

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3108 OF 2013

1. Smt. Bharati Rajendra Gavande
Age-35 years, Occu. Household
2. Ku. Puja Rajendra Gavande
Age-14 years, Occu. Education
3. Ku. Kajal Rajendra Gavande
Age-10 years, Occu. Education

(Appellant No. 1 is for herself and as Natural
Guardian for appellant Nos. 2 and 3)
All the appellants are residing at 46,
AMDS Colony, Remeshwar Colony, Jalgaon)

... Appellants
(Orig. Claimants)

Versus

1. Shri Barfiram Pobkin Nagar
Age – Major, Occu. Business,
R/o Shanti Roadlines, Jamar,
Kajgaon (Mumbai)
2. The New India Assurance Company Ltd.,
Through The Divisional Manager,
Kandsh Mill Complex, Nehru Chauk,
Jalgaon.

... Respondents

.....
Advocate for the appellants : Mr. M. M. Bhokarikar
Advocate for respondent No. 2 : Mr. A. G. Kanade
.....

CORAM : V. K. JADHAV, J.
DATED : 14th JULY, 2016

PER COURT :-

1. Heard finally with consent of learned counsel for the respective parties.

2. Being aggrieved by the Judgment and Award passed by learned Member, Motor Accident Claims Tribunal, Jalgaon dated 01.12.2008 in MACP No. 400 of 2002, the original claimants have preferred this appeal.

3. Brief facts giving rise to the present appeal are as under:

a) On 07.09.2001, deceased Rajendra along with his relative was going from Parola to Jalgaon by National Highway No. 6 on Kawasaki Boxer motorcycle bearing registration No. MH-19-R-8099. At about 11.30 to 12.00 p.m., when he was passing from village Savkheda Hol, which is at a distance of 13 kms from Parola, the said motorcycle dashed against one truck bearing registration No. MTS-9540, which was stationary on the road without any signal or sign or indicator lamp. The driver of the said truck had stopped the truck on the road in a negligent manner without following the traffic rules. In consequence of which, deceased Rajendra and his relative, who was the pillion rider, sustained multiple injuries on various parts of body. Deceased Rajendra died on the spot. Deceased Rajendra was working as a tailor in one industry on monthly salary of Rs.2,500/-. The claimants were entirely depending upon his income. Thus, the claimants preferred MACP No. 400 of 2002

before the Motor Accident Claims Tribunal, Jalgaon for grant of compensation under various heads.

b) Respondent No. 1, though duly served, remained absent, and therefore, hearing of the claim petition was ordered to proceed *ex-parte* against him. Respondent No. 2/insurer has strongly resisted the claim petition by filing written statement Exh.15. Respondent/insurer has denied the age, health, occupation and income of deceased Rajendra. It is contended that the accident has not taken place due to rash and negligent act of the truck driver, but due to rash and negligent driving of motorcycle by the deceased. It is also contended that charge of the accident was levelled against the deceased, and therefore, the insurer is not liable to pay compensation. The claimants adduced oral and documentary evidence in support of their contentions. Respondent/insurer has not adduced any evidence. Learned Member of the Tribunal, by its impugned Judgment and Award dated 01.12.2008, dismissed MACP No. 400 of 2002. Being aggrieved by the same, the claimants have preferred this appeal.

4. Learned counsel for the appellants submits that the claimants have examined the pillion rider of the motorcycle involved in the

accident before the Tribunal. Witness No. 3 Pramod Sonwane was the pillion rider of the motorcycle involved in the accident and he had sustained injuries in the said accident. Even during the course of investigation, the Investigating Officer has made inquiry with witness Pramod Sonwane and a reference has been given in the complaint Exh.27 to that effect. The Tribunal has not considered the oral evidence of the injured eye witness Pramod Sonwane, who has deposed that the truck was kept stationary on the center of the road and there were no indicator lights, nor there were markings to indicate that the truck was kept stationary on the middle portion of the road. The said eye witness has also deposed that the Police have not recorded his statement and thus, wrongly showed deceased as an accused. He has further unequivocally deposed that driver of the truck alone was responsible for the accident. Learned counsel submits that the contents of spot panchnama Exh.28 clearly supports the case of the claimants. The contents of the spot panchnama un-mistakenly point out that the said truck was kept stationary on the middle portion of the road without any indicators or markings around the truck. The accident had taken place at the mid-night time and therefore, it was not possible for the rider of the motorcycle to notice the stationary vehicle on the middle portion of the road. The Tribunal has given unnecessary weightage to the complaint Exh.27 and erroneously dismissed the claim for

compensation entirely.

5. Learned counsel for the appellants further submits that deceased Rajendra was serving as a tailor in one industry on monthly salary of Rs.2,500/-. The claimants have examined PW2-Sunil Sukhani, the employer of deceased Rajendra. According to PW2-Sunil Sukhani, he is running the industry since 1998 and deceased Rajendra was working as tailor in his industry on monthly salary of Rs.2,500/-. He has accordingly issued salary certificate which bears his signature and the same is marked at Exh.37. PW2-Sunil Sukhani has also brought before the Tribunal the account books showing that the monthly salary of Rs.2,500/- was being paid to deceased Rajendra. The claimants are entitled for the compensation on account of loss of future income as well as under the non-pecuniary heads.

6. Learned counsel for the respondent/insurer submits that the complaint Exh.27 was filed by the Police Head Constable after carrying out investigation in the crime. The complaint was lodged against deceased Rajendra and it is specifically mentioned in the complaint that deceased Rajendra was at fault. The said complainant i.e. the Head Constable has also considered the contents of spot panchnama and also by referring the same, lodged the complaint

against deceased Rajendra. Even as per the contents of spot panchnama, the said truck was not kept stationary on the middle portion of the road and there was enough space left for the vehicles like motorcycle to overtake the said truck. The Tribunal has rightly considered the oral and documentary evidence in its proper perspective, and accordingly dismissed the claim petition. The claimants have failed to prove the income of deceased Rajendra and further, there is no evidence in support of age of the deceased at the time of his accidental death.

7. The following points arise for my consideration and I record my findings on it for the reasons mentioned below:

POINTS	FINDINGS
1] Whether the death of Rajendra Shriram Gavande occurred due to the rash and negligent driving of the driver of the goods truck bearing No .MTS-9540 owned by respondent No.1 and insured with respondent No. 2?	In the affirmative.
2 A. Whether the petitioners are entitled for Compensation?	Yes.
B. If yes, to what amount?	As per final order.

REASONS

8. As to Point No.1

In order to prove the accident, the claimants have examined PW3-Pramod Pralhad Sonwane who was the pillion rider at the time of accident. It is not disputed that said Pramod Sonwane was the pillion rider at the time of accident and he had also sustained injuries in the said accident. Deceased Rajendra was riding the motorcycle and PW3-Pramod Sonwane was the pillion rider. According to PW3-Pramod Sonwane, at about 11.15 to 11.30 p.m., the accident had occurred. He has further explained that the said truck was standing in the center of the road and the indicator lights of the truck were not on, nor there were markings around the truck for indicating the stationary position of the truck. According to PW3-Pramod Sonwane, the accident took place due to mistake on the part of the truck driver. Learned Member of the Tribunal has discarded the evidence of injured eye witness Pramod Sonwane only on the count that he had not filed complaint to the Police. Furthermore, the Tribunal has given weightage to the contents of complaint Exh.27. However, the said complaint Exh.27 was lodged in the Police Station by Police Head Constable on behalf of the State. He was not an eye witness to the accident. Even though he has made inquiry with the injured eye witness Pramod Sonwane, for the reasons best known to him, he has not recorded his statement. Furthermore, even referring the contents

of spot panchnama in the complaint, he has lodged complaint against deceased Rajendra by alleging that deceased Rajendra was responsible for the accident and driver of the truck was not at fault. On the other hand, the contents of spot panchnama Exh.28 unmistakably point out that the said truck was kept stationary on the middle portion of the road without any indicators or markings on the road indicating the stationary position of the truck. On careful perusal of the contents of spot panchnama Exh.28, it appears that the road National Highway No.6 at the spot of the accident is east-west in direction. Village Erandol is towards eastern side whereas, Parola is towards western side. It is not disputed that the said truck was coming from Parola and was proceeding towards Erandol. It means that the truck was proceeding from western side to eastern side. If this is so, then the northern side of the road is the correct left side for the said truck. The motorcycle being driven by deceased Rajendra, was also proceeding in the same direction. As per the contents of the spot panchnama, the tar road of 10 ft. width is left towards the northern side from the stationary truck. If width of the truck is considered as 6 to 7 ft., then the truck was on the middle portion of the road leaving only 3 to 4 ft. of tar road towards southern side. As per contents of the spot panchnama, at the spot of accident, there is no village nearby, nor there are street lights on the said Highway. Consequently, it was not possible for any vehicle passing

by the said road to notice the vehicle kept stationary on the middle portion of the road. In the given set of facts, the only inference could be drawn that by keeping the vehicle truck in stationary position on the middle portion of the road, the driver of the truck acted in rash and negligent manner and he alone is responsible for the accident. I accordingly answer point No.1 in affirmative.

9. As to point No. 2A & B

So far as income of deceased Rajendra is concerned, the claimants have examined witness No. 2 Sunil Sukhani. He is the owner of the said Sukhani Industry and the claimants have duly proved the contents of salary certificate Exh.37 through this witness. Witness Sunil Sukhani has deposed that deceased Rajendra was working as a tailor on monthly salary of Rs.2,500/-. He has also brought before the Tribunal the account books to substantiate his contention that he was paying salary of Rs.2,500/- per month to deceased Rajendra. He has brought before the Tribunal the original accounts of the year 2001. He has stated in his cross examination that he is one of the partners of the firm and muster roll and payment register are also maintained in the industry. There is nothing in his cross examination to disbelieve his version.

10. The claimants were entirely depending upon the income of deceased Rajendra. If the salaried income of deceased Rajendra is considered as Rs.2,500/- per month, after deducting $\frac{1}{3}^{\text{rd}}$ amount towards his personal expenses, the loss of future income comes to Rs.1700/- per month, corresponding to Rs.20,400/- per annum. Deceased Rajendra was 33 years old at the time of his accidental death. His age is mentioned in the postmortem report Exh.30 as well as in the inquest panchnama Exh.29. Considering his age at the time of his accidental death, the relevant multiplier would be 16. In view of this, the loss of future income comes to Rs.3,26,400/-. The claimants are also entitled for compensation under the non-pecuniary heads. Claimant No. 1 was 28 years of age at the time of death of her husband. Thus, she is entitled for an amount of Rs.50,000/- for loss of consortium. Furthermore, the claimants are also entitled for an amount of Rs.10,000/- towards loss of estate. Claimant Nos. 2 and 3 are entitled for an amount of Rs.15,000/- each, for loss of love and affection. The claimants are also entitled for an amount of Rs.5,000/- towards funeral expenses. Thus, the breakup of compensation under various heads which can be broadly categorized is as under:

1. Loss of future income/dependency	Rs.3,26,400=00
2. Loss for consortium (for claimant No.1)	Rs.0,50,000=00
3. Loss of love and affection (Rs.15,000/- each for minor claimant Nos. 2 and 3)	Rs.0,30,000=00
4. Loss of estate	Rs.0,10,000=00
5. Funeral expenses	Rs.0,05,000=00

	Total Rs.4,21,400=00

Thus, the claimants are entitled for total compensation of Rs.4,21,400/-. I answer point Nos. 2 A and B accordingly.

11. The claimants are also entitled for interest on the said amount of Rs.4,21,400/- at the rate of 9% per annum from the date of application till realization of the entire amount. Since no other defence is raised by respondent/insurer before the Tribunal, both the respondents are jointly and severally liable to pay the same. Hence, I proceed to pass the following order:

ORDER

- I. The appeal is hereby allowed with costs.
- II. The Judgment and Award passed by the Member, Motor Accident Claims Tribunal, Jalgaon dated 01.12.2008 in

MACP No.400 of 2002 is hereby quashed and set aside.

- III. The MACP No.400 of 2002 is hereby allowed with costs.
- IV. Respondent Nos. 1 and 2 are jointly and severally liable to pay the compensation amount of Rs.4,21,400/- to the claimants, with interest at the rate of 9% per annum from the date of application till realization of the entire amount.
- V. The appellants/claimants to deposit the deficit court fees within a period of four weeks from the date of this order.
- VI. Award be drawn up accordingly.
- VII. The appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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