

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.825 OF 2004

- 1) Housabai Baburao Karjule,
(Died) Through her L.Rs.

Anandrao Krishnaji Mutkule,
Age: Major, Occu.: Agril,
R/o. Mandve, Post, Belgaon,
Tq. Ashti, Dist. Beed.

- 2) Rakhmabai W/o. Anandrao Butkule
Age: 42 years, died through her
legal heirs;

a) Anandrao Krishnaji Mutkule,
Age: Major, Occu.: Agril,
R/o. Mandve, Post, Belgaon,
Tq. Ashti, Dist. Beed.

b) Shankar Anandrao Mutkule,
Age: Major, Occu.: Agril,
R/o. as above,

c) Sangeeta Balu Shrikhande,
Age: Major, Occu.: Household,
R/o. as above.

= **APPELLANTS**
(Orig. Petitioner
Nos. 1 & 2)

VERSUS

- 1) Vijay Janardhan Koli,
Age: Major, Occu.: S.T. Service,
R/o. C/o. Maharashtra State Road
Transport Corporation, Beed,
Depot Beed,
- 2) Divisional Controller, M.S.R.T.
Corporation, Beed Depot, Beed.
- 3) The General Manager, M.S.R.T.
Corporation, Bombay,
4. Ghanashyam Tukaram Jasud,
Age: 30 years, Occu: Service,

R/o. C/o. Ashti, Tq. Police
Station, Ashti, Dist. Beed,

5. Sahebrao Shamrao Mutukule,
Age: Major, Occu.: Agril,
R/o. Mandave, Tq. Ashti,
Dist. Beed,
6. The Branch Manager,
The Oriental Insurance Co. Ltd.,
Kishan Kranti Bldg. Ahmednagar,
7. Sau. Hirabai W/o. Ghansham Jasud,
Age:30 years, Occu.: Household,
R/o. Imamgaon, Tq. Ashti,
Dist. Beed.

= **RESPONDENTS**
(Resp.Nos.1 to 6 are
Ori.Resp.Nos.1 to 6
and Resp.No.7 Ori.
Pet.No.3)

Mr. P.P. Dawalkar, Advocate h/for
Mr. C.S. Deshmukh, Advocate for Appellants;
Mr. R.C. Bora, Advocate h/ for
Mr. P.P. Bafna, Advocate for Respondent No.6.

CORAM : P.R.BORA, J.

RESERVED ON : 23rd August,2016.

PRONOUNCED ON:22nd SEPTEMBER,2016.

JUDGMENT:

1) Heard. The present Appeal is filed against the Judgment and award passed by the Motor Accident Claims Tribunal, Ahmednagar (for short the "Tribunal") on 4th March, 1996 in M.A.C.P.No.119/1985.

2) The aforesaid claim petition was filed by one Ansabai Kishanrao Pokale, claiming compensation on account of death of her son namely Maruti Pokale in a vehicular Accident happened on 13th July, 1985 having involvement of a motor-cycle bearing registration No. MTH-4620 owned by present Respondent No.5 and insured with present Respondent No.6. Deceased Maruti Pokale was proceeding towards Beed along with one Ghansham Jasud (Respondent No.4) on the aforesaid motor-cycle as a pillion rider. In Aathwad Ghat the motor-cycle colluded with ST bus coming from the opposite direction and in the accident so happened, Maruti Pokhale suffered grievous injuries and ultimately died because of the said injuries.

3) In the claim petition filed by mother of deceased Maruti Pokhale, it was her contention that the alleged accident had happened because of negligence on part of the driver of ST bus as well as Respondent No.4, who was plying the

motor-cycle when the accident happened. Claiming that she was wholly dependent upon the income of deceased Maruti, she had claimed compensation of Rs.50,000/- from the driver and owner of ST bus as well as the driver, owner and the insurer of the motor-cycle.

. During the pendency of the aforesaid claim petition, Ansabai expired and her two daughters, viz. Hausabai and Rakhamabai, being the legal heirs of deceased Ansabai, prosecuted the claim petition further.

4) The claim petition was resisted by the respondents on various grounds. In support of the contentions raised in the claim petition, Rakhamabai, deposed on behalf of the claimants. Opponent No.1, i.e. driver of the ST bus, had also adduced his oral evidence in order to substantiate that the alleged accident had happened not because of his negligence, but because of the negligence of Respondent No.4, who was plying the motor-cycle at the relevant time.

5) The learned Tribunal, after having assessed the oral as well as documentary evidence brought on record, dismissed the claim petition vide the impugned Judgment and Award.

6) Learned Counsel appearing for the appellants assailed the judgment of the Tribunal on various grounds. The learned Counsel submitted that the Tribunal has erred in holding that the daughters of deceased Ansabai, who prosecuted the claim petition further, did not prove that they were dependent upon the income of deceased Maruti and hence were not entitled for any compensation. The learned Counsel further submitted that the dependency of the legal representatives is not a sine qua non for the purpose of entitlement to the compensation under the provisions of the Motor Vehicles Act.

. The learned Counsel further submitted that had the compensation been awarded by the Tribunal before death of Ansabai, the said estate would have obviously devolved upon her daughters

being her legal representatives. To buttress his contention, the learned Counsel relied upon the judgment of the Delhi High Court in the case of Budh Singh Vs. Vijender Singh & Ors.- ACJ 2013_19; and the Division Bench Judgment of Andhra Pradesh High Court in the case of Dr.GangaRaju Sowmini Vs. Alvala Sidhakar Reddy & Anr. - 2016_ (5) All MR 45.

7) The learned Counsel further submitted that there was no reason for the Tribunal to dismiss the claim petition even against the owner of the motor-cycle (Respondent No.5) when the claimants have successfully proved that the alleged accident had happened because of the negligence of the motor-cycle rider. The learned Counsel, therefore, prayed for setting aside the impugned Judgment and Award and consequently to allow the claim petition at least against Respondent No.5.

8) Though all the respondents are duly

served, when the matter was finally heard, learned Counsel representing Respondent No.6 was only present. Since the appellants did not press any relief against Respondent No.6, learned Counsel appearing for Respondent No.6, did not make any submission and prayed for passing appropriate orders.

9) I have carefully considered the submissions advanced by the learned Counsel appearing for the appellants. I have also perused the impugned judgment and the other material on record. The Tribunal has recorded a finding that the alleged accident had happened because of the negligent driving of Respondent No.4, who was plying the motor-cycle bearing registration No.MTH-4620 when the alleged accident happened. However, since the Tribunal has further held that the petitioners failed in proving that they were the Dependents of deceased Maruti Pokale, has ultimately dismissed the claim petition. The finding so recorded by the

Tribunal cannot be sustained in view of the ratio laid down by Delhi High Court in the case of Budhsingh (cited supra). In the aforesaid matter before the Delhi High Court, the claim petition was filed by mother of the deceased, who expired after about nine months from the accidental death of the deceased. Though, father and brothers of the deceased were alive and were taken on record as legal representatives of mother of the deceased, who had filed the claim petition, the Tribunal declined to grant any compensation to them on account of loss of dependency, holding that mother of the deceased only was entitled to compensation during her life time for loss of dependency and no compensation was liable to be paid to father of the deceased or to brothers of the deceased since they were not the dependants on the income of the deceased.

. The Delhi High Court in the aforesaid matter negated the finding so recorded by the Tribunal with the following observations, -

"9. In view of the aforesaid legal position, the inescapable conclusion is that the learned Tribunal has not assessed the amount of compensation payable to the appellants by following the correct legal principles. The mother of the deceased was alive at the time of the death of the deceased and the amount of compensation, most certainly, fell due on the date of the accident. She died nine months after the demise of the deceased and her share of the compensation, had it been awarded by the Claims Tribunal before her death, would have obviously devolved upon her legal representatives viz., her husband and her children. The learned Tribunal did not at all consider this aspect of the matter. Even otherwise, as discussed above, the dependency of the legal representatives is not a *sine qua non* for the purpose of entitlement of the claimants to compensation, that is to say, even if the claimants are found not to be dependant upon the income of the deceased, they are entitled to the loss to the estate of the deceased as

a result of his death. Such loss to the estate of the deceased would have to be ascertained keeping in view the income of the deceased and the amount the deceased would have spent on himself and the savings of the deceased which would then have to be quantified by the use of an appropriate multiplier with reference to the age of the claimants.

10. In the instant case, the claim petition has been presented by the mother and the father of the deceased. The quantum of compensation must, therefore, be ascertained on the basis of the fact that the mother of the deceased was alive on the date of the accident, and the right to sue for compensation accrued on said date. Had the Tribunal decided the claim petition instituted by her during her lifetime, in the event of her death, the entire amount would have devolved upon her legal representatives. Merely because she died during the pendency of the claim petition, by no stretch can be construed to mean that her claim

abated.

10) The facts of the present case are quite identical to the facts which were involved in the aforesaid matter before the Delhi High Court. In view of the aforesaid judgment of the Delhi High Court, it has to be held that had compensation been awarded by the Tribunal to Ansabai before her death, the same would have obviously devolved upon her legal representatives. It cannot be disputed that the amount of compensation must certainly fell due on the date of the accident when Ansabai was alive. In the said matter, the Delhi High Court had held that mother of the deceased was entitled to compensation during her life time for loss of dependency. Adopting the said course, I am also inclined to hold that deceased Ansabai was entitled for compensation during her life time for the loss of dependency and I quantify the said compensation on the similar line as was assessed by the Delhi High Court in the aforesaid matter to the extent of the compensation awardable under no fault

liability.

11) Admittedly, the alleged accident had happened in the year 1985. At the relevant time, the compensation payable under no fault liability was Rs.25,000/-. I, therefore, hold that the deceased Ansabai was entitled to the compensation of Rs.25,000/-. I further hold that the present appellant Nos. 1 and 2 are entitled to receive the said compensation, being the legal representatives of deceased Ansabai,

12) Now, the next question arises as to from whom the compensation is payable. It is not in dispute that Respondent No.4 was plying the motor-cycle at the relevant time, which was owned by Respondent No.5. As noted earlier, the Tribunal has recorded a finding that the accident in question happened because of the negligent driving of Respondent No.4. For the negligence of Respondent No.4, Respondent No.5, being owner of the motor-cycle is thus vicariously liable to

pay the amount of compensation to the claimants along with Respondent No.4. It is further not in dispute that the offending motor cycle was insured with Respondent No.6. The Tribunal has, however, declined to pass any order against the insurance company by holding that the insurance policy of the said motor-cycle was covering the risk of third party only and not of the driver or owner of the motor-cycle. During the course of the arguments before this court the appellants have not assailed the aforesaid finding recorded by the Tribunal and have consequently not pressed any relief against the insurance company. I, therefore, do not see any error in the finding recorded by the Tribunal whereby it has exonerated the insurance company from its liability. Thus, Respondent Nos. 4 and 5 only can be held liable for payment of compensation as aforesaid.

13) In the result, the following order, -

ORDER

- i) The impugned Judgment and Award is quashed and set aside;
- ii) Appellant Nos.1 & 2 are held entitled to receive compensation amounting to Rs.25,000/- jointly and severally from Respondent Nos. 4 and 5;
- iii) Respondent Nos.4 and 5 shall jointly and severally pay the aforesaid amount of compensation to Appellant Nos.1 & 2 together with interest thereon @ 6% per annum from the date of filing of the present appeal before this Court till its realization;
- iv) The appeal is allowed in the aforesaid terms. Pending Civil Application, if any, stands disposed of.

sd/-
(P.R.BORA)
JUDGE