

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL [STAMP] NO.588 OF 2003

The Oriental Insurance Co. Ltd.	 Appellant
Vs.	
Smt. Mangal Ramesh Subkade & Others	 Respondents

Mr. J.S. Chandnani for the Appellant.
Mr. Balasaheb Deshmukh for Respondent Nos.1 to 3.

CORAM: MRS. MRIDULA BHATKAR, J.

DATE : FEBRUARY 24, 2016

P.C:

1. Not on Board. This appeal is pending since 2003 and it is under the Motor Vehicles Act. The accident in question took place on 14-2-1995, i.e. about 21 years back. Hence this appeal is taken up for hearing and final disposal, by consent and on the request of the learned counsel appearing for the parties.

2. Heard the learned counsel appearing for the appellant and respondent Nos.1 to 3. Perused the record and the documents produced by both parties, as also the impugned Judgment and Award.

3. Respondent Nos.1 to 4 are the original claimants. While respondent No.1 is the widow of deceased Ramesh Baburao Subkade, respondent Nos.2 and 3 are the children who were minors at the time of filing of the application. Respondent No.4 is the aged mother of the deceased.

4. On 14-2-1995, at about 5:30 a.m., when deceased Ramesh Baburao Subkade was returning from Ganpatipule to Pune in a Trax Jeep No.MH-12/P-9047, a truck bearing No.MH-04/P-2771, owned by respondent No.5 and insured with the appellant-Insurance Company came in a rash and negligent manner from the opposite direction and dashed the Trax Jeep. The impact of the collision was so severe that Ramesh, so also the other persons seated in the Trax Jeep sustained injuries and died on the spot. Deceased Ramesh was 42 years old at the time of his death. He was working as a Sales Representative with Elasto Chem at Kasarwadi and was getting Rs.1,800/- per month. His widow, minor children and mother filed an application under Section 166 of the Motor Vehicles Act claiming compensation of Rs.2,50,000/- under all permissible heads, with interest. The learned Member of the Motor Accident Claims Tribunal, Pune, by his Judgment and Award dated 23-7-2002 fixed the compensation at Rs.2,38,000/-, inclusive of the no fault liability, jointly and severally on opponent Nos.1 and 2 with 9% interest. Hence this appeal.

5. Learned counsel for the Insurance Company submitted that the learned Member of the Tribunal has lost sight of the defence taken by the Insurance Company. He submitted that the accident has taken place not because of the rash and negligent driving of the driver of the truck, i.e. the offending vehicle, but because of the rash and negligent driving by the deceased. He submitted that the driver of the truck was prosecuted before the criminal Court and the trial ended in his acquittal. He further submitted that the Trax Jeep was over-loaded with passengers, in breach of the terms and conditions of the permit for persons being transported by said Jeep.

6. The point for my determination is, whether the compensation awarded by the Tribunal is illegal and excessive and deserves to be set aside?

7. Per contra, the learned counsel for the respondents/original claimants supported the Judgment and Award passed by the learned Member of the Tribunal. He submitted that the accident occurred due to rash and negligent driving by the driver of the truck. The deceased was drawing salary of Rs.1,800/- per month and the evidence tendered by the original claimants went unchallenged. The Insurance Company has not examined any witness in support of its contentions.

8. Applicant No.1 Smt. Mangal, the widow of the deceased, has entered the box and deposed about the accident. Reliance is placed on the spot panchnama (Exhibit-32) and the copy of the FIR (Exhibit-31). If the Insurance Company wanted to prove that the accident has taken place not because of the rash and negligent driving by the driver of the truck but only because of the rash and negligent driving by the driver of the Trax Jeep, then it was necessary for the Insurance Company to examine the driver of the truck to discharge that burden. However, the Insurance Company did not examine the witness on any count, including the defence of breach of policy. Therefore, the finding recorded by the Member of the Tribunal is correct. The original applicant-wife has produced the salary certificate, which is marked as Exhibit-37 and on that basis and which is rightly accepted, the calculations and deductions made by the Member of the Tribunal are also correct and thus the amount of compensation, which is fixed as Rs.2,38,000/- is just and adequate. No interference with the said Judgment and Award is called for. The appeal is dismissed. The Registry to number the appeal.

(MRIDULA BHATKAR, J.)