IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1213 OF 2012

The Oriental Insurance Co. Ltd.
Through Manager .. Appellant

Versus

Vimalbai Ashok Patil and others .. Respondents

Shri Dhananjay P. Deshpande, Advocate for the Appellant.
Shri N. L. Choudhari, Advocate for Respondent Nos. 1 to 3.

WITH
FIRST APPEAL STAMP NO. 8304OF 2012

Vimal Ashok Patil and others .. Appellants

Versus

Shekhar Shankar Jadhav and others .. Respondents

Shri N. L. Choudhari, Advocate for Appellants.
Shri Dhananjay P. Deshpande, Advocate for the Respondent No. 3.

CORAM : S. V. GANGAPURWALA, J.
DATE : 10TH SEPTEMBER, 2015.

PER COURT :

. The First Appeal No. 1213 of 2012 is filed by the Insurance company and another appeal is filed by claimants for enhancement of compensation amount.

2. The respondent Nos. 1 to 3 in First Appeal No. 1213 of 2012 have filed claim petition U/Sec. 166 of the Motor Vehicles Act seeking compensation on account of death of Ashok Patil. The Motor Accident Claims Tribunal partly allowed the said petition directing the opponents to jointly and severally pay the amount of Rs. 26,50,000/- to claimants with interest at the rate of 9% per annum.

3. Mr. Deshpande, the learned counsel for the Insurance Company submits that, the Tribunal has failed to consider the aspect of contributory negligence. The deceased was driving the motorcycle. The accident of the said motorcycle took place with the truck. The Tribunal without discussing the evidence on record came to the conclusion that the driver of the truck was solely negligent. No eye witness was examined by claimants. The burden is upon claimants to prove rash and negligent driving of the driver of the truck. In the absence of any evidence been led, the Tribunal could not have drawn an inference that the driver of the truck was driving the truck in rash and negligent manner. The son of the deceased was pillion rider of the motorcycle. He is not examined. An adverse inference ought to have been drawn against the claimants. The learned counsel submits that, if spot panchanama is perused, it is clear that it is case of contributory negligence. The left side of the truck was damaged, which would show that the motorcyclist was driving in

wrong direction. This aspect has been ignored by the learned Tribunal. According to the learned counsel, no discussion is made by the Tribunal with regard to spot panchanama. Even the informant is not the son of the deceased. The learned counsel further submits that, 30% extra amount is awarded towards the future prospectus, which is not in tune with the judgment of the Apex Court in the case of **Sarala Verma and others Vs. Delhi Transport Corporation and another** reported in ***(2009) 6 SCC 121***. According to the learned counsel there is no proof that the deceased would have got 30% future increment. There is no pleading to that effect also. Unless same is pleaded and proved, 30% extra amount towards future prospectus could not have been awarded. The learned counsel further submits that, pay scale as on the date of death of deceased is required to be considered and not subsequent pay revision. The benefit of pay revision is made applicable in the year 2009 i. e. after death of the deceased, which is impermissible as per the case of **Sarala Verma Vs. Delhi Transport Corporation** referred to supra. According to the learned counsel the quantum of compensation awarded is exorbitant and excessive.

4. Mr. Choudhari, the learned counsel for claimants submits that, the negligence of the driver of the truck has been rightly considered. The driver of the truck who was best witness was not examined. As such, adverse inference is required to be drawn

against them. According to the learned counsel the revision of pay scale is with retrospective effect i. e. from 01.01.2006 that is the period when the deceased was in service. As such, same is rightly considered. According to the learned counsel there are three claimants. The deductions towards personal expenses has been made to the extent of 1/3rd. The same ought to have been made $1/4^{th}$ only and for that purpose the claimants have filed the separate appeal.

5. I have considered the submissions canvassed by the learned counsel for respective parties. So also I have gone through the record and proceedings.

6. As far as aspect of contributory negligence is concerned, the driver of the truck was party to the claim proceedings. The driver of the truck did not examine himself, nor the Insurance Company examined the driver of the truck as witness. The driver of the truck was best witness to show the manner of accident. There is no reason to withhold such witness. In view of that, adverse inference is required to be drawn against respondents, i. e. driver of the truck. Moreover, the complaint is filed by the Deputy Inspector of Police regarding the accident. In the said complaint he has specifically stated, upon investigation it is found that driver of the truck was driving the vehicle in excessive speed, in rash and negligent manner and because of

such rash and negligent driving, the accident took place. Even the criminal case is filed against the driver of the truck. The spot panchanama is also perused and considered.

7. The Tribunal has not committed any mistake in coming to the conclusion that the driver of the truck was negligent.

8. It is not disputed that, the deceased was working as a teacher and was in permanent employment. The salary certificates are matter of record. The deceased was 47 years of age. When the deceased was in permanent employment as a teacher and was getting salary of Rs. 24,792/- per month, 30% addition for future prospectus is rightly made. Even the Tribunal has considered the actual salary after deducting the tax.

9. The recommendations of the 6th Pay Commission were made applicable from 01.01.2006. The accident took place in the year 2008. When the 6th Pay Commission was made applicable and the deceased was entitled for the salary as per 6th Pay Commission, the said aspect is rightly considered.

10. As far as contention of claimants with regard to deduction of 1/3rd amount towards personal expenses made by the Tribunal and instead of that 1/4th deductions ought to have been made is

concerned, there are only three dependents. The Tribunal has rightly considered the said aspect.

11. Considering the above, both the appeals are dismissed, however, with no order as to costs.

[S. V. GANGAPURWALA, J.]

bsb/Sept. 15