IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 20 OF 2017
WITH
CA/5250/2016 IN FA/20/2017

M/S. SHRIRAM GENERAL INSURANCE CO. LTD.
THROUGH THE BRANCH MANAGER, PUNE.
VERSUS
SHITAL BHAUSAHEB LOKHANDE AND ORS
...
Advocate for Appellant : Mr S G Chapalgaonkar
Advocate for Respondents : Mr M S. Kabra For R/1 To 5,
Mr Gaware Niteen V. For R/6
...
CORAM : V.K. JADHAV, J.
Dated: March 20, 2017
...

PER COURT :-

1. Heard finally with consent at admission stage.

2. Being aggrieved by the judgment and Award dated 8.12.2015 passed by the Member, Motor Accident Claims Tribunal, Ahmednagar in MACP No.220/2013, the original respondent no.2-insurer has preferred this appeal.

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

a] on 11.2.2013 at about 05.30 p.m. deceased

Bhausaheb was returning from Newasa to Wambori on his motor bike bearing registration No.MH-17/AA-2952 and within the limits of village Usthal Dhumala, Tq. Newasa near Vijay Hotel one pickup van bearing registration No.MH-12/DT-5378 came in rash and negligent manner and dashed to the backside of the motorcycle being driven by deceased Bhausaheb. In consequence of which, deceased Bhausaheb sustained severe injuries on his face and head. Even one truck bearing registration No.MH-04/H-1415 also gave dash to the pick up van. In consequence of the injuries sustained deceased Bhausaheb died on the spot.

b] The legal representatives of deceased Bhausaheb approached the Tribunal by filing M.A.C.P. No.220/2013 for grant of compensation under various heads. It has been contended in the claim petition that deceased Bhausaheb was serving as Gramsevak on monthly salary. He was the State Government employee. He was the only earning Member of the family and the claimants were entirely depending on his income.

c] Respondent no.1 owner has failed to file his written statement and hence, hearing of the claim petition ordered to proceed without his written statement.

d] The appellant-insurer has strongly resisted the claim petition by filing his written statement. It has been contended that the driver of the pickup van was not responsible for the accident. The driver of the pickup van was not holding valid and effective driving licence and therefore there has been breach of the terms and conditions of the insurance policy.

e] The claimants have adduced oral and documentary evidence to substantiate their contentions. Respondents have not adduced any evidence. The learned Member of the Tribunal, by its impugned judgment and award dated 08.12.2015 allowed the petition and thereby directed the respondents including the present appellant to pay compensation of Rs.55,82,792/- to the claimants inclusive of NFL amount with interest 7% p.a. from the date of application till realization of the entire amount. Being aggrieved by the same, the insurer has preferred this appeal.

4. The learned counsel for the insurer submits that, the driver of the pickup van was not responsible for the accident alone. The driver of the pickup van had applied brakes of the van to avoid the accident and the same is also reflected from the contents of the spot panchnama exh.34. Learned counsel submits that, in fact, deceased Bhausaheb was driving his motorcycle in such a manner that the driver of the pickup van constrained to apply brakes to avoid the accident. Learned counsel submits that, furthermore, one another truck gave dash to the backside of pick up van. There are three vehicles involved in the accident and after the accident, crime came to be registered against driver of the pickup van as well as driver of the said truck. Learned counsel submits that, Tribunal ought to have held that deceased Bhausaheb had contributed negligence to some extent. The claimants have not impleaded the owner, driver and insurer of the said

vehicle truck involved in the accident and in view of the same, the Tribunal ought to have recorded the negligence on the part of the driver of the pickup van in absence of impleading the owner, driver of the said truck as a party to the claim petition. The learned counsel for the appellant-insured submits that, learned Member of the Tribunal has not deducted certain amount towards income tax though gross salary drawn by the deceased at the time of his death was taxable.

5. Learned counsel in order to substantiate his contention places his reliance on a case Yerramma Vs. G. Krishnamurthy in Civil appeal No.7705/2014 wherein the Supreme Court after deducting 10% towards income tax considered gross salary drawn of the deceased at the time of his death as per his salary slip.

6. Learned counsel for respondents-claimants submits that, the driver of the pickup van had driven the vehicle in such a high speed that even after application of the brakes, he could not control the

vehicle and given dash to the backside of the motorcycle. Learned counsel submits that, it is enough to draw inference about rash and negligent driving if dash is given to the vehicle proceeding ahead on its back side. Learned counsel submits that, after giving dash to the motorcycle on its backside, the driver of the pickup van was getting down and at that time said truck given dash to the back portion of the pickup van. Learned counsel submits that, said incident of giving dash by the truck on the back portion of the pickup van would be an independent accident and the same cannot/should not be clubbed with the accident arising out of the use of the pickup van. Learned counsel submits that, on careful perusal of the contents of the spot panchnama Exh.34 and map drawn on it, it appears that deceased Bhausaheb was driving his motorcycle on the extreme correct left side of the road and pickup van given dash on the back portion of the motorcycle at the extreme left side of the road. The learned Member of the Tribunal has, therefore, rightly recorded a finding that, driver of the pickup van alone was responsible for the accident and none else. Learned counsel submits that, deceased Bhausaheb was admittedly a State Government Employee and as per the salary slip Exh.28, no deduction was made towards income tax. Such deduction is commonly known as Tax Deducted at Source. If the employer fails to deduct the tax at source from the employees salary, then the penalty for non deduction of TDS is prescribed under Section 201(1A) of the Income Tax, Act 1961. In absence of any such deductions from the salary of deceased Bhausaheb, the only irresistible inference could be drawn that earning of the deceased Bhausaheb was not taxable. Learned counsel submits that, there is no question of deducting any amount towards income tax.

7. Learned counsel in order to substantiate his contention placed his reliance on a case Vimal Kanwar and others Vs. Kishor Dan and others reported in 2013 AIR SCW 3258.

8. On careful perusal of the pleadings, evidence and impugned judgment and award, it appears that, the dash was given on the backside of the motorcycle

pickup van. On perusal of the contents of spot panchnama, exh.34, it appears that the motorcycle was almost on the Kaccha road and dash was given on back side portion of the motorcycle. There are tyre marks at a distance of 100 feet behind the pickup van, however, it cannot be said that those tyre marks are of the pickup van or the truck. Even, assuming that those tyre marks were of the pickup van, same is indicative of the fact that even after application of the brakes at a considerable space, the driver of the pickup van could not control the speed of the vehicle. Thus, only irresistible inference could be drawn that the driver of the pickup van was driving his pickup van in a very fast, excessive and uncontrollable speed. The learned counsel for respondent original claimant after referring the contents of the FIR Exh.33 has rightly pointed out that after giving dash to the motorcycle, the driver of the pickup van was getting down and at that time one another truck coming from back side given dash to the back portion of the pickup van. The claimants have examined one Sagar Lokhande as witness no.3 at Exh.38. He has lodged FIR exh.33. On perusal of his affidavit of evidence, it appears that, the driver of the pickup van was getting down from his vehicle and at that time one another truck gave dash to the pickup van on its backside. Respondent no.1 owner cum driver has not examined himself. The appellant-insurer has also not examined any other witness to substantiate its defence. On the other hand, on perusal of the written statement filed by the appellant, it appears that the appellant-insurer has not raised any specific defence about the contributory negligence or negligence on the part of the deceased and driver of the truck.

9. In view of the above I do not find any fault in the finding recorded by the Tribunal that accident occurred on account of rash and negligent driving of the driver of the pick up van alone and none else is responsible for the accident.

10. So far as quantum of the compensation is concerned, the learned counsel for the appellant-insurer has objected determination of the compensation made by the Tribunal only on the ground that the tribunal

has failed to deduct 10% of the amount from the salaried income of deceased Bhausaheb towards income tax. Admittedly, deceased Bhausaheb was the State Government employee. On careful perusal of the pay slip exh.28, it appears that no amount was deducted towards income tax. Learned counsel for respondent original claimant by placing reliance on Vimal Kanwar and ors. Vs. Kishore Dan and ors rightly pointed out that employer is liable to deduct the amount from the salary at source towards the income tax and in absence of any such deduction inference could be drawn that the income of deceased Bhausaheb was not taxable. In the case cited in paragraph no.21 of the judgment, the Supreme court has made following observations :-

> 21. The third issue is "whether the income tax is liable to be deducted for determination of compensation under the Motor Vehicles Act" In the case of Sarla Verma & Anr.(Supra), this Court held "generally the actual income of the deceased less income tax should be the starting point for calculating the compensation." This Court further observed that "where the annual income is in taxable range, the word "actual salary" should be read as "actual salary less tax". Therefore, it is clear that if the annual income comes within the taxable range income tax is required to be deducted for determination of the actual salary. But while deducting income-tax from salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income chargeable under the head "salaries" one should keep in mind that under Section 192 (1) of the Income-tax Act, 1961 any person responsible for paying any income chargeable under the head "salaries" shall at the time of payment, deduct income-tax on estimated income of the employee from "salaries" for that financial year. Such deduction is commonly known as tax deducted at source ('TDS' for short). When the employer fails in default to deduct the TDS from employee salary, as it is his duty to deduct the TDS, then

> the penalty for non-deduction of TDS is prescribed under Section 201(1A) of the Income-tax Act, 1961.
>
> Therefore, in case the income of the victim is only from "salary", the presumption would be that the employer under Section 192 (1) of the Income- tax Act, 1961 has deducted the tax at source from the employee's salary. In case if an objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee.
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> However, there can be cases where the victim is not a salaried person i.e. his income is from sources other than salary, and the annual income falls within taxable range, in such cases, if any objection as to deduction of tax is made by a party then the claimant is required to prove that the victim has already paid income tax and no further tax has to be deducted from the income.

11. In the instant case, only salaried income of deceased Bhausaheb is considered and the claimants have also not claimed any other additional source of income. In view of the above, I do not find any fault in the impugned judgment and award passed by the Tribunal so far as determination of the compensation towards loss of income/dependency is concerned. I find no merit and substance in the appeal. The appeal is thus liable to be dismissed with costs. Hence, following order.

O R D E R

I. First Appeal is hereby dismissed with costs.

II. First Appeal accordingly disposed of.

III. The claimants are entitled to withdraw the compensation if deposited by the appellant-insurer before this court.

sd/-

(V.K. JADHAV, J.)

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aaa/-