circumstances, a composite compensation of Rs.10 Lakhs was claimed.

6] Before the learned Member, no eye witness was examined regarding the actual accident. On the basis of the material on record, the Tribunal came to the conclusion that the deceased as well as the driver of the tractor and trolley are equally liable for the accident. The amount of compensation was arrived at Rs.20 Lakhs and holding the case of contributory negligence, the

insurer was directed to pay half of the amount i.e. Rs.10 Lakhs with interest at the rate of 9% per annum from the date passing of the award.

7] Mr.Kulkarni, learned counsel for the appellant – insurer in First Appeal No.1726 of 2012, submits that after the investigation, charge sheet was filed by the police against the deceased Ravindra himself and when there was no evidence regarding the actual occurrence of the accident, learned Member ought not have come to the conclusion that it was the case of contributory negligence of both the drivers. In the circumstances, he submits that the appeal may be allowed and the entire award may be set aside.

8] On the other hand, Mr.Mahajan, learned counsel for the claimants, submits that only tractor and trolley driver was responsible for parking the tractor and trolley in the middle of

the national highway without putting parking lights on, at 7:50 p.m. and thus, learned Member ought to have awarded entire compensation. He further submits that the compensation granted by learned Tribunal requires to be enhanced taking into consideration the prospective increase in the income of the deceased.

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

a] Whether the accident has occurred due to rash and negligent driving of the motorcycle by the deceased as well as due to improper parking of the tractor and trolley ?

b] Whether the learned Member has awarded just compensation ?

. My findings to the above point no.1 is in the affirmative and as to point no.2, is in the

negative. The compensation awarded by the learned Tribunal needs revision for the reasons to follow.

R E A S O N S

10] The evidence on record would show that the concerned police authorities had come to the conclusion that the deceased himself was rash and negligent in driving the motorcycle and accordingly, no charge sheet was filed against the driver of the tractor and trolley. Learned Member, however, considered the recital in the panchnama of spot of occurrence and the submissions of Mr.Mugal, Advocate, who appeared for the insurer in the Tribunal, and came to the conclusion that the accident has occurred due to rash and negligent driving of both the deceased and the driver of the tractor and trolley.

11] The panchnama as regards the spot of occurrence would show that the road in question, was a National Highway. There were offsets of 5 feet each from both the sides of the road. Despite this, the tractor and trolley was just one foot away from the central line of the tar-road. Learned Advocate for the insurer in the trial Court Mr.Mugal, has advanced submission that there was no facility of having parking lights to the tractor and trolley. The panchnama of spot of occurrence also does not reveal that any parking light facility was there for the tractor and trolley. In the circumstances, when the accident has occurred in the rainy season i.e. in the month of August, at about 7:50 p.m., on the road which was beyond the city lights, the clear position would be that in the darkness, the tractor and trolley might have located by the deceased only at the eleventh hour. Therefore, had the speed of his motorcycle been moderate one, upon looking the

tractor and trolley, he could have avoided the accident to some extent. In the circumstances, no fault can be found with the findings of the learned Member that the accident has occurred due to rash and negligent driving of the motorcycle by the deceased as well as of the driver of tractor and trolley.

12] First Appeal No.1726 of 2012, therefore, deserves to be dismissed.

13] As regards First Appeal No.1209 of 2014 filed by the original claimants, it is to be noted that it was proved before the learned Member that the deceased was a registered contractor with Public Works Department. PW Nos.2, 3 and 4 are the officials of the Public Works Department, who deposed that contracts were awarded to the deceased during the relevant period and also deposed about payments made to the deceased.

The claimants pleaded that the deceased was income tax payer, however, no true copies of the Income Tax returns of the deceased were placed on record. Despite this, learned Member believed the oral evidence from the side of the claimants that the deceased was earning Rs.1,50,000/- per annum.

14] When the learned Member was liberal in accepting the oral version about the income of the deceased, in my view, it takes care of prospective increase in the income of the deceased in future. The deceased was proved to be 36 years old at the time of the accident. In the circumstances, in my view, in view of the ratio laid down in the case of **Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121**, the proper multiplier of 16 (in place of 15 applied by the tribunal) would be applicable to the multiplicand in the present case. Thus, there would be enhancement of Rs.1,20,000/- towards the loss of

dependency. As the findings of contributory negligence of the deceased and well as the driver of the tractor and trolley, is already upheld by me, the enhancement towards the actual compensation would come to Rs.60,000/-.

. As regards the interest, learned Member has granted 9% per annum from the date of the award. No reasons are forwarded as to why, the interest is not made payable from the date of filing of the claim petition on 27th June, 2007. In that view of the matter, interference to that extent is also required to be made.

15] In the result, the following order :-

a] First Appeal No.1726 of 2012 filed by the insurer is hereby dismissed without any order as to costs.

b] First Appeal No.1209 of 2014 filed by the original claimants is partly allowed with proportionate costs.

[i] Respondent nos.1 to 3 are directed to pay, jointly and severally, the additional compensation of Rs.60,000/- with interest at the rate of 9% per annum from the date of filing of the claim petition in the Tribunal, till realisation of the amount.

[ii] Respondent nos.1 to 3 are directed to pay, jointly and severally, interest at the rate of 9% per annum on the amount of the compensation awarded by learned Tribunal i.e. Rs.Ten Lakhs, including no fault liability, from the date of filing of the petition till the realisation/deposit of the amount as granted by the learned Tribunal.

[M.T. JOSHI, J.]

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