

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...
FIRST APPEAL NO. 1876/2013

UNITED INDIA INSURANCE CO. LTD.

VERSUS

SHEELA W/O SUDARSHAN PATIL AND OTHERS

...

Advocate for Appellant : Mr.Chapalgaonkar S. G.

Advocate for respondent No.1: Mr. S.B.Bhapkar

Advocate for Respondent No.2 : Mrs. A. N. Ansari

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CORAM : S. V. GANGAPURWALA, J.

DATE : 9th September, 2015

PER COURT :

1. The present respondents- claimants had filed application for compensation under section 166 of the Motor Vehicles Act on account of death of Sudarshan who died in an accident. The claim petition is partly allowed. Aggrieved thereby, the insurance company has assailed the same in the present appeal.

2. Mr. Chapalgaonkar, the learned counsel for the appellant, insurance company, submits that the deceased was rider of the motorcycle. Criminal case was also registered against the deceased motorcyclist. He had hit the trolley which was in standing position. The learned counsel submits that it was erroneous on the part of the tribunal to consider negligence of the motorcyclist only 20%. The learned counsel submits that

the evidence in this regard has not been properly considered. The accident was result of negligence of the deceased motorcyclist. As such, the compensation amount could not have been paid.

3. Mr. Bhapkar, the learned counsel for the claimants submits that the trolley was standing in the midst of the road without any indicator. The accident took place when it was dark. As the trolley was standing in the centre of the road, without any indicator, the same could not be noticed. As such it cannot be said that the deceased was negligent. Negligence was of the Driver and owner of the trolley.

4. The present appeal is limited to the extent of quantum. I have considered the submissions. It is borne out from the record that the trolley was kept in the centre of the road, that too in the night time without any indicator. There was no light on the road and trolley could not be noticed and as such the accident, took place. Even attributing 50% negligence to the deceased, still, if I peruse the judgment, the deceased was an Advocate by profession. He was practicing since 1996. Accident took place in the

year 2004. While awarding compensation, the Court has considered loss of dependency as Rs. 16 lakhs and has deducted 20% as negligence of the deceased. It appears that while computing the compensation, future prospects have not been considered, so also, under the non pecuniary damages, paltry sum of Rs.10,000/- is awarded towards loss of consortium. No amount is awarded towards loss of love and affection and towards loss of estates as has been held by the Apex Court in the Case of **Asha Verman Vs. Maharaj Singh reported in (2015) 42 SCD 537.**

5. Even if I consider 50% negligence of the motorcyclist and these non pecuniary damages, the amount of compensation would be the same as awarded by the tribunal.

6. Considering the above, no interference is called for. First Appeal as such is dismissed. No costs.

7. The amount deposited is allowed to be withdrawn by the claimants in the proportion as awarded by the Tribunal.

(S. V. GANGAPURWALA, J.)

JPC