IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

First Appeal No.108 of 2012

* The Oriental Insurance Co. Ltd.
Through its Branch Manager,
Osmanabad,
Now through Senior Divisional
Manager, The Oriental Insurance
Co. Ltd. having office at
Inderprakash, Adalat Road,
Aurangabad. .. **Appellant.**

Versus

1) Mandakini Satish Bhanvase,
Age 30 years,
Occupation : Household,
R/o Shirala, Taluka Madha,
District Solapur.
At present Mangalwarpeth,
Paranda, Taluka Paranda,
District Osmanabad.

2) Atul Satish Bhanvase,
Age 11 years, Minor,
Under guardianship of his
natural mother - respondent No.1.

3) Seema Satish Bhanvase,
Age 11 years, Minor,
Under guardianship of his
natural mother - respondent No.1.

4) Raosaheb Kundalik Shinde,
Age 40 years,
Occupation : Agriculture,
R/o Kavitgaon (Sangavi),
Taluka Karmala,
District Solapur. .. **Respondents.**

Shri. Satish M. Godsay, Advocate, for appellant.

Shri. Abhijit S. More, Advocate, for respondents 1 to 3.

CORAM: T.V. NALAWADE, J.

DATE : 15th FEBRUARY 2016

JUDGMENT:

1) The appeal is filed by the insurance company against the judgment and award of Claim Petition No.201 of 2006 which was pending before the Claims Tribunal, Osmanabad. As the liability is fastened on the insurance company, the decision is challenged by the insurance company and the challenge is also on the point of quantum of compensation. Both the sides are heard.

2) The claim was filed in respect of the death of one Satish Bhanvase who died in motor vehicle accident dated 11-6-2006. The accident took place on 11-6-2006 at 7.30 a.m. on Akkalkot - Maindargi road within the local jurisdiction of Akkalkot police station. It is contended that the deceased Satish was pillion rider on a motor cycle bearing No.MH-45/B-8123 which was being driven by one

Mohan Mahadik. It is contended that due to rash and negligent driving the motor cycle skidded and the accident took place. In the accident, Satish was seriously injured. He succumbed to the injuries after few days in a hospital but he did not regain consciousness.

3) The claim was filed by the widow and two minor issues of the deceased. It is their case that the deceased was earning Rs.4,000/- per month by working as driver. It is contended that all the claimants were totally dependent for their livelihood on the income of the deceased. Under various heads they had claimed compensation of Rs. five lakh from the owner and insurance company of the aforesaid motor vehicle.

4) The insurance company contested the matter by filing written statement. It contended that the deceased himself was riding the motor cycle and the accident took place due to his negligence. Other contentions were also denied.

5) Only the claimants gave evidence. The Tribunal has held that Mohan was riding the motor cycle. As it was a package policy, liability is fastened on the insurance company also.

6) The widow gave evidence to substantiate the contentions but she has no personal knowledge regarding the accident. The claimants placed reliance on copies of police papers including copy of report given by one police constable. He had made inquiry with Mohan, rider of the motor cycle and as Mohan had informed that deceased was riding the motor cycle, FIR was given against the deceased by the police constable. Much was argued on this circumstance by the learned counsel for the insurance company.

7) To prove that the deceased was riding motor cycle there needs to be substantive evidence. When Mohan, the person who was on the same motorcycle, is alive, it was necessary for insurance company to examine him and give evidence to prove the contention of Mohan. The owner did not file written statement. On the other

hand in the FIR name of one Suresh Pawar is mentioned as eye witness. Suresh Pawar is examined by the claimant and he has given evidence that Mohan was riding the motor cycle. Police statement of Suresh was not produced to show that before police he had given statement that Satish was riding the motor cycle. In view of this circumstance and as the fact of the accident is not disputed, this Court holds that the Tribunal has not committed error in holding that Mohan was riding the motor cycle.

8) To prove the income of the deceased, the claimants have examined one Navnath Bhanvase. He has given evidence that the deceased was working as driver on the jeep and he was earning monthly Rs.4000/-. As no driving licence was produced, the Tribunal has presumed the income as Rs.3000/- per month and on that basis the Tribunal has calculated the loss of dependency. One-third amount is deducted from this amount towards personal expenses. Proper multiplier is used. Amount of Rs.5000/- only is given under the head of loss of consortium and amount of Rs.2000/- is given under the head of funeral

expenses. The accident took place in the year 2006 and so much more amount could have been given under the heads of loss of consortium and funeral expenses. Further the deceased was admitted in hospital for about 9 days. Nothing is given in respect of amount which must have been spent on treatment, medicines, attendant, stay etc. Thus the compensation awarded is on the lower side. No interference is possible on the point of quantum of compensation also.

9) In the result, the appeal stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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