

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 291 OF 2007
WITH
CIVIL APPLICATION NO. 3867 OF 2008

United India Insurance Co. Ltd.
through its Divisional Manager
Office at Vinayakrao Patil Chowk,
Station Road, Aurangabad

...Appellant

versus

1. Chandrakala w/o Vishnu Kokate
Age 35 years, Occ. Household
R/o. Khodas, Tq. Kaij, District Beed

2. Bhagyashree d/o Vishnu Kokate
Age 14 years, minor U/g
mother, respondent No.1

3. Neha d/o Vishnu Kokate
Age 11 years, minor U/g
mother, respondent No.1

4. Parag s/o Vishnu Kokate
Age 5 years, minor U/g
mother, respondent No.1

...Respondents

5. Bhagwan s/o Nanasaheb Kadam

6. Shyamrao Madhavrao Salunke

(Appeal is dismissed as against
respondent Nos. 5 and 6 by order
dated 28.7.2009)

.....
Mr. S.G. Chapalgaonkar, advocate for the appellant
Mr. R.R. Imale, advocate for respondent Nos. 1 to 4.

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CORAM : V. K. JADHAV, J.
DATED : 12th JULY, 2017

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and award dated 12.12.2006

passed by the learned Member, M.A.C.T. Ambajogai, in M.A.C.P. No. 96 of 2002, the original respondent No.3 insurer has preferred this appeal.

2. Brief facts giving rise to the present appeal are as follows:-

a) Deceased Vishnu Narayan Kokate was in Government service as an Agriculture Superintendent at Aurangabad. On 9.12.2001, at about 00.15 he was returning to his house after having dinner at Kale Hotel, in a car bearing registration No. MH-20-U-998, alongwith his officers. Respondent No.2 was driving the said car owned by the respondent No.1 at the relevant time. On way, when the car reached near Cambridge school, respondent No.2 had tried to overtake one unknown truck, which was proceeding in the same directions. In that process, the said car dashed against the back portion of the truck. In consequence of which, deceased Vishnu had sustained head injury. He was immediately shifted to the Hospital, where he succumbed to the injuries, while under treatment.

b) Legal representatives/claimants approached the Tribunal by filing M.A.C.P. No. 96 of 2002 for grant of compensation under various heads. It has been contended in the claim petition that the accident was caused due to rash and negligent driving on the part of driver of the car i.e. respondent No.2. It has been contended that the driver of car failed

to take proper care while driving the car on the road. Accordingly, the claimants have claimed compensation of Rs.15,00,000/- with interest and costs of the petition.

c) Respondent Nos. 1 and 2 have not filed their written statement and the claim petition was ordered to be proceeded without their written statement.

d) The appellant insurer has strongly resisted the claim petition by filing written statement. It has been contended that the claimants have not impleaded the truck owner and its insurance company as party to the claim petition and as such, the claim petition is bad for non joinder of necessary parties. It has also been contended that it is a case of contributory negligence. The claimants have claimed exorbitant amount of compensation.

e) The claimants have adduced oral as well as documentary evidence in support of their contentions. The appellant insurer has not adduced any evidence. The learned Member of the Tribunal by its impugned judgment and award dated 12.12.2006, partly allowed the claim petition and thereby directed the respondents alongwith the appellant insurer to pay jointly and severally an amount of Rs.10,51,000/- (inclusive of N.F.L. amount) to the petitioners together with interest and costs. Hence, this appeal.

3. Learned counsel for the appellant/insurer submits that the respondents claimants have placed their reliance on the police documents, such as F.I.R. Exh.23, spot panchnama Exh.24, inquest panchnama Exh.25 and complaint Exh.26. Learned counsel submits that after the accident, driver of car had lodged the complaint against driver of said unknown truck, alleging in his complaint that the driver of the said truck suddenly took the truck on the middle portion of the road and as such car being driven by him dashed against back side portion of the said truck. Learned counsel submits that once the document is placed on record and it is exhibited, the claimants cannot be resiled from the contents of the said documents. The claimants cannot place their reliance on part of the documents and not upon the rest. Learned counsel submits that the accident had taken place on account of rash and negligent driving of driver of the truck alone and in the alternate the aforesaid documents on record point out that driver of the said truck had also contributed the negligence to certain extent. Learned counsel submits that so far as the quantum of compensation is concerned, the Tribunal has erroneously applied the multiplier 17 instead of 14. Deceased Vishnu was 41 years of age at the time of his accidental death and as such, relevant multiplier would be 14 and not 17. Learned counsel for the appellant insurer fairly concedes the legal position that in terms of comprehensive policy Exh.29, issued by the appellant insurer, the risk of the occupier of the car is covered under the policy.

4. Learned counsel for the appellant in order to substantiate his submissions, placed reliance on the judgment of Supreme Court in the case of ***Oriental Insurance Company Ltd. vs. Premlata Shukla and others, reported in (2007) 13 SCC 476.***

5. Learned counsel for the respondents original claimants submits that on the basis of documents placed on record, the Tribunal has correctly recorded the finding to the effect that driver of the car alone was responsible for the accident and accident occurred due to rash and negligent driving on the part of driver of the car. So far as the F.I.R. Exh.23 and complaint Exh.26 are concerned, respondent No.2, who was driving the car has made certain allegations against the driver of said truck. However, as per the contents of spot panchnama, it appears that spot of accident is towards northern side of tar road. It has also been mentioned in the spot panchnama Exh.24 that the width of tar road, at the spot of accident is 90 ft. Learned counsel submits that the map drawn on spot panchnama, unmistakably points out that said truck was at the correct and extreme left side of the road. Thus, the fact that dash was given from back side is sufficient to draw inference that driver of the car had driven the car in rash and negligent manner. Learned counsel submits that the Tribunal has awarded just and reasonable compensation under the head of loss of future income, after considering the salaried income of deceased Vishnu, however, learned counsel

submits that the Tribunal has not awarded compensation under the head of loss of consortium to respondent claimant No.1 and loss of love and affection to minor claimants and also for funeral expenses. Learned counsel submits that though the respondents claimants have not preferred any appeal or cross appeal, they are entitled for just and reasonable compensation under all permissible heads.

6. On perusal of the evidence and judgment and award passed by the Tribunal, it appears that the appellant insurer though raised defence of contributory negligence, however, in order to substantiate the same, the appellant insurer has not adduced any oral or documentary evidence. On the other hand, the appellant insurer has placed its reliance on some police documents, such as F.I.R., spot panchnama etc. On careful perusal of spot panchnama Exh.24 and map drawn on it, it appears that considering the position of the car, the position of the truck was assumed in the map drawn on the spot panchnama and it appears that the position of the said truck was at the extreme left side of tar road. It further appears from the contents of spot panchnama, mostly the damage caused to the car on its cleaner side. Further dash was given on the back side of the truck and same is sufficient to draw inference that driver of the car had driven it in rash and negligent manner. Such irresistible inference could be drawn when the cleaner side portion of the car mostly got damaged in the accident and deceased Vishnu sat on front cleaner side portion of the car. The

appellant insurer has not examined respondent No.2 to substantiate its contentions about the contributory negligence on the part of driver of the truck nor examined any other eye witness. Respondent No.2, who was driving the car at the time of accident is bound to make certain allegations in the complaint lodged at the relevant time against the driver of truck. However, it is for the Court to marshal the evidence and arrive at correct conclusion. In the given set of facts, I do not find that the Tribunal has recorded incorrect finding to the effect that accident had taken place on account of rash and negligent driving of the driver of car alone. So far as the reliance placed by learned counsel for the appellant on the judgment of Supreme court in the case of ***Oriental Insurance Company Ltd. vs. Premlata Shukla and others (supra)*** is concerned, in my opinion, the same is not applicable to the facts and circumstances of this case.

7. So far as the quantum of compensation is concerned, the Tribunal has observed in para 13 of the judgment that deceased Vishnu was 41 years and 4 months old at the time of his accidental death. In view of same, relevant multiplier would be 14 instead of 17. The claimants are also entitled for the compensation under the head of loss of consortium and loss of love and affection and funeral expenses. Though the claimants have not preferred any appeal or cross appeal, the claimants are entitled for just and reasonable compensation under the permissible heads. Respondents claimants are entitled for

Rs.1,00,000/- under loss of consortium as against Rs.20,000/- and total amount of Rs.1,00,000/- towards loss of love and affection for the minor claimants Nos.2 to 4 as against Rs.15,000/- awarded by the Tribunal. The claimants are also entitled for amount of Rs.19,400/- towards funeral expenses as against Rs.3,000/- as awarded by the Tribunal.

8. In view of above, redetermination of compensation is required to be made. Thus the break up of compensation under different heads awardable to the claimants which can be broadly categorized is as under:-

I.	Loss of future income/dependency (As against Rs.10,09,800/- as awarded by the Tribunal)	Rs. 8,31,600.00
II.	Loss of consortium (As against Rs.10,000/- as awarded by the Tribunal)	Rs. 1,00,000.00
III.	Loss of love and affection (Lump sum amount) (As against Rs.15,000/- as awarded by the Tribunal)	Rs. 1,00,000.00
IV.	Funeral expenses (As against Rs.3,000/- as awarded by the Tribunal)	Rs. 19,400.00

		Total Rs.10,51,000.00
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(Rupees Ten lacs fifty one thousand only)

9. Since the amount after redetermination is the same, there is no

need to modify the operative part of order. There is no substance in the appeal, except the application of relevant multiplier. The appeal is thus liable to dismissed. Hence, I proceed to pass the following order.

O R D E R

- I. The appeal is hereby dismissed with costs.
- II. The appeal is accordingly disposed of.
- III. Pending civil application is also disposed of.

(V. K. JADHAV, J.)

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