

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL (ST.) 31867 OF 2013

The National Insurance Company Ltd.,
Through its Divisional Manager,
Divisional Office at Hazari Chamber,
Padam Pura, Railway Station Road,
Aurangabad

..APPELLANT
(Orig. Respondent No.2)

VERSUS

1. Anushka Akash Manjramkar,
Age : 35 years, Occu. Household,
2. Amitesh Akash Manjramkar,
Age : Minor, Occu. Nil,
3. Akanksha Akash Manjramkar,
Age : Minor, Occu. Nil,

Resp. 1 and 2 are minors u/g
of Resp. No.1 Mother

4. Kawaldeepkaur Bhupendrasing Rangi,
Age : Major, Occu. Business,
R/o C/o Billu Seth,
Sindhi Colony, Nanded
5. Kausalya Kashinathrao Manjramkar,
Age : Major, Occu. Household,
6. Aditi Kashinathrao Manjramkar,
Age : 36 years, Occu. Household,
R/o MIDC, Balirampur,
Nanded

..RESPONDENTS

Mr S.P. Chapalgaonkar, Advocate for applicant;
Mr M.V. Ghatge, Advocate for respondents no.1 to 3;
Mr S.V. Suryawanshi, Advocate for respondent no.5

CORAM : N.W. SAMBRE, J.

DATE : 21st April, 2015

ORAL ORDER :

By order passed today in Civil application No.14271 of 2013, this Court has condoned delay caused in preferring First Appeal. Office, therefore, to register the First Appeal.

2. First Appeal is taken up for final disposal with the consent of the parties.

3. The present First Appeal is by the Insurance Company, questioning the judgment dated 3rd July, 2013, rendered by the Member, Motor Accident Claims Tribunal, Nanded (for short 'Tribunal'), in MACP No.671 of 2008. In the said claim petition, claimant no.1 is wife of late Akshay Manjramkar, whereas claimants no.2 and 3 are his minor son and daughter, respectively. It is claimed in the claim petition that Dr. Akshay was a qualified Homeopath and was running a multi-specialty hospital, who died because of the accident that occurred on 17th May, 1988, between scooty bearing registration No.MH-26-V-3942 and the truck bearing registration No. MH-26-H-7378.

4. It was claimed in the claim petition that the truck was driven in a rash and negligent manner.

5. The Tribunal, after considering the claim brought before it, awarded compensation by the judgment and award dated 3rd July, 2013, directing respondents no.1 and 2, i.e. insurance company and the owner of the truck, jointly and severally to pay a sum of Rs.30,85,000/- to respondents no.1 to 3 and 5, after taking into account monthly income of late Dr. Akash to the tune of Rs.20,000/- per month, commensurate to his qualification.

6. Mr Chapalgaonkar, learned Counsel appearing on behalf of the appellant – insurance company, while strenuously attacking the impugned judgment and award, would urge two-fold ground :-

(a) According to the appellant, since the claimants have alleged rash and negligent act on the part of the Driver of the offending truck, the Driver of the truck was very much necessary party to the proceedings.

(b) In absence of any documentary evidence in support of the qualification and income of Dr. Akash, whether the Tribunal was right in considering the monthly income of the deceased to the tune of Rs.20,000/- per month ?

7. With the assistance of learned Counsel appearing on behalf of respective parties, I have gone through the observations made by the Tribunal.

8. The Motor Accident Claims Tribunal has framed following issues for its consideration and answered the same accordingly :-

Sr. No.	ISSUES	FINDINGS
1	Do petitioners prove that on 17/05/2008 accident took place on account of rash and negligent driving by the driver of truck bearing No.MH26/H-7378 and caused the death of Akash s/o Kishanrao Manjramkar ?	In the affirmative
2	Does the respondent No.2 prove that the driver of the truck was not holding valid and effective licence to drive the truck as such there is breach of condition of insurance policy ?	In the negative
3	Are petitioners entitled for the compensation as claimed ?	In the affirmative to the extent of Rs.30,85,000/- (inclusive of NFL amount) from the respondent No.1 & 2 jointly and severally
4	What order and award ?	As per final order

The Tribunal considered the first information report lodged by respondent no.3 – mother of deceased Akash. The Tribunal then considered that the scooty, on which the deceased was travelling, was dashed on the front side by the offending truck. The spot panchnama Exh.36 and the seizure panchnama of the offending truck Exh.37,

prompted the Tribunal to draw conclusion that the offending truck was driven on the wrong side of the road. Though a ground for contributory negligence was raised before the Tribunal, the same could not be established, particularly having regard to the fact that the spot panchnama depicts driving of the offending vehicle on the wrong side.

9. The fact remains that the owner of the vehicle was added as respondent no.1 to the claim petition and the objection of non-joinder of the driver of the offending vehicle in the claim petition is raised for the first time before this Court. Even if it is presumed that the said Driver is added as a party at the behest of the appellant herein, still fact remains that the contributory negligence though was alleged, was not proved by the appellant – insurance company, as the said issue was raised by him and burden as such shifts on the appellant – insurance company to prove the same. In view of above, the said issue is answered against the present appellant.

10. So far as the next issue about consideration of income of deceased Dr. Akash and the quantum of compensation awarded by the Tribunal is concerned, it is required to be noted that the claimants have come out with a specific case about the qualification and the nature of work performed by deceased Dr. Akash. The appellant - insurance company, at no point of

time before the Tribunal, has denied the qualification or occupation of the deceased. Once such case was not put-forth or even established before the Tribunal, in my opinion, the Tribunal was right in considering the occupation of deceased Akash as Homeopath Practitioner and in view of non-denial of the said fact, it goes without saying that the said fact stands admitted at the behest of the appellant.

11. The Tribunal then proceeded to consider the average income of a qualified Homeopath Doctor to the tune of Rs.20,000/- per month. If we consider the educational and social background of the deceased, it is required to be noted that the Tribunal was justified in considering the monthly income of Homeopath Doctor to the tune of Rs.20,000/- per month and has rightly assessed the same, having regard to this qualification.

12. In that view of the matter, in my opinion, no case for interference is made out. The First Appeal thus fails and stands dismissed with no order as to costs.

13. The amount of compensation is permitted to be withdrawn, in terms of the judgment and award rendered by by the Tribunal on 3rd July, 2014, to the said effect. Thus, Civil Application No.4566 of 2015 stands disposed of.

(N.W. SAMBRE, J.)

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